



The City of  
**WORCESTER**  
Zoning Board of Appeals

Russell Karlstad, Chair  
Jordan Berg Powers, Vice Chair  
Anthony Dell'Aera  
George Cortes  
Eric Torkornoo  
Nathan Sabo, Alternate Member  
Shannon Campaniello, Alternate Member

**SPECIAL PERMIT & VARIANCE – FINDINGS OF FACT AND DECISION**

**194 Park Avenue (MBL 11-006-0012A)**

**(ZB-2023-090)**

The Zoning Board of Appeals scheduled a hybrid public hearing on November 6, 2023, at 5:30 PM in the Worcester City Hall, 455 Main Street, Esther Howland Chamber, on the petition of 194 Park Avenue LLC, seeking a Special Permit and Variances for property located at 194 Park Avenue, Worcester, Massachusetts.

Due notice of the public hearing to be held on November 6, 2023, was sent to the individuals listed on the City of Worcester Certified Abutter's list for the subject property.

On October 23 & 30, 2023, notice of the hearing was duly advertised in the Worcester Telegram & Gazette.

On November 6, 2023, the hybrid meeting was called to order by Russell Karlstad, Chair. Board members physically present for the hearing at Worcester City Hall, 455 Main Street, Esther Howland Chamber were Russell Karlstad, George Cortes, Nathan Sabo, and Shannon Campaniello. Board members Jordan Berg Powers, Anthony Dell'Aera, and Eric Torkornoo participated remotely. Remote participation was facilitated for attendees via phone at call-in number, 844-621-3956 (Access Code: 2630 362 4924) and via WebEx link (<https://cityofworcester.webex.com/meet/zoningboardofappealswebex>).

**FINDINGS**

The Worcester Zoning Board of Appeals (ZBA), having conducted a public hearing and reviewed all the submitted evidence, finds that:

1. 194 Park Avenue LLC, whose address is 194-196 Park Avenue, Worcester, MA 01609, is the owner and petitioner of certain land situated at 194 Park Avenue in the City of Worcester, Massachusetts, and is more particularly described in a deed recorded with the Worcester District Registry of Deeds Book 52627, Page 319.
2. Said land is located in a zoning district classified under the City of Worcester Zoning Ordinance as an BL-1.0 (Business, Limited) and RS-7 (Residence, Single-Family) zoning districts.
3. Presently on the premises is a ±9,000 SF multi-tenant commercial structure with a mix of food service, personal service, and retail uses and ±50 surface parking spaces.
4. The applicant seeks to operate a food-service establishment, with alcohol, within a ±3,000 SF portion of the premises
5. The applicant seeks a special permit to allow a food service use (including consumption/sale of alcoholic beverages) and/or providing dancing or entertaining in a BL-1.0 zone (Article IV, Section 2, Table 4.2, Business Use #8).
6. The use (Food Service – Business Use #7, Personal Services, Business Use #26) is also non-conforming, with no commercial uses allowed within the RS-7 zoning district. The applicant seeks a special permit to expand the non-conforming food-service use into the tenant space formerly used for personal services and to change the use to a use of a similar nature to allow food service that includes consumption/sale of alcoholic beverages and/or providing dancing or entertainment (Business Use #8).

City of Worcester Zoning Board of Appeals c/o Planning & Regulatory Services  
City Hall, 455 Main Street, Room 404 (4<sup>th</sup> floor), Worcester, MA 01608

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194 PARK AVENUE, WORCESTER

- 7. The applicant seeks a **Variance** for relief of **8 spaces** from the minimum 58 space parking requirement for a food-service use (Article IV, Section 7, Table 4.4)
- 8. The petitioner seeks the following:

- Special Permit:** To allow a food-service use (including consumption/sale of alcoholic beverages) and/or providing dancing or entertaining in a BL-1.0 zone (Article IV, Section 2, Table 4.2, Business Use #8)
- Special Permit:** To allow the extension, alteration or change of a privileged pre-existing, nonconforming use to a use of a similar nature (Article XVI, Section 4)
- Special Permit:** To allow the extension, alteration or change of a privileged pre-existing, nonconforming structure and/or use (Article XVI, Section 4)
- Variance:** For relief of **8 spaces** from the minimum 58 space parking requirement for a food-service use (Article IV, Section 7, Table 4.4)

**Findings of Fact – Variance:**

Per Zoning Ordinance Article II, Section 6(A)(3), the ZBA, as Permit Granting Authority, may grant upon appeal or petition with respect to particular land or structures, a variance from the dimensional terms of the Zoning Ordinance.

- 1. Describe how a literal enforcement of the provisions of the City of Worcester Zoning Ordinance would involve a substantial hardship, financial or otherwise, to the petitioner or appellant:

*The parking relief would allow for a slightly increased occupancy for the restaurant which would result in a more optimum operation.*

- 2. Describe how the hardship is owing to circumstances relating to the soil conditions, shape, and/or topography of the land or structures and how the hardship especially affects said land or structures, but does not affect generally the zoning district in which it is located:

*The shape of the lot has fixed the number of parking spaces and their distribution on the property.*

- 3. Describe how desirable relief may be granted without detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the City of Worcester Zoning Ordinance:

*The restaurant is replacing two other active retail establishments and, as such, will not necessarily increase the overall parking demand.*

- 4. Describe how the dimensional variance as it relates to floor space, bulk, number of occupants or other relevant measures, if granted, shall be no greater than the minimum necessary to provide relief from the statutory hardship:

*The parking relief is based solely on a calculated occupancy that will satisfy both minimum needs of the restaurant and the existing salon.*

**Findings of Fact – Special Permit:**

**Criteria.** Per Zoning Ordinance Article II, Section 6(A)(2), Special permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the city or the neighborhood.

1. Social, economic or community needs that are served by the proposal;  
*The proposed use is located in a business district and will replace another food establishment. The proposal will include an internal reconstruction and updating of the small business plaza.*
2. Traffic flow and safety, including access, parking, and loading areas;  
*The site has been tested over many years with successful businesses and has been able to adequately handle the parking requirements of the individual establishments.*
3. Adequacy of utilities and other public services;  
*The site is served by municipal water and sewer.*
4. Neighborhood character and social structure;  
*The plaza in which the restaurant will operate is located on one of Worcester's main east-west arteries and has sufficient capacity to absorb for the proposed use.*
5. Impacts on the natural environment;  
*The existing lot surface will not be altered.*
6. Potential fiscal impact, including city services needed, tax base, and employment.  
*Restaurants are the life blood of a growing community and economy. No additional municipal services will be needed to service the property or proposed use.*

**DECISION**

At a meeting of the Board on November 6, 2023, and on motion duly made and seconded, it was voted 4-1, with Board members Russell Karistad, Jordan Berg Powers, George Cortes, and Anthony Dell'Aera voting in favor and Board Member Eric Torkornoo voting against, to approve the following requested relief:

- Special Permit:** To allow a food-service use (including consumption/sale of alcoholic beverages) and/or providing dancing or entertaining in a BL-1.0 zone (Article IV, Section 2, Table 4.2, Business Use #8)
- Special Permit:** To allow the extension, alteration or change of a privileged pre-existing, nonconforming use to a use of a similar nature (Article XVI, Section 4)
- Special Permit:** To allow the extension, alteration or change of a privileged pre-existing, nonconforming structure and/or use (Article XVI, Section 4)
- Variance:** For relief of 8 spaces from the minimum 58 space parking requirement for a food-service use (Article IV, Section 7, Table 4.4)

With the following conditions of approval:

Prior to issuance of a building permit:

1. Provide one (1) to-scale, stamped/sealed original of a final revised site plan-set, and a PDF file of the same, to the Division of Planning & Regulatory Services reflecting the following changes:
  - a. Revise the Zoning Table to reflect the required dimensional requirements both the BL-1.0 and RS-7 zoning district, the proposed and existing conditions in separate columns. Revise the lot area and frontage requirements for the BL-1.0 zone.
  - b. Reflect dimensions for all parking spaces and aisle widths.
  - c. Provide a detail for all proposed signage.
  - d. Reflect wheel stops for all parking spaces abutting Park Avenue in a manner to prevent vehicles from overhanging onto the street.
  - e. Reflect the installation of a bicycle rack that complies with recommendations of the association of Pedestrian & Bicycle Profession.
  - f. Provide a detail for proposed dumpster screening with a solid-style, non-chain-link enclosure.
  - g. Incorporate a landscape island under the "business pylon sign" directly in front of the nail salon.
  - h. Reflect one (1) minimum 3" caliper shade tree of an Asian Longhorned Beetle and Emerald Ash Borer resistant species shall be planted along Park Avenue in coordination with DPW, and two minimum 3" caliper shade trees be planted within the side yard setback north of the parking lot between it and the property located at 190 Park Ave. Notate that said trees shall be planted on/before 6/30/2024 unless DPW determines otherwise for the new public shade tree.
  - i. Reflect that parking at the rear parking lot nearest Lee Street be limited to employee use only.

DTM Comments:

- j. Landscaping, or a low fence, or other means approved by the DTM shall be installed between the parking lot and the adjacent public sidewalk to prevent parked vehicles from encroaching on the public sidewalk.
- k. Reflect one way circulation in a southerly direction for the main parking lot in front of the building with two curb cuts.

- I. All driveways be placed under a Right Turn only restriction onto Park Avenue and signed accordingly.

**Perpetual:**

2. Wheel stops shall be maintained in a manner to prevent vehicles from overhanging onto the sidewalk.
3. Hours of operation for service to patrons shall be limited to 10 AM to 10 PM and there shall be no outdoor entertainment.
4. Egress from the site onto Park Ave shall be right-turn only.
5. Access to the parking lot from Lee Street remain inaccessible by motor vehicles on Lee Street.
6. Any replacement to existing lighting shall be dark-sky compliant and of a warmer temperature (3,000K), excepting signage and architectural lighting.
7. Drive aisles, stormwater basins, landscaped setback areas, and required parking spaces shall not be used for snow storage; once designated snow storage areas reach capacity or interfere with visibility, snow shall be trucked off-site.
8. Provided that the project shall be constructed in substantial accordance with the findings of fact and all final revised definitive site plans on file with the City of Worcester and in accordance with all applicable governmental codes.

The Board also voted unanimously to approve waivers of the following plan requirements:

1. Distances from adjacent buildings
2. Proposed topography
3. Percentage of the lot covered by principal and accessory buildings

Appeals of this decision shall be made pursuant to M.G.L. c. 40A § 17 and shall be filed within twenty days after the filing of this decision in the office of the City Clerk.

It was **ORDERED** by the Board that persons notified of the hearing be notified of the foregoing decision.

The names typed below represent the intent to sign the foregoing document in accordance with MGL Chapter 110G §9. Duly authorized by Ch. 110G and recorded at Worcester Registry of Deeds in Book 62537, Page 327.

**ADJOURNED**

DocuSigned by:  
*Russell Karlstad*  
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**RUSSELL KARLSTAD**

DATE 11/29/2023

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**JORDAN BERG POWERS**

DATE \_\_\_\_\_

\_\_\_\_\_  
**GEORGE CORTES**

DATE \_\_\_\_\_

\_\_\_\_\_  
**ERIC TORKORNOO**

DATE \_\_\_\_\_

\_\_\_\_\_  
**ANTHONY DELL'AERA**

DATE \_\_\_\_\_

**REMINDERS**

Time Limitations: If the activity authorized by a Special Permit granted by the ZBA is not initiated within one (1) year of the date of grant (one year from date Special Permit is received by the City Clerk) and/or the activity is not completed within two (2) years, then the Special Permit shall lapse unless the Director of Code Enforcement makes a determination that the failure to complete was for good cause. If the rights authorized by a Variance are not exercised within one (1) year of the date of grant of such Variance they shall lapse (one year from date Variance is received by the City Clerk). Per Article II, Section 9, D. 7. of the City of Worcester Zoning Ordinance.

Time Limitations: Per Article II, Section 9.D.5. of the City of Worcester Zoning Ordinance If the rights authorized by a Variance are not exercised within one (1) year of the date of grant of such Variance they shall lapse. Per Article II, Section 9, D. 7. of the City of Worcester Zoning Ordinance.

Landscaping Requirements: Required landscaping shall be maintained in a healthy growing condition, free of refuse and debris, and any plantings that do not survive shall be replaced in kind by the applicant or the property owner within a reasonable period of time. All plant materials and fencing shall be arranged and maintained so as not to obscure the vision of traffic. There shall be no parking of vehicles or snow storage in areas used for screening and buffering. Per Article V, Section 5, C. iv of the City of Worcester Zoning Ordinance.

Construction Noise: No person shall operate any powered construction equipment or build, erect construct, demolish, alter, repair, excavate or engage in hoisting grading, site work, including tree and brush removal, dredging or pneumatic hammering, or deliver construction equipment and/or supplies to the site on any building, road, tower, parking lot, machine, pipe, sewer, sidewalk, or any other construction project, except between the hours of 7:00 a.m. and 9:00 p.m. on weekdays and Saturday, and between the hours of 9:00 a.m. and 7:00 p.m. on Sundays. Per Chapter 9 Section 1A (e) (9) of the City of Worcester's Ordinance Relative to Excessive and Unreasonable Noise.

**ATTEST: WORC. Kathryn A. Toomey, Register**