

**City of Salem Planning Board City Council
Meeting Minutes
Joint Public Meeting
Monday, Sept. 19, 2016**

A joint public hearing of the Salem Planning Board and the Salem City Council was held on Monday, Sept. 19, 2016 at 6:00PM at City Council Chambers, City Hall, 93 Washington Street, Salem, Massachusetts to consider a petition to amend the City of Salem Zoning Map for the parcel of real property situated at 293 Bridge St and 297 Bridge Street zoned NRCC and R-2, respectively. Both Parcels are to be rezoned to Business Wholesale and Automotive (B-4).

The meeting opens the meeting at 6:00 pm.

I. ROLL CALL

Planning Board Members present: Chair Ben Anderson, Vice Chair Matt Venio, Helen Sides, Dale Yale, Carole Hamilton, Kirt Rieder and Bill Grisct

Absent: Noah Koretz and Tony Mataragas

Councillors present: President Josh Turiel, Thomas H. Furey, Jerry Ryan, Elaine Milo, Heather Famico, Stephen P. Lovely, David E. Eppley, Beth Gerard, and Stephen G. Dibble

Absent: Robert K. McCarthy

Also in attendance: Mayor Kimberley Driscoll; City Solicitor Beth Rennard; Tom Daniel, AICP, Director of Planning and Community Development; Erin Schaeffer, Staff Planner and Stacy Kilb, recorder

II. REGULAR AGENDA

Mayor Driscoll makes a presentation on the property. The team from F.W. Webb (Webb) is also present. The proposal is to re-zone both the lot known as the Universal Steel lot and the building lot where the current F.W. Webb is located to B-4. At present the Universal Steel lot is zoned R2 and the F.W. Webb lot is zoned NRCC.

The original plan, which faced staunch opposition, would have demolished the original building. This plan will instead add a retail showroom and office space. The change in zoning would allow Webb to operate as they do now, and as they plan to after the addition. Under current zoning ordinance, there are not many districts that would allow wholesale, retail and office space on the same location, but B-4 is one. The proposed is a smaller scale plan with the project further from abutters, but it will still allow Webb to grow and do business here in Salem.

A no-build deed restriction will be placed on the Universal Steel parking lot for at least a 30 to 50 year time frame. It is felt that this will address the concerns about what will happen to the property should Webb no longer operate there, as well as maintain Salem's ability to be attractive to business. Webb will also go before the Planning Board for site plan review in order to address issues under the purview of that Board.

FW Webb Counsel Joseph Correnti of 63 Federal St. represents the petitioner. He reiterates that there will be a time when the Universal Steel parcel is put out for acquisition and that FW Webb will try to obtain it; as it undergoes rezoning and permitting, a no vertical build deed restriction from the City will be coming from Webb for consideration, which they agreed to. There will be language for placement of footings and a ramp, but no vertical building.

Attorney Correnti says that the applicant needs the Universal Steel lot to comprise this site. It has been asked if rezoning is necessary and if the work could be done under a variance or special permits, but it is not possible as

there is no variance or special permit that would allow the industrial building wholesale/retail use in an R-2 residential zone. Also, a residentially owned parcel may not be driven over to access a commercial property, thus, rezoning is necessary for the project to move forward.

Atty Correnti comments that Webb's has been attentive to various concerns raised and has heard that the concern is not with the current operation or Webb's proposed operation, but what happens if Webb's leaves. That might not fit the intended goals of the city or the neighborhood as there are other uses in the B-4 zone that some find obnoxious. To address this, Webb will propose to add both building and use deed restrictions. Use of the site will be limited to "Webb use," which will be defined in the deed. Thus, the site must always be used in the same manner. When that use ceases there will be no other B-4 uses allowed, as restricted by the deed the City will proffer to Webb via the Universal Steel Lot. Attorney Correnti re-emphasizes that the rezoning to B-4 is absolutely necessary so that they can have a project site but offer deed restrictions as an attempt to address the concerns in the event that the Webb use ceases.

Councilor Eppley asks if this joint body and City Council chooses not to rezone, what is Webb's intent for the project? Atty Correnti responds that Webb cannot go forward if there is no rezoning because they cannot use the Universal Steel site and project cannot go forward.

Councilor Dibble: Asks if the use restriction will be on both properties. Attorney Correnti elaborates that it will be on the project site which will encompass both. The "no vertical construction" restriction will be defined to the Universal Steel lot so they can build on the other side. Councilor Dibble asks if the restriction will the use restrict prohibit other things on the 4th, 5th floor of the building such as offices. Mayor Driscoll responds that these are additional protections built in to address/respond to residential concerns while supporting an existing business. The Mayor notes that Webb's is working hard to do respond to neighborhood concerns, and she is hopeful that the rezoning will move forward. The standard no build restriction is 30 years, they are proposing 50 years. Councilor Dibble asks if the use restriction can be worded to allow the rental of the top floor to lawyers. Attorney Correnti responds, yes additional uses could be carved out. Although he does not know if that would be likely while the Webb operation is ongoing. The applicant does not want to look into exceptions before putting the rules. Councilor Dibble encourages the applicant to do so, he opines that the downtown could grow through this building.

Councilor Lovely follows up on the office exceptions, and asks if they would require an amendment. Attorney Correnti responds that he believes professional offices are permissible under the B-4 designation. Councilor Dibble comments that he would like to see some language that would allow said uses, if not would be prohibited during the 50 year use restriction. Attorney Correnti reiterates that if that is a unanimous feeling, they could discuss it but does not want to get into carving out individual uses. The Mayor clarifies that offices are allowed in B-4. The uses that will be not allowed per the use restriction are things in B-4 that people might find objectionable. Office use is not something that people would find objectionable. The intent is to allay fears of what might happen if Webb is not there, not to make the process confusing. The City wishes to allow Webb to do business but ensure that the characteristics of the area do not change if they should go away. Councilor Dibble comments that he heard it as only Webb use, with everything else excluded. Atty Correnti responds that his characterization was broad, but they could craft it as suggested.

Councilor Lovely asks for more details about the 50 year restriction and not in perpetuity. Atty Correnti responds that 30 years is a minimum per State statute and then often times there are 20 year increments of extensions. The 50 year was thought to be reasonable to cover concerns, and allows a limited time where at some point, it can change. A discussion of how this restriction can be changed occurs. Atty Correnti questions why one would want to restrict it in perpetuity when the parties may leave and you could rezone it to something more friendly.

The mechanism for removing the deed restriction is discussed. Atty Correnti explains that all parties would have to agree, and then you would have to draft a document that would remove it and record it with the registry. The deed restriction would be in chain of title.

Councilor Furey congratulates Webb and the City on the process and says they must look at the overall vision. He cites several other projects he considers successful and is in support of the Webb project.

Councilor Famico asks if after the 50 years if the use restriction automatically goes away. Atty Correnti responds yes. Councillor Famico comments that she would artist spaces to be allowable.

Additional allowable uses are discussed.

Arthur Sargent is also concerned that the deed restriction and/or zoning designation could be changed, and wonders how to afford residents the protection they need.

Attorney Correnti states that deed restrictions are one of the most common means to limit uses on sites, and that they do offer real protection. Supermajorities of the City Council and Planning Board could change things, but this is true of anything. He outlines the logistics of deed restriction and reiterates that it is a well recognized tool, a powerful and enforceable mechanism.

Arthur Sargent comments that abutters could better benefit from the restriction if it was listed on their deeds. Attorney Correnti agrees, noting that the applicant would like more time to flesh out the concept.

Chair Anderson asks about:

1. Compatibility with City's Master plan?
2. What is the public benefit?
3. Compatibility with surrounding uses?

Atty Correnti outlines his thoughts on these questions. In general, the project fits in with the City's Master Plan to protect businesses. This will benefit the public. As a tax-paying business, it will expand to provide more jobs and remain in the City, sending a positive message to other businesses considering locating here. This shows to the business community that we have an existing business that we want to keep and grow here. Compatibility with surrounding uses: There are four or five different zoning districts within several hundred feet of this project, so it is difficult to say that it is compatible with them all, but the current use of the site has been what it is for many years, and has been a good neighbor, so an 8,000 square foot addition to the building to allow the business to continue on is compatible. Thus, the NRCC would be fortunate to maintain a decent neighboring business like this.

Matt Veno asks about the current NRCC status of the parcel; the City Solicitor comments that it was previously zoned industrial.

Helen Sides comments that this is outside the jurisdiction of the Salem Redevelopment Authority (SRA) and is concerned about the lack of design review oversight as this is an important, visible site for the city.

Attorney Correnti understands those concerns but feels that the Planning Board has good oversight on site plan review. The applicant does expect this to get a thorough review and understands the sensitivity of the location.

Mayor Driscoll apologizes that she must leave early as she has a school committee meeting but notes that with many City Councilors and the City Solicitor is present, Salem is well represented.

President opens to public testimony. There are no comments in favor of the project.

IN FAVOR: None

OPPOSED:

Public testimony by email, opposing the project, is read into the record. Submissions were received from:

- Darrel L.
- Barbara Cleary
- Emily Udy, Historic Salem Inc.
- Jane Arlander

The Chair asks those commenting to be brief and concise, and limit their comments to new points that have not been discussed.

- Chuck Von Brunns of 3 River St. – Opposed
- Lou Ceriani, no address given - Opposed
- Barbara Cleary, 104 Federal St. - Opposed
- Carole Coss, 7 Middle St. - Opposed
- Joe Scifus, 358 Federal St, 10 Derby Square - Opposed
- Justin Whittier 10 River St., President, Federal St. Neighborhood Assoc. - Opposed
- Meg Twohey, 122 Federal St. - Opposed
- Jane Arlander, 93 Federal St. - Opposed
- Brett (No last name given) 17 ½ River St. - Opposed
- Constance Arlander, 91 Federal St. - Opposed
- Anne (No last name given), 10 River St. - Opposed
- John Carr, 7 River St., 9 North St. - Opposed

Concerns of those opposed to the project:

- Timing of the zoning change. Several opponents are concerned with costs associated with the Universal Steel Parking Lot remediation and payments to Mass Development. They believe that, if the property is sold before Oct. 2017, the City would have to pay Mass Development \$500,000; if after that date, it would not.
- It is suggested that the whole site be zoned NRCC, and there are complaints of “spot zoning.” It is also suggested that Webb simply seek variances and special permits to accommodate their project.
- The deed restriction would not be sufficient. They would at least like to see the language of the deed restriction before it goes into effect.
- Voluntary submission to design review will be inadequate.
- Some believe that Webb has threatened to take their business elsewhere if the zoning change does not work out in their favor.
- Such a zoning change sets a bad precedent, and also that whatever is decided can be changed in the future. Some indicate that if this zoning change goes through they will appeal.
- The Board and Council may not yet have enough information to vote, as specifics such as contamination issues, size, design, loading ramps, etc. have not yet been provided. Neither they nor the public have had sufficient time to review the issue at hand, as well.
- B-4 may not represent the best use of the area, or other properties on Bridge St., and does not enhance or complement other districts; there are also concerns that the B-4 zoning designation could expand.
- The potential appearance of the project and how it will negatively impact what Salem visitors see upon entering the City

The President has some comments:

- As this is a public process, the deed restriction language can be made available and circulated once the City Council has a chance to review it
- Any comments or issues the neighbors have would be addressed through their Ward Councilors, Councilors at Large, or the City Council, not through an extension of the public hearing, as the deed is tied to the sale of the property
- Logistics are discussed; the deed will be considered thoroughly before sale of the property. The City Solicitor, Webb and the public will all be reviewing it, working under the assumption that it would be seen prior to a final vote. Rezoning to B-4 will not expedite or facilitate development; the applicant will still require special permits.

Councilor Dibble explains that he is the reason this meeting was called, as he suggested moving the development to the other side of the building. The applicant had originally wanted to build on the Universal Steel lot, and Councilor Dibble wanted to save the public walkway and prevent that lot from being dug up. He is concerned by the comments raised as he believed that they were nearing a resolution, however he still has some concerns, namely:

- What happens to the EPA Use Restriction on the former Universal Steel lot if the two are merged? Confirm that a park or school could not be built there.
- What are the exact figures and timeframe for Mass Development payback?
- Can the vote be contingent upon approval of Deed restriction? (President of Council states this is not possible, the only vote before the Council tonight is to close the public hearing and recommend the matter to the Planning Board)

Beth Rennard, City Solicitor, clarifies:

- As per precedent set by case law, the deed restriction would protect the City and direct abutters. Language on how to incorporate the existing parcel is under development.
- Regarding the Mass Development repayment, there is a tax lean of \$207,000 on top of that repayment. She outlines additional logistical issues that would draw out sale of the property
- Regarding contamination, the merger would not affect what is covered by zoning and the description of the cap and materials would remain on the description.
- As for the question of spot zoning, timelines have been discussed.
- The deed restriction will be in before the next meeting so the Council and City Solicitor will have time to review language; it is acceptable not to act until it has been reviewed no matter what the recommendation is.

Arthur Sargent suggests putting the issue in Committee. He feels the Universal Steel lot should be retained by the City.

Attorney Correnti responds to the suggestions and comments made. If the Universal Steel lot were to be zoned NRCC, the applicant would have requested that, but zoning ordinance prohibits the very use they are seeking in an NRCC zone. He understands the sentiment, but the law gets in the way. The project does not enjoy grandfathered use. Projects cited by opponents were either permitted or specially permitted, options which are not available to the Webb project. They are in no way getting a “free ride” or expedited review, as has been insinuated.

Councilor Lovely suggests that NRCC zoning could be amended to allow that use, but B-4 is a cleaner, easier solution. Attorney Correnti reiterates that B-4 is the ONLY district that permits the Webb use.

Councilor Famico asks if the project could be required to appear before the Design Review Board; the City Solicitor states that that would be mixing land use and zoning law, which are two separate issues though they sounds the same. The applicant hears the sentiment and will consider how to do it.

Councilor Ryan asks about the deed restriction and the Council President elaborates.

Councilor Famico clarifies that after this hearing, the item goes to Planning Board, and there is no public comment during that process; they have 21 days to make a recommendation.

A motion to close public hearing is made by Councilor Famico, seconded by Councilor Gerard, and passes with all in favor.

A motion to refer the matter to the Planning Board is made by Councilor Famico, seconded by Councilor Gerard, and passes with all in favor

A motion to adjourn is made by Councilor Furey, seconded by Ben Anderson, and passes with all in favor.

The joint meeting ends at 8:05PM

For actions where the decisions have not been fully written into these minutes, copies of the decisions have been posted separately by address or project at: <http://www.salem.com/planning-board/webforms/planning-board-2016-decisions>

Respectfully submitted,
Stacy Kilb, Recording Clerk

Approved by the Planning Board on 11/3/2016

Know your rights under the Open Meeting Law M.G.L. c. 30A § 18-25 and City Ordinance § 2-2028 through § 2-2033.