

**REVISED Minutes
Worcester Planning Board
Special Meeting
April 21, 2004**

**Dept. of Code Enforcement
Conference Room
25 Meade Street
Worcester, MA**

Proposed Zoning Ordinance (Dated November 12, 2003)

Planning Board Members Present:

Joe Boynton, Chair
Anne O'Connor
John Shea
Stephen Petro

Staff Present:

Jill Dagilis, Code Enforcement
Kathleen Donovan, Land Use Division
Joel Fontane, EONS – Planning Division
Jody Kennedy-Valade, Land Use Division
Edgar Luna, EONS – Planning Division
Michael Traynor, 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 4:00pm.

Staff pointed out that several items were not voted on at the last meeting.

1. Article I – General Provisions

- a. **Section 1 – Purpose:** *The Board recommends inserting the following language regarding protection against: “use of land incompatible with nearby uses”. John Shea motioned and Stephen Petro seconded. The vote was 4-0.*
- b. **Section 2 – Definitions:** *Board postponed taking up this section.*

Staff indicated that the Board left off on Page 71, Article IV, Section 7 as the end of its last meeting.

2. Article IV, Section 7 – Off Street Parking and Loading

- a. **Section 7A(1) – Application:** The deletion of Page 71, Section 7A(1) removes a redundancy with regard to parking plan approval (less than eight spaces does not need approval). Staff pointed out that Section 7A(2) regarding jurisdiction on Page 72 addresses this issue. Staff also recommended deleting the first paragraph on the top of Page 72. Staff noted that the recent amendment that the Board recommended and that the City Council ordained regarding drive through services is found in Section 7A(6) on Page 74.
- b. **Section 7A(6) – Drive through Service:** Staff recommend moving the definitions for drive through service and drive through service lane to the definitions (found on Page 74 of the proposed ordinance) in Article I – Section 2 – Definitions. *The Board recommends deleting as proposed. John Shea moved and Stephen Petro seconded. The vote was 4-0. The Board also recommends moving definitions of Page 74 to Article I, Section 2 – Definitions and re-letter as appropriate. John Shea moved and Anne O’Connor seconded. The vote was 4-0.*
- c. **Section 7A(3) – Design Standards:** Staff indicated that the timing for Parking Plan Approval was deleted in error. Language must be inserted from Page 55 of the current ordinance and change the timeframe to 65 days since there is a 65-day period for Site Plan Approval. There is no default approval timeframe since there is no action that occurs when that timeframe expires. There is no constructive approval granted. Joe Boynton pointed out that there could be a constructive grant if a parking plan is submitted along with a site plan since Site Plan Approval has a constructive grant after 65 days. This drops the timeframe for accessory parking. *The Board recommends reinserting the language from the Page 55 of the current ordinance, and changing the time period from 35 to 65 days, and deleting the references to the Director of Code Enforcement in the rest of Section 7B except Section 7B(9) & (10). John Shea moved and Stephen Petro seconded. It was voted 4-0.*

3. Off Street Parking Requirements – Table 4.4

- a. **General Uses:** Staff proposes adding “Adult Day Care Center” as a General use. The Board inquired whether these uses will generate significant parking demand, and if 1 parking space per teacher / service provider would be sufficient. Staff indicated that the Traffic Engineer had suggested it. Joe Boynton asked staff to provide a report regarding whether that provided enough parking for this use.

- b. **Note at bottom of Table 4.4 regarding residential parking requirements in BG-6:** Currently, there is no off-street parking requirement in a BG-6 zone. Joe Boynton stated that Traffic Engineering is concerned with this situation considering the potential for additional residential development downtown. John Shea questioned whether it was appropriate to have no required parking for residential adaptive reuse. Stephen Petro indicated the availability of public parking downtown. John Shea pointed out that rehabilitation is not qualitatively different than new construction. Joel Fontane stated that unlike adaptive reuse, it is easier for a new development to provide parking. He further stated that requiring parking for adaptive reuse in the downtown area would necessitate demolishing a portion or all of the building(s) intended to be reused – defeating the purpose of adaptive reuse.

John Shea questioned whether it is realistic to develop residential uses without a parking requirement. Joel Fontane indicated that there are other parking options available in downtown, citing both on-street parking and numerous parking lots. John Shea responded that most places do not allow overnight parking and if that were changed, it would reduce the number of spaces available during the day. He said that the Pearl/Elm garage is at capacity and inquired about the Federal Plaza Garage. Mr. Fontane responded that the Federal Plaza Garage has provisions for night parking for the Burwick Building.

Mr. Shea stated that efforts to generate more interest for people to live, work and shop downtown, must include parking. Mr. Fontane stated that higher parking requirements in downtown could lead to developers providing the least costly solution, surface parking. By not having parking requirements for residential re-use development, we increase the likelihood that a development community will see a market for a multi-level parking garage. He further stated that surface parking has been developed because the demand is not great enough to make it profitable to construct additional multi-level garages. Parking garages promote an intensity of development that supports vibrant downtowns. Requiring parking could preempt residential adaptive reuse and possibly increase the likelihood of additional surface parking.

Joe Boynton pointed out that parking could be located anywhere, and a market could be created to purchase parking spaces similar to Boston where prime parking spaces sell for \$165,000 to \$200,000. Stephen Petro stated that if we don't require parking downtown, the market would determine how much parking they can provide. Mr. Fontane stated that downtown luxury residential developments typically provide one to one and-a-half parking spaces per dwelling unit, and the market for downtown Worcester has recently been estimated at about 600 dwelling units. Since there is currently no parking requirement in a BG-6.0 zone for residential

development, this would be a substantive change. Mr. Boynton stated that he thought that one parking space per unit is achievable and balances the desire to encourage adaptive re-use.

The Board also discussed whether to require common ownership of the parking provided within 1,000 feet. John Shea expressed concern over the common ownership requirement for parking. He indicated that requiring ownership would work for condominiums, but thought that lease agreements would provide more flexibility and could work also. Michael Traynor responded that the elimination of the leased parking originated from the issue that, from a practical standpoint, it is very difficult to enforce. He added that if someone is living at a location, the City couldn't evict a resident because his or her landlord's lease for parking expired and could not be renewed. Therefore, the proposal is that all residential developments own the parking they provide within 1,000 feet. *The Board recommends the changes proposed with one exception – the deletion of the parenthetical about rehab and re-use on Page 80, Note 1. John Shea moved and Samuel Rosario seconded. The vote was 3-1 (Anne O'Connor voted no).*

- c. **Business Use - Fast Food:** Change proposed from one parking space for every 40SF Gross Floor Area (GFA) to one space for every 60 feet of GFA. Katie Donovan said the reason is that fewer people park to eat due to the convenience of drive through service. This proposal reflects this trend by increasing the land area required for the operation of drive through service and by decreasing the area required for parking vehicles. Note that the City has already adopted increased requirements for drive through stacking lanes, thereby increasing the land area requirement for these services. *The Board recommends as proposed. John Shea moved and Stephen Petro seconded. The vote was 4-0.*
- d. **General Use - Telecommunications Facility:** This is new to the ordinance. Requirement would be one parking space per 3,000 gross floor area, and an additional parking space per employee. *The Board recommends as proposed. John Shea moved and Stephen Petro seconded. The vote was 4-0.*
- e. **Note * bottom of Page 78, 79 to be deleted.** *The Board recommends as proposed John Shea moved and Stephen Petro seconded. The vote was 4-0.*

4. Notes to Table 4.4 – Off Street Accessory Parking Requirements

- a. **Note 1a - Number of Spaces:** Staff explained that this change is a clarifying note due to an attempt to increase the number of spaces for a group home.

b. **Note 1b:** See above.

c. **Note 2 – Location and Dimensions:**

- i. **Note 2a – Ownership vs. Lease Issue:** This note eliminates leased parking for residential uses. Joe Boynton questioned the use of leases to satisfy the parking requirements for non-residential uses. Joe Boynton said he is personally aware that some spaces in the City are double-leased. He indicated that he would like to see the provision for leases be eliminated because the leases are not enforceable. Stephen Petro stated that he supports reducing the burden on staff. Mr. Boynton stated his belief that lease agreements should not be used to meet zoning requirements. Michael Traynor stated that there are many businesses using leases properly, and that the ability to lease required parking may be important for the operation of these businesses. Joe Boynton suggested that the City should recognize that those who do not provide adequate parking use the available on street parking and therefore place a burden on landowners that do provide parking. He said it is good public policy to require adequate commonly owned parking be provided.

Joel Fontane reported that the City is not able to address abuse of the leased parking requirement. He acknowledged that there is abuse but questioned its extent. Mr. Fontane also questioned whether the City should say “no” to everyone because a minority of businesses, even a significant minority, are double leasing. Joe Boynton pointed out that when a lease expires, the use becomes nonconforming and is not a valid prior nonconforming use. Code Enforcement is legally obligated to stop the use because it is not protected. Michael Traynor offered the following compromise: reduce the distance, increase the required lease length, and track the leases. The Board questioned Code Enforcement’s ability to track any of these issues. Jill Dagilis pointed out that due to budget cuts, Code has a minimal ability to enforce zoning regulations at this time. Joe Boynton stated that this seemed to be an issue similar to that of signs – an issue the City will never be able to devote appropriate resources to address.

Stephen Petro said that he prefers to see the administration focus on the look of the City through sign enforcement, instead of this parking issue. John Shea asserted that requiring ownership of parking would discourage the development of new business on Shrewsbury Street, and suggested that the Board propose requiring longer lease agreements instead. Stephen Petro reiterated that

these leases are very difficult to monitor. Joel Fontane surmised that the City would see an increase in the number of parking variances if leases were prohibited. Jill Dagilis stated that Code Enforcement had no preference as to the length of the leases. *The Board recommends Note 2a as proposed on Page 80. John Shea moved and Anne O'Connor seconded. The vote was 3-1 (Joe Boynton voted no).*

ii. **Note 2b – Location Issue:** The board considered whether the 1,000 feet requirement should be measured along public ways or ways open for public use, because otherwise there could be obstacles within 1,000 feet that would defeat this requirement's purpose. The intent is to have parking be easily accessible and that the location be practical in relation to the site. *The Board recommends that the measurement between the parking area and the dominant use be along ways that are open to public use, open to motor vehicles, and provide adequate pedestrian accessibility. John Shea moved and Stephen Petro seconded. The vote was 4-0.*

iii. **Note 2b – Other Changes:** This note needs a reference to the Adaptive Reuse Overlay District (AROD). *The Board recommends inserting in the second sentence after adaptive re-use of existing structure "as provided in Article 14 of this ordinance". Stephen Petro moved and John Shea seconded. The vote was 4-0.*

Third sentence needs modification. *The Board recommends modifying the third sentence as follows: "The number of spaces required by the immediately preceding sentence cannot be further reduced by special permit." John Shea moved and Stephen Petro seconded. The vote was 4-0.*

Last sentence modification. *The Board recommends changing the last sentence by changing the last word to "areas". John Shea moved and Stephen Petro seconded. The vote was 4-0.*

Duplicate Table 4.4 Note 2b in Article 14. *Board recommends inserting Table 4.4 Note 2b into Article 14 Section 5(d). John Shea moved and Anne O'Connor seconded. The vote was 4-0.*

d. **Note 3 – Dimensions of Parking Space:** *The Board recommends deleting lead-in sentence that is redundant with Page 81. John Shea moved and Stephen Petro seconded. The vote was 4-0.*

i. **Note 3b – Compact Spaces:** *The Board recommends changing to 25% from 50% not to 0% as proposed. Stephen Petro moved and Anne O'Connor seconded. The vote was 4-0.*

- e. **Note 5 – Setbacks, Buffers and Landscaping:** *The Board recommends changing Article V Section 3(a) to Article V Section 5C. John Shea moved and Stephen Petro seconded. The vote was 4-0.*
 - f. **Note 6 – Interior Landscaping:** These changes, located on Page 81, have already been adopted. No action required.
 - i. **Note 6a, b & c:** *The Board recommends moving to Note 5 and re-lettered b, c & d. Stephen Petro moved and John Shea seconded. The vote was 4-0.*
5. **Table 4.5 – Loading Requirements:** *The Board recommends moving Table 4.5 and inserting it after Note 7 of Table 4.4. John Shea moved and Stephen Petro seconded. The vote was 4-0.*
 6. **Article IV Section 8(B) – Accessory Uses, Limitation in Residential Districts**
 - a. **Article IV Section 8(B)(1):** *The Board recommends inserting the word “parking” after “excluding” in the first sentence. John Shea moved and Anne O’Connor seconded. The vote was 4-0.*
 - b. ****Article IV Section 8(B)(3):** *The Board recommends as proposed. John Shea moved and Stephen Petro seconded. The vote was 4-0.*
 7. **Article IV Section 8(C) – Home Occupations in Residential Districts as Accessory Uses: Section 8(C)(1)(i):** *The Board recommends deletion. John Shea moved and Stephen Petro seconded. The vote was 4-0.*
 8. **Article IV Section 9 – Special Events:** The Board indicated that this section was internally inconsistent and recommended that staff redraft this section. Staff indicated that the intent of this change was to have more control over how much of a site’s required parking area a Special Event can use. Staff agreed that this section was not properly drafted and recommended to remove, redraft and bring this back as an amendment at a later date. *The Board recommends redraft. John Shea moved and Stephen Petro seconded. The vote was 4-0.*
 9. **Article IV Section 10 (A) & (B) – Residential Conversions:** *The Board recommends amending to the proper effective date (Michael Traynor will research). Anne O’Connor moved and Stephen Petro seconded. The vote was 4-0.*
 10. **Article IV Section 11 – Adult Entertainment Establishments:** All definitions were found in Article I Section 2. Joe Boynton asked why the definitions associated with Bed and Breakfast establishments were not in Article IV Section 12. Mr. Traynor responded that many of the article-specific definitions are not

needed by other users of the ordinance, and therefore, are located with their respective articles. *The Board recommends keeping them with their respective Article. John Shea moved and Stephen Petro seconded. The vote was 4-0.*

11. Article IV Section 12 – Bed and Breakfast Establishment:

- a. **Section 12(A)(6) – General Conditions and Requirements:** The intention of the change to this subsection is to regulate appearance. *The Board recommends modification as follows: “The architectural character of the dwelling shall be maintained or designed in case of new construction as a single family dwelling unit.” Board also recommends deleting the last sentence just below it because it is no longer needed. John Shea moved and Anne O’Connor seconded. The vote was 4-0.*
- b. **Section 12(B)(1) – Procedures:** *The Board recommends the following revision at the beginning of the sentence: “A plot plan certified by a registered engineer or registered professional land surveyor locating....” John Shea moved and Anne O’Connor seconded. The vote was 4-0.*

12. Article IV Section 13 – Personal Wireless Service Facilities

- a. **Section 13(B) - Definitions:** Move definitions. “Antenna” should stay in the definitions. No vote necessary. “Antenna, Wireless” – *the Board recommends adding the word “wireless” and deleting the word “radio”. John Shea moved and Anne O’Connor seconded. The vote was 4-0. The Board also recommends as proposed inserting definitions for “Elevation”, “Security Barrier”, “Separation”. John Shea moved and Stephen Petro seconded. The vote was 4-0.*
- b. **Section 13(C)(1)(b) – Use Regulations:** *The Board recommends inserting the word “definitions” and renumbering the Article Section reference as proposed. John Shea moved and Stephen Petro seconded. The vote was 4-0.*
- c. **Section 13(D)(7)(a) – Special Permit Regulations:** *The Board recommends underlining Special Permit Granting Authority (SPGA). John Shea moved and Anne O’Connor seconded. The vote was 4-0. The Board also recommends re-lettering as proposed. John Shea moved and Anne O’Connor seconded. The vote was 3-0 (Stephen Petro was out of the room.)*

Board member John Shea excused himself from the meeting.

13. Article V – Site Plan Review

a. Section 2 – Uses Requiring Site Plan Review:

- i. **Deletion of Subdivision Control trigger formerly Section 2(B):** Currently, a developer can file a five lot Approval Not Required (ANR) plan to bypass the subdivision control regulatory process. Current triggers for site plan approval relate to size and slope only. Joe Boynton recalled two instances of subdivisions that were mitigated by the use of site plan review – Roseville and Blithewood. Joe Boynton stated that he believed it was not a good idea to eliminate site plan as a requirement for subdivision approval, but also indicated that it should not be a requirement at the time an applicant submits a subdivision plan. *The Board recommends reinserting subdivision as a trigger for site plan review. Stephen Petro moved and Anne O'Connor seconded. The vote was 3-0. The Board also recommended deleting the requirement that the site plan review take place at the same time as the consideration of the application for a definitive subdivision. Stephen Petro moved and Anne O'Connor seconded. The vote was 3-0.*
- ii. **Section 2C – regarding interior improvements:** *The Board recommends deletion of last line in Section 2A and keeping as proposed here. Stephen Petro moved and Anne O'Connor seconded. The vote was 3-0.*
- iii. **Section 2:** *The Board recommends reinserting paragraph 2 that will become paragraph B, paragraph B becomes C, C is deleted and D stays and D and E stay as E.*
- iv. **Section 2(E):** *The Board recommends to move (E) before Table 5.1. Stephen Petro moved and Anne O'Connor seconded. The vote was 3-0.*

- b. **Table 5.1 – Site Plan Review Thresholds:** *The Board recommends deleting the third column. Stephen Petro moved and Anne O'Connor seconded. The vote was 3-0. The Board also recommends deletion of the Historic Properties trigger for site plan review. Stephen Petro moved and Anne O'Connor seconded. The vote was 3-0. Editor's note: the Board reconsidered and changed its recommendation regarding the Historic Properties trigger – see May 27, 2004 special meeting minutes (Item # 1) for details.*

c. **Section 3 – Procedure:**

- i. **Section 3(E) - Public Meetings:** Michael Traynor explained that public hearings are not held on site plan. Therefore a hearing would not be appropriate – only notice and public meeting. He further explained that when the Zoning Ordinance went to the City Council in the 1990’s, this section referred to a public hearing and accordingly addressed the public hearing process. The City Council changed it to a public meeting, but nothing else changed. Therefore, it has the look and feel of a public hearing process, but it is only taken up at a regular public meeting. Staff thought this was confusing and, as a result, recommended to regulate this outside the ordinance, through the Board’s regulations.

Staff indicated that applicants frequently want to speed up the process by notifying abutters themselves and not having to advertise. In the ordinance there is no flexibility for the Board to alter that. If it were in the regulations, the Board could waive the requirement. Staff believes that the current text follows something that never went forward at the City Council. Joe Boynton stated that he preferred that the Board’s direction be spelled out in the ordinance instead of in the Board’s own regulations. He stated that one of the advantages of site plan review is that people get an opportunity to provide their input into the development process, and, as a result, impacts can be mitigated to some extent. Mr. Boynton further added that he believes the public is better served by having it required as it currently is. Staff responded that the notice requirements are in the Board’s rules and regulations. *The Board recommends reinsertion (from current Zoning Ordinance) of the rest of the public meeting section, exclusive of the legal advertisement. Stephen Petro moved and Anne O’Connor seconded. The vote was 3-0. The Board also recommends amending to eliminate the need to copy the City Clerk. Stephen Petro moved and Anne O’Connor seconded. The vote was 3-0.*

Section 3(D) – Powers: *The Board recommends inserting “without following the notice requirements found in Section E below.” in line 11. Stephen Petro moved and Anne O’Connor seconded. The vote was 3-0.*

Section 3(F) – Time Limits: *The Board recommends eliminating “as provided by Statute”. Stephen Petro moved and Anne O’Connor seconded. The vote was 3-0.*

d. **Section 4 – Application and Submission Requirements:**

i. **Section 4(B) – Formal Application:** Staff indicated that the proposal is to drop of the word “approval” in the first sentence and dropping references to Bureau of Land Use Control, Clerk and OPCD. *The Board recommends removal of brackets and change to Section 3(A) from 4(A), and recommends that this subsection is renamed “Definitive Application”, and to accept the deletions proposed. The vote was 3-0.*

e. **Section 5 – Application Approval Process:** Proposal to delete conformance of site plan with design requirements with other applicable requirements of the Worcester Zoning Ordinance (formerly letter “M”), and delete former P because it is no longer needed. *The Board recommends both deletions. Stephen Petro moved and Anne O’Connor seconded. The vote was 3-0.*

f. **Section 5(D) – Standards for Approval or Disapproval:** Joe Boynton agreed with the removal of the appeal to the ZBA expressing a preference for an appeal of the issuance of a building permit. Currently the zoning ordinance permits appeals to the ZBA for site plan approval. Rather than indicating the appeal process in the ordinance, it should be in the Board’s regulations and on site plan applications. *The Board did not vote on the proposed deletion of the person aggrieved appeal process.*

Joe Boynton reiterated that Table 4.5 Loading Requirements is being moved and inserted after Note 7.

Meeting Adjourned 7:05pm.