

The Planning Board met for its regular meeting on Wednesday, January 18, 1989 at 2:00 P. M. in Room 209, City Hall. Members present were Chairman John F. Keaney; Vice Chairman Frank D. DeFalco; Clerk Joan C. Sadowsky; John T. Reynolds; George Russell. Also present were Director Francis J. Donahue; Code Commissioner Carl H. Koontz; Assistant Commissioner of Public Works Gerhard P. Muenchmeyer; Assistant City Solicitor Michael Traynor; Senior Planner Alexander A. Pridotkas; Coordinator of the Office of Planning and Community Development Philip Hammond.

View

The Board viewed Carter Road-Whisper Drive - request re chain removal, Executive Estates - review.

Regular Meeting - Room 209 - City Hall

Mr. Keaney introduced new Board member, George Russell, as appointed by the City Manager.

Call to Order

Chairman Keaney called the meeting to order at 3:10 P. M.

Minutes of December 14 and 28, 1988

Mr. DeFalco moved that the minutes of December 14 and 28, 1988 be approved.

Mrs. Sadowsky seconded the motion. The vote was unanimous.

Wright Line - flood plain review

Attorney Richard F. Reidy, representing St. James Properties, Inc., stated that St. James Properties, Inc. proposes to renovate the former Sawyers retail store at 135-139 Gold Star Boulevard for a medical clinic. There will only be interior

renovations with the exception of razing the existing shed and using the area for parking. The lot is a split lot, partly lying within a BG-3.0 and MG-1.0 zoning district. A clinic is not permitted in a manufacturing zone. The premises are also located in the Flood Plain and Wetlands Conservation District in which a clinic and its parking and loading would be prohibited without grant of a variance. Per Article XII of the Zoning Ordinance, the Planning Board makes a recommendation to the Board of Appeals regarding the requested variance affecting the Flood Plain and Wetlands Conservation District.

Mr. Donahue stated that a long time ago there used to be a marsh in that area but culverts were constructed to take care of the water so no wetlands exist on the site. The information used to draw up the flood plain maps were taken from the USGS maps which were older and no actual survey was made.

Mr. Muenchmeyer stated that there will be no filling and the Department of Public Works has no problems.

Mr. DeFalco moved that the Board recommend to the Board of Appeals approval of the application for a variance because the proposal is consistent with the purposes of the Flood Plain and Wetlands Conservation District. Mrs. Sadowsky seconded the motion. The vote was unanimous.

Carter Road-Whisper Drive - chain removal request

Mr. Donahue stated that Superintendent of the School Department, John E. Durkin, has requested that the existing chain separating Whisper Drive from Carter Road be removed in order that the school bus will be able to proceed up Carter Road and turn around at the access way.

William McMann, Director of Transportation for the School Department, stated that 32 elementary children plus high school students are picked up in the vicinity of Carter Road and Moreland Street. This is a dangerous intersection. There is no room for a bus to turn around on Carter Road and has to back up to turn around creating problems. If the chain was removed, the bus could cut across to Salisbury Street via Whisper Drive and would enable students to be picked up and dropped off the bus at a safer location.

Deborah Jahn, 75 Carter Road, stated that that intersection is dangerous, there are no sidewalks in this area and the children have to walk in the street during the winter months creating a safety problem for them. The number of elementary students will not decrease.

John Luring, 13 Brigham Road, stated the only alternative to resolve the safety problem is to have the chain removed.

Bonita Jefferson, 79 Carter Road, stated that there are no sidewalks in this vicinity and some of the children have to walk as far as one-half mile to the bus stop.

Lauren Ota, 57 Carter Road, questioned if there are any other alternatives to alleviate the problem.

Mr. Keaney replied that the Board is not aware of any.

Mr. McMann stated the School Department was looking into the possibility of using Carter Way but that street is not on the official map and the land is privately owned. The insurance company requires that the buses stay on public ways. Also, questions were raised who would plow private property even if the insurance company allowed the buses to use it.

Mr. Keaney stated that the city cannot remove the chain because it is on private property.

James M. Rafferty III, School Committee member, stated it was believed that the emergency access way off Whisper Drive was owned by the city. He criticized the City Manager for not looking into the matter prior to forwarding the request of the School Department to the Planning Board.

Mr. Keaney replied that many requests are submitted to the manager and he forwards them to various boards or commissions for their recommendations.

Mr. Donahue stated that the subdivision plan, as approved by the Planning Board, relates to this way as "Emergency Access Only" and the access area is not a public right-of-way. The chain was put up by the developer not by the city.

Mr. Muenchmeyer stated that Whisper Drive was decreed as a public way but the access way was not included because it is private property.

Dr. Judy Finkel, principal of Forest Grove School, stated safety problems exist in that area and should be corrected.

Nancy Fencal, 47 Carter Road, questioned who controls bus turnarounds.

Mr. McMann replied that the Registry of Motor Vehicles does.

Mr. Muenchmeyer stated that most of the emergency vehicles carry chain cutters and if not the thrust of the vehicle will snap the chain.

Mr. McMann stated that the School Department assumed that the access way is a public way.

Mr. Russell questioned if the developer can take down the chain.

Mr. Donahue replied that the developer finished the street, the city accepted it and he is now gone.

Mr. Russell questioned if the abutters can take down the chain.

Mr. Keaney replied that the access way is private property probably owned by the two abutters.

Mr. DeFalco stated that the School Department has to do more research to come up with a solution. Even if the chain is removed, he doubted that the abutters would bear the liability for persons using the access way.

Mrs. Sadowsky stated that when the subdivision was approved the abutters wanted the chain put in in order not to increase the traffic on Carter Road.

Mrs. Sadowsky moved that the Board notify the City Manager that the request of the School Department to remove the chain at the access way is beyond the Board's jurisdiction and is private property. Therefore, land takings would be required by the city to accomplish this task. Mr. Reynolds seconded the motion. The vote was unanimous.

Executive Estates - review

Mr. Muenchmeyer stated prior to recording the final decree plan for this subdivision, four Worcester Highway (W.H.) bounds have to be installed at the two cul-de-sacs. The developer has indicated that he does not intend to effect snow removal on these two streets and indicated it is the city's responsibility. Since the health and safety of the public is at stake, the city intends to plow the streets and charge the cost against the developer's \$10,000 line of credit currently being held by the city.

Mark Greenberg of Executive Estates stated that the developer assumed the streets were accepted by the city. The developer was notified about the missing W.H.'s after the decree plans were submitted to the Department of Public Works. He suggested that the city install them and charge the developer.

Mr. DeFalco questioned if the missing W.H.'s are shown on the decree plan.

Mr. Greenberg replied positive.

Mr. Muenchmeyer stated that there are private surveyors that install bounds. The city can give the required bounds but the developer will pay for them.

Mr. Reynolds moved that the city charge the developer for snow plowing until such time as the W.H.'s are installed and the streets are accepted by the city. Mr. DeFalco seconded the motion. The vote was unanimous.

North Pond Estates - set bond

Mr. Donahue stated that the developer of this subdivision has requested the Board to set the amount of bond for this subdivision to guarantee construction of the street including all the utilities in accordance with the Subdivision Control Regulations and City of Worcester standards.

Mr. Muenchmeyer recommended a bond in the amount of \$130,000 be held by the city.

Mr. Reynolds moved that the Board require a bond in the amount of \$130,000 of which 10% be in cash for this subdivision. Mrs. Sadowsky seconded the motion. The vote was unanimous.

Parsons Hill - reduce bond - accept as public

Mr. Donahue stated that the developer of this subdivision has requested the Board for a reduction of the bond being held by the city and has petitioned to have the streets, Ledgecrest Drive and Beatrice Drive, accepted as public.

Mr. Muenchmeyer recommended that the bond be reduced by \$309,500 and to accept the streets as public ways. A separate bond must be posted in the amount of \$5,000 for each lot where house construction has not been completed for reconstruction of said streets. There are 13 uncompleted lots at \$5,000 per lot equals \$65,000.

Mr. Reynolds questioned the legality of requiring a developer to post the latter bond.

Mr. Donahue replied that the Board in the past has required developers to post a bond but does not know whether its a legal requirement.

Mr. Muenchmeyer stated that the Board could ask the Law Department to review this matter.

Mr. Reynolds moved that the Board reduce the amount of bond from \$344,500 to \$35,000 and a separate bond of \$65,000 for the uncompleted lots if the Law Department determines it is a legal requirement. Mr. DeFalco seconded the motion. The vote was unanimous.

Mr. DeFalco moved that the Board recommend to the City Council acceptance of Ledgecrest Drive, Sta. 0+00 to Sta. 11+00, and Beatrice Drive, Sta. 0+50 to Sta. 3+50, as public ways. Mrs. Sadowsky seconded the motion. The vote was unanimous.

Private Street Openings - fee

Mr. Donahue stated that Chapter 7, Section 43 of the Revised Ordinances of 1986 requires the Planning Board to review the grading, surfacing and drainage of private streets which are proposed to be open to public use. A fee schedule should be set for reviewing said plans. The bureau will not have that much work to do and recommended that \$.50 per linear foot of street to be opened up be charged to the applicant.

Mr. Reynolds questioned if the Department of Public Works can recover their cost.

Mr. Muenchmeyer replied that the Department of Public Works charges \$1.46 per linear foot.

Mr. Keaney suggested maybe a graduated fee would be more applicable.

Mr. Donahue replied that there will be no substantial cost involved except to accept the plans and refer them to various departments for their comments.

Mr. Reynolds moved that the Board set the fee at \$.50 per linear foot as recommended by Mr. Donahue. Mrs. Sadowsky seconded the motion. The vote was unanimous.

Election of Officers and Plan Signers

Mr. Donahue stated since it is a new year officers and plan signers have to be elected by the Board.

Mr. Reynolds moved that the present officers, Mr. Keaney, Chairman; Mr. DeFalco, Vice Chairman; and Mrs. Sadowsky, Clerk be elected. Mr. Russell seconded the motion. The vote was unanimous.

Mr. DeFalco moved that the plan signers be Mrs. Sadowsky, Mr. Reynolds, Mr. Russell, and himself. Mr. Reynolds seconded the motion. The vote was unanimous.

Discussion re Zoning Ordinance Procedure

Mr. Donahue stated that the City Clerk, from the City Council, has sent to the

Board a proposed Zoning Ordinance as presented to the city by On Site/Insight and the report of the Special Committee chaired by Commissioner Koontz, together with various materials submitted to the City Council and generated by several public hearings held by the City Council. The material forwarded is in an informal transmission with the request that the Board review the material and within 90 days submit to the City Council the Board's recommendations for zoning text and zoning map. This is not a formal request and if the Board advertised a public hearing there would be a freeze of issuing building permits throughout the city. The Board has to review all the materials submitted, establish a base document and send it back to the City Council who in turn will refer it back to the Board for a public hearing. The Bureau has a list of people concerned about the Zoning Ordinance and wish to appear before the Board to make their recommendations.

Mr. Keaney questioned if a proposed Zoning Ordinance is advertised does the freeze begin.

Mr. Donahue replied positive.

Mr. Russell questioned if the request from the City Council is informal.

Mr. Donahue replied positive.

Mr. Reynolds called this process illegal.

Attorney Traynor replied that the Board does not have a Zoning Ordinance before them. The City Council forwarded to the Board various reports from various

agencies and wishes the Board to review them and submit a draft Zoning Ordinance for their consideration.

Mr. Reynolds stated that the City Council has held meetings for the last two years regarding the Zoning Ordinance and the Planning Board should advertise it and hold open meetings.

Mr. Russell suggested that the Board hold its own meetings in the five districts of the city and recruit people for their opinion. The Board can request various organizations to sponsor the meetings.

Mr. Hammond responded that the City Council has held those meetings and the citizens remarks are available at the Office of Planning and Community Development.

Mr. Reynolds stated that the City Council has given the Board the task of putting a Zoning Ordinance together. He does not want any part of having certain people appear before the Board to express their opinions. That was done at the City Council meetings. He suggested that the Bureau of Land Use Control and the Office of Planning and Community Development combine all the remarks of the citizens and various agencies pertaining to the Zoning Ordinance and have a special meeting to discuss the procedure the Board wishes to follow.

Mr. Keaney stated that the only thing before the Board is the ordinance and not the map.

Mr. Hammond replied affirmatively. The City Council wants to hold off on the map.

Date of Next Meeting - January 25, February 1, and February 8, 1989.

Plans to be Ratified

Mr. DeFalco moved that the following plans be ratified. Mrs. Sadowsky seconded the motion. The vote was unanimous.

- 3948 - plan of land on Palfrey Street, owned by Robert F. & Mary A. Jaston,
signed 12/20/88
- 3949 - plan of land on Olean Street, owned by Paul & Ann Berube, signed 12/20/88
- 3950 - plan of land on Shore Drive, owned by Norton Company, signed 12/28/88
- 3951 - plan of land on Lorraine Road & Vincent Circle, owned by Javelin West
Realty Corp., signed 12/20/88
- 3953 - plan of land on May Street, owned by Robert D. & Mary C. O'Neil, signed
12/20/88
- 3954 - plan of land in Fielding Street, owned by Robert O'Neil, signed 12/20/88
- 3955 - plan of land on Beeching & Pleasant Streets, owned by Samuel J. &
Sophie R. Perrone, signed 12/28/88
- 3956 - plan of land on Steele Street & Peacedale Avenue, owned by Joseph Wersal,
signed 12/28/88
- 3957 - plan of land on Morgan Street, owned by Martha S. Lawton, signed 1/18/89
- 3958 - plan of land on Scandanavia Avenue, Fourth Street and Passway Four, Five
and Six, owned by Candlewood Farms Trust, signed 1/18/89
- 3959 - plan of land on Rockwell Street, owned by Matthew Stepanski Jr., signed
1/18/89
- 3960 - plan of land on Reed Street, owned by Wilfred & Barbara Bellerose, signed
1/18/89

- 3961 - plan of land on Wildwood Avenue, owned by George E. Smith Jr., signed 1/18/89
- 3962 - plan of land on Castine & Cumberland Streets, owned by Vincent G. Person, signed 1/18/89
- 3963 - plan of land on Tuckerman & Salisbury Streets, owned by Salisbury Realty Trust, signed 1/18/89
- 3964 - plan of land on Chatham & Crown Streets, owned by Benjamin & Steven Abrams and Abraham & Ruth Rosen, signed 1/18/89
- 3965 - plan of land on Sunderland Road, owned by R. H. Gallo Builders, signed 1/18/89
- 3966 - plan of land on Dane Avenue, owned by John T. & Alina Kisiel, signed 1/18/89
- 3967 - plan of land on Burncoat Street, owned by Marion S. Proko, signed 1/18/89
- 3968 - plan of land on Fielding Street and Great Post Road, owned by James J. & Cheryl A. Turgeon, signed 1/18/89
- 3969 - plan of land on Eskow Road, owned by R.Z.V. Realty Corp., signed 1/18/89
- 3970 - plan of land on Oriental, Van, Moosh & Chester Streets, owned by G. M. Bergeron Realty Trust, signed 1/18/89
- 3971 - plan of land on Wayne Street, owned by Arthur A. Rheaume, signed 1/18/89
- 3972 - plan of land on Roy Street, owned by Neil R. Harvey, Richard J. Rafferty, and Ralph Gurney, signed 1/18/89
- 3973 - plan of land on Benham & Lorenzo Streets, owned by Premier Design, Inc., signed 1/18/89
- 3974 - plan of land on Main & Austin Streets and Murray Avenue, owned by Russell Block Associates, signed 1/18/89
- 3975 - plan of land on Pineland Avenue, owned by A. P. Etre Builders, Inc., signed 1/18/89.

Any Other BusinessOak Grove Estates - extend bond expiration date

Mr. Donahue stated that the developer of this subdivision has requested the Board to extend the completion date for Phase I from September 30, 1988 to September 30, 1989.

Mr. DeFalco moved that the Board approve the request. Mr. Reynolds seconded the motion. The vote was unanimous.

Scenic Heights - restrictions in a covenant

Attorney Kathleen O'Connor, representing the developer, stated that the Planning Board gave definitive approval to the proposed subdivision with certain conditions. One condition was that a covenant be included in all deeds which would hold the city harmless from any future suits regarding noise pollution. The Law Department came up with the following wording. "The owner, its successors and assigns, covenant not to bring any action against the City of Worcester, its Airport Commission, or their successors, for damages caused by the noise, smoke, fumes, vibration, or any other reason, by low-flying aircraft."

Because of the tough market, sales of the homes were lost because of the wording of the covenant. It is proposed that the wording be changed to read as follows. "The successors and assigns of the owner are hereby notified that the premises is located in the vicinity of Worcester Airport and agree not to bring any action against the City of Worcester, its Airport Commission, or their successors, for damages caused by the noise of aircraft using the airport provided that the City of Worcester, its Airport Commission, or their successors are in compliance with all federal, state and local regulations."

Attorney Traynor stated that the language he used is the same as used in another subdivision. The language was derived using other cities regulations.

Attorney O'Connor stated that the latter proposal goes further and the existing wording is a burden economically to the developer.

Mr. Reynolds stated that the present wording is standard language and should be maintained.

Mr. Keaney stated that the Board realistically cannot vote favorably on the request and be consistent.

Mr. Reynolds moved that the Board deny the request and keep the language in the covenant as prepared by the Law Department. Mrs. Sadowsky seconded the motion. The vote was unanimous.

Recess

Chairman Keaney recessed the meeting at 5:30 P. M.

Public Hearing - Room 209 - City Hall

Chairman Keaney called the meeting to order at 7:30 P. M.

Zoning Ordinance amendment - Article IV, Sec. 3 (8), Article X, Sec. 3 (a), and Article X, Sec. 5 (c) (2) (ii) pertaining to conversions and non-conforming uses

Mrs. Sadowsky read the public notice on the request of the City Council that the Zoning Ordinance of the City of Worcester be amended as follows.

1. Article IV of the Zoning Ordinance of April 29, 1980 and designated as Appendix D to the Revised Ordinances of 1986 be amended by deleting Section 3 (8) in its entirety.
2. Article X, Section 3 of the Zoning Ordinance of April 29, 1980 and designated as Appendix D to the Revised Ordinances of 1986 be amended by deleting Section 3 (a) in its entirety and inserting in lieu thereof the following:
 - (a) In all districts, structures may be converted to a different use and/or residential structures may be converted to provide additional dwelling units provided:
 - (1) the proposed use is an allowed use in the zoning district.
 - (2) the structures, as converted, meets all the dimensional and parking regulations of the Zoning Ordinance.
3. Article X, Section 5 of the Zoning Ordinance of April 29, 1980 and designated as Appendix D to the Revised Ordinances of 1986 be amended by deleting Section 5 (c) (2) (ii), which reads as follows:
 - (ii) A nonconforming use may be expanded upon a grant of a special permit by the Zoning Board of Appeals

and inserting in lieu thereof:

 - (ii) A nonconforming use may be expanded upon a grant of a special permit by the Zoning Board of Appeals provided the use of the structure as expanded meets the dimensional and parking regulations of the Zoning Ordinance.

Mr. Keaney then asked for the proponents.

Commissioner Koontz stated that the Department of Code Inspection takes a position of neutrality with respect to desirability of the ordinance change proposed.

The suggested change has been advertised and, since the date of advertising, the department has been advising building permit applicants that any act in contradiction to the newly proposed sections would be taken at their own peril.

Attention is directed to a number of most readily apparent effects of the proposed

ordinance change in terms of what can be accomplished under the current ordinance that would not be permitted with the proposed changes.

A prolific source of residential conversions presently are some of the larger so-called three-deckers that are being converted from three units to as many as six. The additional units that have been so produced provide a substantial measure of available affordable dwelling units. Practically all of these structures now existing with three units do not meet the dimensional and/or parking regulations of the ordinance even without conversion. They certainly would not comply to the terms of the proposed change and a variance would be required. Variances require proof of hardship.

In some sections of the city there exist some old buildings of substantial size and with large numbers of rooms that in the past and even now were and are used as single family dwellings. These have, in the past, been converted to other uses including lodging houses, multi small apartments, single room apartments, professional office buildings, etc. Such conversions which even now could be made as a matter of right or with special permit would generally require a variance under the proposal. Again, variances require a demonstration of hardship arising out of the nature of the land.

Parcels in the downtown area of the city generally do not now meet the dimensional requirements of the present ordinance. Under the new provisions every change in use for such parcels would require a variance. The same applies to a substantial number of parcels that exist in the same or similar state at other locations throughout the city as for example, Millbury Street, Water Street, Chandler Street, etc. The effect would not be on residential uses alone but on every use.

Probably the preponderance of existing nonconforming uses do not even now meet dimensional and/or parking regulations. This includes manufacturing, commercial, storage, retail, etc. uses. The proposed ordinance change forever freezes them at current levels unless a variance be granted.

The changes suggested would, if adopted, result in apparent conflicts with other sections of the zoning ordinance as for example Section 4 of Article X.

Because of the widespread impact that the proposed ordinance changes would produce, reasonable doubt exists as to whether or not the City Council really intended that effect.

Mr. Reynolds questioned if the impact of the proposed ordinance change in the downtown area was ever discussed.

Mr. Koontz replied negatively and restated that he does not think it was the City Council's intention to include the downtown area.

Mr. Reynolds questioned how the Planning Board can resolve this matter.

Mr. Koontz replied that the Board could recommend to the City Council that under Article IV, Section 3 (8) the words SP and yes under RL and RG categories respectively be deleted and inserting no and no respectively.

Mr. Reynolds stated that many of the conversions being done in three-deckers

are not aimed at affordable housing. Severe parking problems exist in those areas.

Attorney Todd Rodman, representing the Worcester Area Chamber of Commerce Downtown Development Committee, objected to the proposed ordinance because any conversion in the downtown area would require a variance which is difficult to receive. The proposed ordinance should deal with conversions in residential areas only in order not to stymie development in the city's core.

Steve Jurberg stated that he plans to open a delicatessen in a vacant storefront at Park Avenue and Maywood Street but the building does not meet dimensional or parking requirements.

Mr. Koontz replied that he will issue permits but the applicant is taking a chance if the ordinance as proposed is passed and the permit is rescinded.

Mr. Hammond stated that the City Council's intent was aimed only at residential zones.

Attorney Traynor stated that the context of uses in the ordinance has to be clarified.

Mr. Russell suggested that the Board recommend to the City Council to resolve this problem is to revise Article IV, Section 3 (8) by inserting SP under the RL and RG categories.

Mr. Reynolds stated that something has got to be done to minimize conversions

in residential zones. The proposed ordinance should be re-written pertaining only to residential units in residential zones.

Janet Slovin of the Downtown Development Corporation of the Worcester Business Development Corporation stated the proposed ordinance would halt the construction of Urban Village and other major developments in the city.

Mr. DeFalco moved that the Board recommend to the City Council that the proposed ordinance refer only to residential units in residential zones. Mr. Reynolds seconded the motion.

Mrs. Sadowsky suggested that the Board send the proposed ordinance back to the City Council recommending it be amended and request the Law Department to prepare a revised ordinance dealing only with conversions in residential zones.

Mr. Keaney stated that the proposed ordinance dealing with conversions would be undue hardship to businesses.

Mr. DeFalco then withdrew his motion.

Mrs. Sadowsky suggested that this hearing be recessed to January 25, 1989 to allow time for the Law Department to re-draft the proposed ordinance. The Board agreed.

Recess

Chairman Keaney recessed the meeting at 9:00 P. M.