

**Planning Board**

**Worcester, Massachusetts**

**Monday, September 28, 1970**

**8:00 A. M. - Room 209-City Hall**

**Agenda**

**8:00 A. M. - Continued Meeting - Room 209 - City Hall**

1. call to order
2. minutes of September 9
3. Salisbury Street - zone change petition - on the table
4. date of next meeting
5. plans to be ratified
6. any other business
7. adjournment

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The Planning Board reconvened Monday, September 28, 1970, at 8:00 A. M., in Room 209, City Hall.

Members present were Lloyd Anderson, Frederic R. Butler, Carl H. Koontz, Carlton B. Payson and Philip A. Segel.

Others present were Charles Abdella, John J. Reney, Gerard F. McNeil, Francis J. Donahue and Alexander A. Pridotkas.

Salisbury Street - zone change. Mr. Butler asked if the details of the proposed Planned Unit Development would be controlled by the Board of Appeals if the zone were changed and if the special permit were granted.

Mr. McNeil replied that both the Board of Appeals and the Planning Board would have review of the plan.

Mr. Payson explained that the restrictions were actually put on by the Board of Appeals.

Mr. Anderson asked about the possibility of spot zoning, since the site was surrounded by RS-10 land. Mr. McNeil replied that the surrounding area included both RS-10 and RS-7 zones.

Mr. Butler asked if there were enough room for snow removal on the circumferential highway. He pointed out that the proposed plan showed buildings on the boundary line of the highway.

Mr. McNeil replied that the buildings would be moved back and that there was enough room for snow removal within the right of way.

Mr. Anderson pointed out that the circumferential highway was not mentioned at the public hearing. He asked if the petitioner were in favor of granting the city an easement for the highway.

Mr. Payson replied that Mr. Maher had agreed to such an easement. He then summarized the progress of the discussion and began to read the proposed wording of the motion prepared by the department.

Mr. Anderson objected to the definition of the proposal as a Planned Unit Development. Mr. McNeil read the definition of a Planned Unit Development as prepared by the Board, and he pointed out that the proposed development conformed to that definition.

Mr. McNeil pointed out that Mr. Maher was willing to spell out further the limitations on dwelling unit sizes to be incorporated in the deed restriction.

Mr. Anderson asked about the agreement to re-petition the Council for a zone change if the project is not built.

Mr. Payson indicated that the Council can require such a commitment.

Mr. Anderson asked if the statement concerning property devaluation were a necessary part of the motion. Mr. Payson replied that it was, and that it was up to the opponents to furnish proof of devaluation. Mr. Anderson pointed out that if the statement were included in the motion, the Board would have to furnish proof that such a development would not depress property values.

Mr. Payson replied that the wording was not strong enough to require proof.

Mr. Koontz asked if the circumferential highway would devalue property.

Mr. Payson thought that it might devalue some property on Barry Road.

Mr. McNeil pointed out that the circumferential highway had been proposed regardless of any proposed apartment complex, that it was initially proposed in 1924.

Mr. Anderson suggested that the number of trips per day on Salisbury Street, as indicated in the traffic count, be indicated as part of the motion.

Mr. Reney asked that the reference to the adequacy of existing utilities be reworded.

Mr. Anderson asked why the Law Department felt that the zone change would not be considered spot zoning.

Attorney Abdella replied that the reasons included the circumferential highway, the natural ridge, the condition of the land itself, and the housing conditions of the city as a whole.

Mr. Anderson pointed out that the area in question remained an RS-10 zone and that few areas of the city remained for single family development. He suggested that a variance would be a more appropriate approach than a zone change.

Mr. Koontz asked if the reasons for a zone change would be applicable to a variance petition.

Attorney Abdella replied that only the reason of hardship would apply.

Mr. Butler brought up the question of rezoning the whole area north of the circumferential highway.

Mr. Payson indicated that rezoning the whole area to RL-7 would not necessarily be beneficial.

Mr. Segel pointed out that zones are frequently split by highways and natural physical boundaries.

Mr. Payson said that if the land were good clean land, the change would not be recommended.

Mr. Segel made a motion to recommend approval of the petition to the Council, as prepared by the Planning Department. Mr. Butler seconded the motion.

Mr. Koontz pointed out that while there was a substantial need for the proposed type of housing, this fact did not necessarily support a zone change. He pointed out that if the Board did not believe the proposed use would devalue property, why provide a buffer zone. He suggested that the other reasons did not apply to a change in zone and were not germane to the question before the Board.

Mr. Anderson agreed with Mr. Koontz, but he suggested that since point #8 was taken from case law on zone changes, it was probably relevant to the issue.

Mr. Butler suggested that the key question was whether the land was suitable for single family development or not.

Mr. Koontz said that he was worried about the precedent being set. He suggested that allowing developers to determine the development pattern of the city was not the way planning should be done.

Mr. Segel pointed out that the Board had initiated action on the Planned Unit Development, and that it had to eventually decide where they were going to be built.

Mr. Koontz pointed out that the petitioners were actually pleading for a variance, using a logic of hardship to support a change in zone.

Mr. Payson asked Attorney Abdella what would happen if the Board turned down the zone change with the request that the petitioners seek a variance, if the Board of Appeals denied the variance, and the petitioners came back to the Board with another zone change request.

Attorney Abdella replied that the waiting period for a second petition would be two years.

Mr. McNeil referred to the zoning enabling act and he suggested that the question of the character of an area would constitute substantiation for a zone change.

Mr. Anderson made a motion to move the question.

Mr. Koontz asked how much the Board was swayed by the question of a Planned Unit Development.

Mr. Payson replied that the vote was strictly concerned with the characteristics of the land.

Mr. Anderson questioned whether this land was significantly and sufficiently different from other land so as to require a change in zone.

Attorney Abdella replied that the question had been researched sufficiently to support a case before the Massachusetts Supreme Court.

Mr. Anderson made a motion to move the question. Mr. Segel seconded the motion. The motion was carried by a 2-1 vote.

The Board then voted on the motion by Mr. Segel. The vote was 2-2. Mr. Payson voted in favor of the motion, and the motion was carried by a 3-2 vote.

Mr. Anderson and Mr. Butler opposed.

The meeting adjourned at 9:20 A. M.

A copy of the final recommendation is attached to these minutes.