

**REVISED Minutes
Worcester Planning Board
Special Meeting
March 3, 2004**

City Council Chambers
455 Main Street
Worcester, MA

Proposed Zoning Ordinance (dated November 12, 2003)

Planning Board Members Present:

Joe Boynton, Chair
Samuel Rosario
Anne O'Connor
John Shea

Staff Present:

Russell Adams, Department of Public Works
Jill Dagilis, Dept. of Code Enforcement
Katie Donovan, Division of Land Use
Joel Fontane, EONS – Division of Planning
David Holden, Dept. of Code Enforcement
Jody Kennedy-Valade, Division of Land Use
Edgar Luna, EONS – Division of Planning
Michael Traynor, Law Department
Jeff Head, Law Department

For the purposes of this meeting, the Planning Board referred to the color-coded version (Law Department version) of the November 12, 2003 Proposed Zoning Ordinance.

Call to order: Joe Boynton called the meeting to order at 5:00pm

1. Article I – General Provisions

- a. Section 1 – Purpose.** Joe Boynton indicated that this Section needed language regarding protection against: “use of land incompatible with nearby uses”. On a motion duly made and seconded, it was voted to recommend that that phrase be added to Section 1.A.4.

- b. Section 2 – Definitions:** Joe Boynton indicated that retail uses appear to be driving the automobile refueling station use and requested clarification. Staff explained that this proposal was intended for instances where retail uses were not allowed but refueling stations were allowed (i.e. in Manufacturing Zones). Joe Boynton asked whether that had already been addressed by an amendment that passed approximately two to three years ago to allow retail uses in manufacturing zones.

Board postponed further review of the definition for next meeting.

2. Article II – Administration and Procedure of Enforcement

- a. **Section 2 – Building Permits (D):** Staff explained that this proposal is intended to improve roadways through a more rigorous review of their adequacy. These revisions reflect that the Official Map statute indicates that building permits shall only be issued for properties with frontage on a street shown on the official map. Over the years, the City has had problems regarding building permits that have been issued and structures that have been constructed with frontage on inadequate roads, essentially “dirt paths through woods”. This amendment gives the Code Director the legal authority to deny a building permit despite having frontage on a street that is technically on the Official Map, but is functionally inadequate. Many of these cases are not reviewed by the Planning Board because they are not ANRs and may already be open to public use (many even have houses along them). This revision enables a more rigorous review through use of a new definition of the term “Street” (found in Article I) which is tied to the definition of a “street” and a “way” in the subdivision control law. The definition of a Street now reflects the standard under Massachusetts General Laws (M.G.L. 81G), and ties the Official Map statute to the Zoning Ordinance. This proposal gives the Code Department the legal authority to require the applicant to go before the Planning Board to determine the adequacy of the way if necessary. The Planning Board will then determine if the existing way meets the quality standards set forth in 81G. Staff also explained that there is no need to incorporate the City’s DPW ordinance regarding opening a way to public use into the Zoning Ordinance.
- b. **Section 9 – Meetings, Notices, Hearings and Decisions (C):** Staff explained that the language in this section is taken directly from M.G.L. Chapter 40A, and recent case law regarding time limitations for variance decisions. The Board asked for clarification and staff responded:
 - i. The filing date is the day when an application is delivered to the Clerk’s office for the purposes of constructive grant dates and zoning. The filing date for a Subdivision or ANR plan is the date when it is received by the Planning Board at its meeting (*staff indicated that they needed to check on this*) unless it is a submission made via certified mail to the Clerk’s Office.
 - ii. Recent case law indicates that the length of time to final action is different for variances and special permits, 100 vs. 90 days respectively.
- c. **Other Changes in Article II:** Staff indicated that the other changes to Article II are primarily formatting related.

3. Article III – Zoning Districts

- a. **Section 1 – Districts:** Staff reported that the Airport Environs designation was removed because new building codes, which have reduced sound infiltration into homes, have rendered it unnecessary. Other changes included new acronyms for several Zoning Districts. *Editor’s note: The Board reconsidered this proposal and changed its recommendation – see May 27, 2004 special meeting minutes (Item # 7) for details.*
- b. **Section 2 – Zoning Map:** Proposed change to this section calls for a “whole map” amendment through the adoption of the City of Worcester Geographic Information System Zoning Map, officially replacing the 1991 paper-based map as the City’s Zoning Map. Staff explained the benefits of this change in terms of ease of administration, interdepartmental communication and analysis, and indicated that electronic version has essentially been our working map since 2000 (albeit not our legal one). Joe Boynton inquired about which City department was responsible for maintaining the Zoning Map. Staff explained that although the organizational ordinance indicates that The Development Office is technically responsible, the Office of Neighborhood Services – Planning Division is currently maintaining the electronic Zoning Map layer for the City. Staff also recommended that the Board date the map just before sending the Zoning Ordinance back to City Council to minimize the opportunity for an intervening map amendment before Council adoption.

4. Article IV: Use Regulations

- a. **Section 1 – Application (B):** Staff provided the following brief history regarding the City’s split-lot regulation: In response to documented abuses during the 1980s, the Worcester City Council voted to remove the rather permissive provisions regarding “split lots” – lots with two or more Zone District classifications – from the Zoning Ordinance in 1991. As a result, over 60 petitions to rezone (nearly all of which have been adopted by council) have been processed since 1991 because the option to apply for a use variance no longer exists. Given that the City’s Zoning Map has many split parcels, the proposal calls for a less onerous Special Permit process (administered through the ZBA) instead of the current zoning map amendment process. This proposal offers more control than the pre-1991 split-lot provision, which was essentially as-of-right, but is less cumbersome than the City’s current rezoning process. Staff and the Board discussed the impact of this change and identified that this amendment would allow for non-residential uses in residential areas, and more use variance throughout the City. Staff pointed out that in some cases planners purposefully split parcels to serve to buffer more intense districts from less intense ones, and that City Council has asked staff to examine the City’s policy regarding fixed depth versus parcel zoning lines and the

“split lot” issue. The Board also questioned whether the 25% permission would be enough to reduce the number of map amendment petitions since many petitioners seek full utilization of their property through rezoning petitions not partial use. Staff explained that this amendment was proposed to address small businesses located on “split lots” in Business Limited Districts with abutting residential zones with split lots. This allows them to expand their business without going through the onerous rezoning process. The City’s current regulation creates parking problems for business uses, and results in unutilized lot area in Business zones (e.g., along Chandler Street). Joe Boynton emphasized the need to provide protections for residential uses since business owners have greater monetary incentive and capacity to build and defend a case for a Special Permit than opposing residents. He did, however, concede that the City’s Business Limited zones, as currently delineated on the City of Worcester Zoning Map, afford some protection to neighboring residential uses since they are relatively narrow.

b. **Section 1(D)(2):** *The Board recommends to approve as proposed, voted 3-0, on a motion made by John Shea and seconded by Anne O’Connor, Samuel Rosario not being present for the vote.*

c. **Table 4.1 – Residential Uses**

i. **Residential Use # 14: Single-family semi-detached dwelling proposed to be changed from SP to N In RS-10 zones.** *The Board recommends to approve as proposed, voted 2-1 (John Shea motioned to recommend Anne O’Connor seconded, Joe Boynton voted no) Samuel Rosario not present for the vote.* Staff indicated that the rationale for this change stems from the magnitude of infill housing in these neighborhoods. Developers are building duplexes by Special Permit in otherwise single-family detached neighborhoods. Staff also mentioned that this change is thought to encourage homeownership. The Board decided that the proposed changes to the dimensional requirements for duplexes (nearly doubling dimensional requirements in the size of the lot and frontage in RS-7) should be taken up at their next meeting regarding the Zoning Ordinance. *Editor’s note: The Board reconsidered this proposal and changed its recommendation – see July 22, 2004 special meeting minutes (Item # 4a) for details.*

d. **Table 4.1 – General Uses**

i. **Use # 1: Agriculture, horticulture, viticulture, flora culture on parcels less than 5 acres proposed from N to Y in Manufacturing, Industrial Park, Institutional and Airport Districts.** *The Board did not take up. No vote taken.*

- ii. **Use # 3: Clinic proposed to change from SP to N in RG-5 & Licensed Hospital, Sanitarium proposed to change from Y to N.** *The Board recommends to approve as proposed, voted 4-0 (Motion by John Shea, seconded by Anne O'Connor.)*
- iii. **Use # 12: Nursing or convalescent home/ institution/ facility proposed change, RG-5 from Y to N, RL-7 from SP to N.** *The Board Recommends to reject proposed change and to modify it to allow by SP in RS-10, RL-7 and RG-5 Zones, voted 4-0 (Motion by John Shea, seconded by Anne O'Connor).* Staff noted that RS-7 zones have already been changed from N to SP through a recently ordained amendment to the Zoning Ordinance. Staff proposed revising the original proposal based on case law research that found a successful challenge to “zoning out” nursing homes in residential districts based on the Federal Housing Act. Staff referred to a recent court decision that the denial of a variance was deemed discriminatory under the Fair Housing Act because nursing homes typically house people that are disabled or incapable of caring for themselves and the Fair Housing Act calls for reasonable accommodation for that population.

e. **Table 4.1 – Business Uses**

- i. **Use #4: Bank, Credit union with Drive-thru proposed to change from Y to SP in Business, Manufacturing, Industrial Park and Institutional zones & Food Service with Drive-thru proposed to change from N to SP in Manufacturing Zones.** *The Board recommends to approve as proposed, voted 4-0 (John Shea motioned, Anne O'Connor seconded).*
- ii. **Use # 9: Funeral Homes in RL-7 and RG-5 Districts proposed to change from SP to N.** *The Board recommends to reject proposal, and to modify it to allow by SP in both RL-7 and RG-5 Districts, voted 3-1 (Boynton dissenting, John Shea moved, Sam Rosario seconded).* Staff explained that the reason for the original proposal had to do with encroachment in residential areas. Joe Boynton asked how many would be made non-conforming. Staff would get back to the Board regarding this answer.
- iii. **Use # 28: Theatre, motion picture theatre, concert hall proposed to change from SP to Y in BL-1 zones.** *The Board recommends to reject proposal and to modify it to leave as SP, voted 4-0 (Sam Rosario motioned, Anne O'Connor seconded).* Joe Boynton indicated that these are parking intensive uses and that BL zones are essentially narrow strip zones, for example Grafton St.

f. Table 4.1 – Manufacturing Uses

- i. **Use # 1: Proposal to add “Accessory storage of flammable liquids/ gases / explosives (excluding residential use up to 1,000 gallons)” to the use table.** *The Board recommends to approve as proposed with parentheses around the phrase “excluding residential use up to 1,000 gallons,” as shown above, voted 4-0 (John Shea motioned, Anne O’Connor seconded).* Staff explained that the Zoning Ordinance lacked appropriate regulation of this type of use. The Board inquired about the derivation of the limit of 1,000 gallons. Staff explained that 1,000 gallons would reasonably accommodate three-family houses with separate 300 gallons tanks for each unit, and noted that most of the city has natural gas or oil and that propane is only used temporarily when the gas company’s distribution network additions lag the construction of a new house.
- ii. **Use # 15: Truck servicing and repair garages proposed to be changed from SP to N in BG zones.** *The Board recommends to approve as proposed, voted 4-0 (Samuel Rosario moved, John Shea seconded).*

g. Notes to Table 4.1 – Permitted Uses by Zoning District

- i. **Note 7: Proposed correction (changing the word audit to avoid).** *The Board recommends to approve as proposed, voted 4-0 (John Shea moved, Sam Rosario seconded).*
- ii. **Note 9: Proposed deletion of Note 9.** *The Board recommends to approve as proposed, voted 4-0 (Anne O’Connor moved to delete note nine and renumber 10, 11,12 seconded by John Shea).*

h. Table 4.2 – Permitted Dimensions by District

- i. **Proposal to add line for Residential Hospice House use in RS-10. In RS-7 row delete “per-du” and in RL-7 for Single-family detached uses delete “per-du”.** *Recommendation to approve as proposed (regarding the changes shown on pg. 49 only), voted 4-0 (Motion by John Shea, Anne O’Connor seconded) with one exception, regarding the single-family semi-detached (currently 4,000 sf per unit and 35ft of frontage, the proposal changes these requirements to the same as a single-family detached use), voted 3-1 to recommend approval as proposed (Joe Boynton dissenting, motion by Sam Rosario and seconded by John Shea).* Staff noted that “other permitted” uses are exempt uses, but are included here

since the City can still require “reasonable dimensional controls”. Board indicated that it wants to consider the location of the notes to Table 4.2 and the rest of the table at its next meeting. *Editor’s note: the Board reconsidered and changed its recommendation regarding single-family, semi-detached uses in RS-7 zones – see July 22, 2004 special meeting minutes (Item # 3a) for details.*

i. Notes to Table 4.2 – Permitted Dimensions by District

i. Proposal to relocate the first nine notes from Article XIII to the Notes to Table 4.2; change Note 11 to read “any new building addition or substantial renovation of a building in the ..” instead of “each ML and MG use”, and insert the date of this ordinance (staff needs to determine appropriate date); Note 12 clarifies the exterior boundary line is in Institutional Zones. Recommendation to approve as proposed, 4-0 (motion by John Shea, seconded by Sam Rosario).

j. Article IV, Section 6 – Signs (A)(4) & (A)(6). Proposed combining motion and illumination sign types. Section 6(A)(6) regarding Projecting Signs, Board amends proposal by rewording first sentence to “Projecting signs shall require approval from the License Commission and / or DPW as applicable”. The Board also proposed to move sentence three in (A)(4) to (D)(2) and deleting the two sentences already there. Rephrase to “no part of any such sign.” Staff agreed to reword. Recommendation to approve as revised by Board, voted 3-0 (motion by Samuel Rosario and seconded by Anne O’Connor, John Shea not present).

i. Section 6 (E): Proposed deletion of (E). *Recommendation to approve as proposed, voted 3-0 (Anne O’Connor motioned, Sam Rosario seconded, John Shea not present).* Staff noted that every painted sign is now a “wall sign” in the definitions.

ii. Section 6 (H)(2): *Recommendation to approve as proposed, voted 3-0 (motion by Samuel Rosario, Anne O’Connor seconded, John Shea not present).*

k. Table 4.3 – Signs Permitted by District, by Size and Type

Recommendation to approve as proposed, voted 3-0 (Samuel Rosario motioned, seconded by Anne O’Connor, John Shea not present). Staff explained that this change makes the table and the text consistent.

Meeting Adjourned 7:05PM