

**MINUTES OF THE PROCEEDINGS OF THE
PLANNING BOARD OF THE CITY OF WORCESTER**

JANUARY 4, 2012

WORCESTER CITY HALL – LEVI LINCOLN ROOM

Planning Board Members Present: Anne O’Connor, Chair
Andrew Truman, Vice Chair
Stephen Rolle, Clerk
Satya Mitra, Member

Staff Present: Joel Fontane, Division of Planning & Regulatory Services
Lara Bold, Division of Planning & Regulatory Services
Deborah Steele, Division of Planning & Regulatory Services
Kathleen Donovan, Department of Inspectional Services
K. Russell Adams, Department of Public Works & Parks
Michael Traynor, Law Department
Jennifer Beaton, Law Department

BOARD SITE VISITS

REGULAR MEETING (5:30 PM)

CALL TO ORDER

Chair Anne O’Connor called the meeting to order at 5:34 p.m.

APPROVAL OF THE MINUTES

Upon a motion by Andrew Truman and seconded by Stephen Rolle the Board voted 4-0 to approve the minutes of December 14, 2011.

Upon a motion by Andrew Truman and seconded by Stephen Rolle the Board voted 4-0 to approve the minutes of May 4, 2011.

**REQUESTS FOR CONTINUANCES, EXTENSIONS OF TIME, POSTPONEMENTS,
WITHDRAWALS**

New Business

1. Devonshire Street – Street Petition – To Make Public (ST-2008)

Kim Bent appeared on behalf of the petition.

Lara Bold explained that a petition had been filed in 2008 to make Devonshire Street a public street and was referred to the Planning Board by City Council but was erroneously never placed on a Planning Board agenda.

Ms. Bold stated that DPWP recommends a Priority #1 for Devonshire St.

Upon a motion by Stephen Rolle and seconded by Satya Mitra the Board voted 4-0 to recommend that City Council approve DPW's recommendation for a Priority #1 to make Devonshire St. public.

2. 29 Lyon Street – Zoning Map Amendment petition requesting to extend the abutting MG-2.0 (Manufacturing General) zoning district to include the entire parcel of 29 Lyon Street which is currently split-zoned BG-2.0 and MG-2.0 (Business General & Manufacturing General) (ZM-2011-007).

Carl R. Freedman of United Barrel and Cooperage appeared on behalf of the petition. Mr. Freedman stated that he was requesting that the existing zoning at 29 Lyon Street be changed from BG-2.0 and MG-2.0 to entirely MG-2.0. He stated that he would like to market the property to allow for various by right manufacturing uses including auto body / paint & repair uses.

Mr. Freedman stated he had several comments in response to the analysis written by Mr. Fontane especially with regard to negative impact to abutters.

Mr. Freedman stated that 25-27 Lyon Street which abuts his property and stated those properties already abut an MG-2.0 zone which has auto repair, auto body and paint operations on the property. There is also large area of cars awaiting repair on the property.

Mr. Freedman also stated that at 20 Lyon Street down the street there is an existing beverage manufacturing company which abuts his location and the property at 28 Lyon Street abuts the city salt storage area at DPWP which is also zoned MG-2.0.

Mr. Freedman stated that he believes the salt bins have more of a negative impact on the area than other manufacturing uses. He stated that if an auto body/paint repair shop could be located at 29 Lyon Street, that there would be very few cars given that the parcel is limited in area and that most of the operation would take place inside.

Mr. Freedman indicated that his property is split zoned and questioned why. He further explained that the northeast of his property is zoned MG-2.0 and the rest of the property is zoned BG-2.0 and he asked whether that type of situation happens often on properties.

Ms. O'Connor stated that the presence of split zones occurs sometimes but not often. She further explained that zone lines do not always follow parcel lines and sometimes parcel lines change over time or abutting properties are rezoned.

Mr. Freedman stated that according to Mr. Fontane's report that if he wanted to rent his space for someone to repair autos he would have to get a special permit through the Zoning Board of Appeals. He questioned that if a special permit was obtained if he would be allowed to do auto body / painting [not allowed in BG-2.0] in the MG-2.0 section on his property.

Mr. Traynor stated it would depend on size of the MG-2.0 area, dimension requirements, and other considerations as to whether two businesses would be allowed on same property. Mr. Traynor stated without all the facts he could not advise.

Mr. Freedman stated he would like to make arguments against Mr. Fontane's recommendations.

Mr. Freedman stated that his location is not that close to the Shrewsbury Street area that Mr. Fontane discussed in his memo.

Mr. Freedman stated that the fact that the existing property is split between MG-2.0 and BG-2.0 he believes it creates a prejudicial effect on his property.

Mr. Freedman reiterated that there are existing manufacturing uses at 25 & 27 Lyon, 28 Lyon Street and the city's salt yard that is zoned MG-2.0.

Mr. Freedman stated that the current zoning doesn't allow him to manufacture and feels that restricts him unfairly.

Ms. O'Connor reminded the applicant that the Board's decision is not final and that the Board's authority in zoning map amendment matters is to recommend to City Council and then the City Council votes on item.

Mr. Freedman stated that is fine and hoped that the Board saw the validity of his arguments.

Ms. O'Connor asked what the current use of the building is.

Mr. Freedman stated he has a warehouse which he does distributing from and also he does some light manufacturing which he believes is a grandfathered use.

Katie Donovan from Inspectional Services stated she had no comments.

Mr. Fontane stated that the DPRS respectfully recommends that the Board deny the request for change for the following reasons:

- The change is not consistent with the long-term vision for the Shrewsbury Street area.
- The existing zoning allows for a mix of uses that are more appropriate for this location and is consistent with the City Council's most recent zone change ordination in 1991.
- Uses permitted in the MG-2.0 zoning districts may be incompatible with the abutting residential uses to the north and west of the parcel petitioned to be rezoned.
- The existing business can expand or change by grant of a Special Permit from the Zoning Board of Appeals that would provide an opportunity to impose reasonable conditions of approval on expanded uses.

Mr. Fontane stated that the existing use is considered privileged non-confirming so could be expanded by Special Permit from the Zoning Board of Appeals. He explained that level of regulatory control is something the City believes is necessary for this area.

Mr. Fontane stated that the area was changed in 1991 to Business General (BG-2.0) and that was part of general philosophy of change that had been passed through regulation for the Shrewsbury Street area, albeit incremental change. Mr. Fontane stated the change was a long term view of where the area will go and incremental change, as all zone changes are, take time to be implemented.

Mr. Fontane stated there are admittedly manufacturing zones in close proximity including the DPW property across the street and the rail yard as well.

Mr. Fontane stated there are quite a few uses allowed in the BG-2.0 zoning district, including some manufacturing uses. He reiterated that a key factor is the City's future vision for how Shrewsbury Street will develop over time and DPRS believes that the BG-2.0 best captures the long term vision the City has for the area.

Mr. Fontane informed the Board that the concept use of auto/ truck body paint use is not allowed in BG-2.0 zoning districts and could not be allowed by Special Permit as it would not be considered a change to use of a similar nature. He explained that while the use of auto body paint / repair is already located

nearby on the abutting parcel at 15 Albany Street, it is not a use that is recommended to expand closer to residential uses nor closer to Shrewsbury Street.

Ms. O'Connor asked for clarification when the zone was changed in 1991 what parcels were included.

Mr. Fontane stated that the zone change encompassed a larger area of Shrewsbury Street.

Ms. O'Connor stated that the irregular zone line on the plan could have been created in 1991.

Mr. Fontane stated he would consider that possibly mistake in the zoning layer. We use a GIS zoning layer; there are some mistakes or parcel boundaries could have changed.

Ms. O'Connor asked for clarification on what Mr. Fontane believed was a mistake to include the parcel in the BG-2.0 zone or to exclude it.

Mr. Fontane clarified he felt it may have been a mistake in 1991 to exclude the portion of the parcel that was left as MG-2.0 because the vast majority of the parcel is zoned BG-2.0. He clarified that he did not think there was an error that the parcel at 29 Lyon Street was zoned BG-2.0.

Ms. O'Connor asked whether there was a manufacturing building was on site in 1991.

Mr. Fontane stated he believes it was same building and stated quite a few manufacturing uses are allowed in BG-2.0 if the uses are enclosed.

The Law Department had no comments.

Mr. Freedman stated that in 1991 when the zoning was changed for the area, his building was used for the same purpose - manufacturing and warehousing. He stated that for some unknown reason they split zoned the property and doesn't believe it was well thought out. Mr. Freedman stated that should have been noted as a mistake and stated he would have expressed opposition. He believed that the zoning district should be MG-2.0 zoned.

Ms. O'Connor asked for clarification if the use Mr. Freedman is seeking to place on the property is allowed or not in the BG-2.0 as well as the existing use of the property.

Mr. Freedman stated he has party interested in leasing the property for auto body repair which will utilize painting and does not think that is allowed under the current zoning.

Ms. O'Connor asked for clarification.

Mr. Fontane stated that motor vehicle service repair uses are allowed in BG-2.0 by right but the petitioner is correct that a paint shop / auto body shop would not be allowed in BG-2.0. He further stated that the current uses on the property are considered pre-existing non-conforming uses and can be changed or expanded by grant of a Special Permit from the Zoning Board of Appeals.

Ms. O'Connor asked if the auto body/paint shop would be allowed by Special Permit.

Mr. Fontane stated that the auto body/paint shop would not be allowed even by Special Permit.

Mr. Freedman stated that perhaps the use could occur on the current MG.2.0 section.

Ms. O'Connor asked Mr. Fontane for clarification about a portion of the zone change map. She stated that the depiction of the lot at 15 Albany Street shows a lined area to the right of Mr. Freedman's property but that is not part of the proposed zone change.

Mr. Fontane stated that the area Ms. O'Connor is referring to is also zoned BG-2.0 but is not part of Mr. Freedman's property. He clarified that sometimes zoning follows property lines and sometimes it does not match up over time since property lines change.

Ms. Bold informed that Board that she had conducted some background research on the area. She stated that historical city records do not include a map of the proposed 1991 zone change for Lyon Street but indicated that there was a large city-wide zone change in conjunction with the adoption of the revised 1991 zoning ordinance which included many changes to the zoning map. She indicated that historical zoning maps show that this whole area between Shrewsbury Street to the railroad from Union Station all the way to the Wexford House was previously zoned various manufacturing zones. She indicated that there were different manufacturing delineations at that time and a large zoning map amendment in the area of Shrewsbury Street was ordained by the Council to change the zoning from manufacturing to business. Ms. Bold stated that it is possible that the zone changes were recommended similar to other large area zone changes where the zoning line is pulled from the centerline of a street out a certain distance from that street which may explain the zone change line in the area of 25 and 27 Lyon Street.

Mr. Bold stated that the Albany Street parcel had been the site of an auto body paint business for several years and the Council may have voted to leave out that parcel to allow the current use to continue on that property but because the use at 29 Lyon Street is allowed in the business zoning district they may have decided to change it to BG-2.0.

Mr. Fontane stated this was a broad zone change encompassing many acres and there was idea that Shrewsbury Street would develop differently over time and change from manufacturing to business. He admitted it is a necessarily a long term process.

Mr. Freedman stated his property is surrounded by MG-2.0 properties and in his opinion is far from the vision of Shrewsbury Street with the DPW salt yard right across the street unless the City is planning to move it.

Mr. Freedman stated it is mistake to zone the other part of his property BG-2.0 but not allow him to do the things he needs to do and feels he is being in a way, unfairly discriminated against. He reminded the board that there have been manufacturing uses on site since the 1900s.

Ms. O'Connor asked if abutters were notified of the hearing.

Mr. Fontane stated that abutters and abutters to abutters within 300 ft had been notified.

Mr. Rolle asked for clarification if abutters are renters who receives the notice.

Mr. Fontane stated that notices are sent to property owners and concurred that frequently renters do not participate unless property owners inform them of the meeting.

Mr. Truman stated he agrees with the applicant and that if he went back to 1991 he would not have included that parcel in the change to BG-2.0 since the parcel is surrounded by manufacturing uses.

Mr. Truman stated he would recommend the proposed zone change.

Mr. Rolle opined these matters are tough especially when manufacturing uses abut residential uses. He agreed that it appears that at the time the zoning in the area was changed from manufacturing to business that the zone line should have probably been drawn somewhere else and stated the logical place, in his opinion, for dividing would be Albany Street itself. He stated he was not in support of the zone change because as Shrewsbury Street develops it has become less manufacturing oriented over time, not more so. He stated that he is sympathetic to the applicant given the longstanding history of manufacturing on the property.

Ms. O'Connor stated she agreed with Mr. Rolle on his last point given that the building and manufacturing use has been there a long time.

Mr. Mitra stated he had questions for Mr. Fontane relative to item #3 in his memo. He asked for clarification on the statement that the proposed zone change is incompatible given that there are already MG-2.0 areas there.. He asked if Mr. Fontane was stating that DPRS does not want to increase MG-2.0 in that area.

Mr. Fontane stated that is correct. He continued that while there is MG-2.0 zoning in the area, the question for the Board is whether or not to allow that zoning line and uses permitted in that zoning district to come closer to the abutting residential uses. He reminded the board that it is all about the incremental impact and stated that while the current uses exist legally in one place does not justify their expansion. He also stated that the BG-2.0 zoning district is appropriate for the site and stated that extending the auto body / paint shop is not recommended for the area.

Mr. Fontane further stated that the City is also considering re-use options for its own property as well as the DPW yard.

Mr. Mitra asked the applicant what type of manufacturing is at the property.

Mr. Freedman stated that from 1947 through the 1970's his father and grandfather manufactured wooden barrels. Mr. Mitra stated he understood from staff that the existing use is a permitted use in the existing business zone.

Mr. Mitra asked what Mr. Freedman plans for the property are.

Mr. Freedman stated he had interested party but had to tell them no because the proposed use would not be compliant with the existing zoning district. He stated that he does not want to go to request special permits because the outcome is not a known factor and he wants to be able to market the property.

Mr. Mitra stated he had visited the area prior to meeting and was not impressed with the area specifically how the barrels were located on the property. He also stated that if there are renters/tenants, they may not come to the public hearing and property owners that do not live in the building may have less interest. He continued that from his personal site visit that his main concern is with the residential neighbors who are close to the business. He expressed concern for the health and safety of the residents and while sympathetic with the applicant's desire to market the property, does not want to vote to recommend an increase in manufacturing closer to the residents. He further stated that the lot while currently split zoned, has less than 10% MG-2.0 area and is not significant. He stated he did not know the reasons for the City Council in 1991 to draw the line where they did but as a current member of the Planning Board I am concerned with further expanding MG-2.0 zoning districts closer to residents. Mr. Mitra expressed concern with the potential for additional noise and chemicals associated with the existing uses and stated that he agreed with Mr. Fontane that it would not be a good idea to elevate those risks. He stated that the existing uses are already there and the Board cannot change that now but he does not want to see an increase in MG-2.0 area in that neighborhood.

Mr. Rolle asked if the current use is grandfathered since he thought he heard allowed under BG 2.0.

Mr. Fontane stated that what is currently on the property can continue to exist. The concept plan to change the use to a paint shop/auto body would not be allowed in BG-2.0 and it has been determined that it cannot be changed by Special Permit as it is not a change in similar nature the way the ordinance defines it. He further stated that there are many uses allowed by right in BG-2.0 including automotive repair.

Mr. Fontane mentioned paint shops would create fumes greater impacts on abutting properties including noise and off-gassing of fumes associated with paint shops. While the use currently exists on Albany Street, he stated that gasses dissipate with distance even if it is only 700 ft. as well as noise and would be different from what there is now if the Board approved the zone change.

Mr. Rolle asked if his use wasn't grandfathered would the activity that traditionally been occurring there be allowed under BG-2.0.

Ms. Bold stated manufacturing of barrels and accessory storage is allowed so long as items are contained. She noted that manufacturing use #5 in the ordinance is permitted by right in BG-2.0 with: provided that *manufacturing, packaging provided that odors, gasses and particulate matter are confined to the premises.*

Mr. Rolle asked if distribution or warehousing of any type is allowed.

Ms. Donovan stated under business uses #29, wholesale business conducted entirely inside business would not be allowed in BG-2.0 but would be allowed in MG.20.

Mr. Fontane pointed out that the notes Ms. Bold referred to (Note 7 to Use #5) are there to mitigate impacts on abutting land uses particularly abutting residential land uses..

Mr. Freedman asked for clarification if warehouse uses are allowed in BG-2.0

Ms. Donovan stated wholesale business conducted entirely in an enclosed structure which she would interpret to be a warehouse would not be allowed in the area as a new use but because it's pre-existing it would be allowed to exist and could be expanded by grant of a Special Permit.

Mr. Freedman asked if he sold the business to someone for the same use would it still be grandfathered.

Ms. Donovan stated that would be correct as the rights run with the land but indicated that if the property's use changed, then it would need to comply with current zoning requirements.

Mr. Freedman stated he feels that limits his sale availability for the property.

Mr. Fontane disagreed stating that, in this case, unlike someone with a vacant lot in BG-2.0, his lot has significantly more rights because the applicant can perpetuate the legally non-confirming use.

Mr. Freedman stated his property is split between two zones and does not think they should be allowed and before 1991 it was manufacturing and should be allowed again.

Mr. Freedman stated he knows the neighbors who abut his property and none of them are present at meeting with negative feelings about item and feels in their absence they support the change.

Upon a motion by Mr. Rolle and seconded by Mr. Mitra the Board voted 4-0 to close the public hearing.

Ms. O'Connor stated this is a tough recommendation but she does see Lyon Street as a dividing line and she does take into consideration that the property has been used for a number of years for these types of uses.

Mr. Truman stated if it was a vacant lot he would say no but since the site has always been manufacturing, he believes it should have been zoned MG-2.0 when the zoning was changed historically and would be in favor.

Mr. Rolle stated on the other hand that the traditional use of the property is one that is allowed under BG-2.0 and reiterated concerns with expanding manufacturing uses.

Upon a motion by Mr. Rolle and seconded by Mr. Mitra the Board voted 2-2, Mr. Rolle and Mr. Mitra voted against the zone change and Ms. O'Connor and Mr. Truman voted for the zone change.

Ms. O'Connor explained that the petition would go forward to the City Council.

Mr. Traynor stated that since the Board only has four members the statute requires that the Board report the recommendation to the City Council so the report would state that two members were in favor and two members recommended denial.

Mr. Rolle asked if there was mechanism that if the Council were to rule favorably on action that they can include sliver on plan behind it as the worst thing you could do is re-zone the portion and leave that sliver out.

Mr. Fontane stated it is only by what is petitioned and that would have to be subject to another petition.

Mr. Freedman asked what portion Mr. Rolle was asking about. Mr. Rolle stated there is sliver of BG-2.0 area on an abutting parcel not included in the petition. Mr. Freedman stated he believed it was the same parcel. Ms. O'Connor stated she was told that portion was owned by abutter.

Ms. Bold stated that GIS records show that small portion of land on 15 Albany Street is zoned business general. Ms. O'Connor asked if the petition included 15 Albany St too. Ms. Bold stated petition was for 29 Lyon Street only and she showed on the plan where GIS records show property line stops.

Ms. O'Connor recommended the applicant discuss property line questions with the City Assessor Office.

List of Exhibits.

Exhibit A: Zone Change Petition, submitted by Carl Freedman on behalf of United Barrel and +Cooperage Company, dated November 15, 2011, referred on November 22, 2011.

Exhibit B: Map, 29 Lyon Street – Proposed Zone Change BG-2 to MG-2.

Exhibit C: Memorandum from DPRS to Worcester Planning Board, 29 Lyon St, dated January 3, 2012.

Exhibit D: Photos – 29 Lyon Street and vicinity, taken by DPRS staff, December 2011.

Other Business

3. ANR plans

AN-2011-048, Franklin Street: Upon a motion by Mr. Rolle and seconded by Mr. Truman the Board 4-0 voted to endorse AN-2011-048.

AN-2011-049, Salisbury Street: Upon a motion by Mr. Truman and seconded by Mr. Rolle the Board voted 4-0 to endorse AN-2011-049.

AN-2011-050, 205 Grafton Street: Upon a motion by Mr. Mitra and seconded by Mr. Rolle the Board voted 4-0 to endorse AN-2011-050

AN-2011-051, Franklin Street: Upon a motion by Mr. Rolle and seconded by Mr. Mitra the Board voted 4-0 to endorse AN-2011-051

AN-2011-052, McKeon Road: Upon a motion by Mr. Truman and seconded by Mr. Mitra the Board voted 4-0 to endorse AN-2011-052.

ADJOURNMENT: Upon a motion by Mr. Truman and seconded by Mr. Rolle the Board voted 4-0 to adjourn the meeting 6:35 p.m.

