

**City of Salem Planning Board
Approved Meeting Minutes
Special Meeting
Tuesday, Sept. 27, 2016**

A special meeting of the Salem Planning Board was held on Tuesday September 27, 2016 at 7:00pm at City Hall Annex, 120 Washington Street, Room 313, Salem, Massachusetts

Chair Anderson calls the meeting to order at 7:00pm

I. ROLL CALL

Those present were: Chair Ben Anderson, Vice Chair Matt Veno, Kirt Rieder, Bill Grisette, Helen Sides and Carole Hamilton

Absent: Tony Mataragas, Noah Koretz and Dale Yale

Also present: Tom Daniel, AICP, Director of Planning and Community Development and Erin Schaeffer Staff Planner

II. REGULAR AGENDA

Consideration of 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).

Tom Daniel, Director of Planning and Community Development comments that a couple of letters from the public have been circulating. Mr. Daniel reads a letter into the record from Attorney Joseph Correnti, which is addressed to him,

"It has come to my attention that a three-page letter addressed to the Planning Board has been submitted by the neighbors and others concerning the Planning Board's deliberations in this rezoning petition.

As you know, the public hearing on this matter was closed on Monday, September 19, 2016 during the joint City Council/Planning Board hearing in City Council Chambers. The matter was then referred to the Planning Board for its deliberation recommendation. The board met on September 19th and continued its deliberation to this evening.

Because the public hearing has been closed the Planning Board is prohibited from taking further submittals from the public. I trust that this letter has not been distributed to the board members, but if it has please note our strenuous objection to this procedural flaw. Not only would this be fundamentally unfair to the property owners and others who may wish to further comment but in reading the letter I find it to be illegally flawed and incomplete.

Please instruct the board to disregard all materials or correspondence received after close of the public hearing on September 19th, signed Joseph Correnti."

Mr. Daniel echoes the comment that the Chair made, that there is not public testimony now, and notes that if the board members have received letters, the letters cannot be part of the Planning Boards discussion either because the hearing is closed.

Mr. Daniel described the materials provided to board earlier in the year, and says they are still relevant. As such, staff has provided that information to the board members again. He then summarizes a letter prepared by staff in response to questions by the board members:

- Zoning Commissioner determines the proposed use is “sales and storage of building supplies.”
 - o That use is only permitted as of right in B4 and Industrial Zones
- Why can't Webb expand its nonconforming use to the Universal Steel site?
 - o The Universal Steel site, which is zoned R2, is vacant and no longer has a non-conforming use. You cannot extend a non-conforming use to the R2 zone that is not currently there.
- What about accessing Webb across the property as it exists today as R2.
 - o That's not allowed because you are accessing a less restrictive lot over a more restrictive. Where R2 is just residential, and Webb is a legal non-conforming use. Case Law shows you can't access that property over the residential property. Mr. Daniel provides the Clark Ave subdivision as an example, he explains it has an industrial property, and neighbors were concerned of that property being developed with an industrial use. But in fact, it can't be developed with an industrial use because the access to the lot would be across residential lots. That is similar to this project.
- What if you rezone the Universal Steel parcel as NRCC, so both properties are zoned NRCC?
 - o Since the Webb use is prohibited in the NRCC, so you are passing over a more restrictive property to a less restrictive.
- Mr. Daniel comments that he has looked at this every which way he can, and as new suggestions or ideas are proposed he explores them with the City Solicitor and other city staff. Ultimately, there just is not a way to get this use permitted other than B4 where it is permitted as of right. The other question that comes up is, why not change NRCC to allow this type of use in NRCC. This could be done; it would allow this use throughout the whole NRCC district rather than just limiting it to this one parcel, which opens up another set of concerns and issues. The question of Design Review Board (DRB) has come up, in that the NRCC zoning district would ensure that the proposal that comes in is subject to DRB- which is true. This is lost with the B4 rezoning. But what you have before you is a Site Plan Review, which is an opportunity to have some control over the design.

Webb has significantly modified their original proposal; they are proposing an 8,000 square footprint approximately 16,000 square feet in total, and the universal steel site is used for access, laydown and loading. They have tried to address the neighbors' concerns which have been demonstrated through the change to their design, and offer a deed restriction to prohibit vertical construction on the Universal Steel site for 50 years. They are also looking at a use restriction on both properties, to limit it to just Webb uses. Their goal is to add on and grow in

Salem while meeting the neighbors' concerns. A working draft of the deed restriction is summarized:

- No build on universal steel site
- 50 year use restriction on both the FW Webb property and the Universal Steel site
- Abutters that would be benefited by the deed restriction
- If something happens and Webb goes away in less than 50 years, and there is not another user that comes in that conforms to the uses allowed under the deed restriction, rather than waiting for the full 50 year time period to expire, the party could come in before the city and request a rezoning to NRCC or whatever subsequent zoning to NRCC there is at that time.

It is an effort to maintain some level of assurance in the future that if Webb goes away and there is not a new owner that fits within the deed restricted uses, that there is a mechanism for someone to utilize the property in a way and the community is not left with a vacant building.

Helen asks, if the site was rezoned to NRCC, would that go into effect immediately, or what would the timing be? Mr. Daniel responds that a zoning amendment would need to be processed, before the City Council and public comment so it is a several month process.

Mr. Rieder asks could the use be rezoned to NRCC, but necessitates a special permit by the Planning Board. Mr. Daniel responds yes, that would be the similar process to amending the ordinance then you carve out that it is a special permit.

Matt Veno follows up on that comment asking if you could craft the special permit such that there are a series of criteria that need to be specifically met in order for the Planning Board to approve that permit, e.g. square footage. Part of his concern is the broader application of this use across the district, which he personally would not like to see anywhere else in the district, thus questions whether it is feasible to put together a series of criteria to limit the applicability of a special permit. Mr. Daniel responds it seems to be possible, but it is a matter of determining what the criteria would be and running it through the analysis. However, he notes that he is not an expert on this and if you craft a use that is too limited you run into issues there so he is unsure how to get to what you're wanting, unless the use is acceptable on other properties.

Mr. Veno comments that he has gone back and forth on this project. This is a complex zoning issue, specifically a complex project because of the zoning issues. There does not appear to be an easy neat solution. The Webb use is not new. If it was a new use that was being proposed for a new development, he would probably not support it. But this is a current use that has been there for decades. It was rezoned without the acquiescence of the property owner, so questions whether it was right to include them in the NRCC in the first place. But we are trying to figure out how to accommodate the slight expansion of a current use onto an adjacent property. The circumstances here are just unique he uses the analogy that it as a square peg in a round hole. We have had a square peg for decades (Webb), he believes are important to the economic development to the city, e.g. keeping the vibrant commercial tax base among other things. This makes him more receptive to the creative solution that has been put forward.

Kirt asks how the board could redefine the parcels as similar to a PUD, to achieve a net gain. Chair Anderson responds it would have to be rezoned. Mr. Daniel concurs; yes it would require a rezoning. The matter before the board is rezoning two properties to B4, if it is something other than that it is starting the process over again. The PUD is a means for the property owner to do their project. It is not the board's determination to do that, it is a tool that they could apply for to meet their building development objectives. What they are looking at doing does not require a PUD to do their project.

Chair Anderson explains his struggles with the project:

- He has gone back and forth on his opinions on the rezoning request (not necessarily on the project).
- In broad brush terms he questions to himself, why are we trying to put a B4 adjacent to NRCC and a R2 neighborhood- it doesn't seem to make sense. BUT then he thinks about FW Webb who has been here for 60 years. This company has employees, and is looking to invest in the city. He looks at thoughts and proposals from the previous rezoning effort and the building proposed, and the resistance from the neighborhood. He thinks about what the applicant has done to reshape the project in response to that. He looked at the City master plan from 1996, what the city has been trying to do. The complexities of the zoning are mind boggling; it is a difficult issue to wrap his head around. He thinks the potential realization of the master plan which discusses maintaining existing businesses and tax base. It is an issue where he feels we have a project and process in front of us with a property owner that wants to invest and stay in the city. The property owner has been responsive to a lot of the concerns, especially with the new proposal which is much smaller than what was previously asked for. He describes the new project compared to the previous proposal. It appears to him that if the board does not seriously consider changing the zoning, they would be stepping on the toes of businesses in Salem, including a business that is serious about staying in the city and investing here. He is confident in the site plan review process that if we the rezoning is approved, the board could address neighborhood concerns, as they have with other projects. The individuals on the board are very capable of working with FW Webb to craft a project that is good for the city. This was demonstrated on other projects the board has pushed developers for things they may not have been thinking of which has resulted in better projects for both the city and the developer. At this point, based on what's in front of the board, and the opportunity the city has to develop a vacant site in way that will collect tax revenue, maintain a business, and keep jobs in the city, his tendency is to support the project to rezone the site.

Carole Hamilton comments that she also has gone back and forth on this petition. This application has stumped her for a couple reasons:

- It is an expansion of a zone that clearly the NRCC zoning wanted to eliminate. As a nonconforming (which it is now) it has restrictions so the existing use can stay but in the future it would get developed in a way that conforms to a NRCC district. But this proposal before the board is to expanding a B4 district, a use, making it a by right use where it is currently a non-conforming use now, and expanding it. In addition, it is laying

on deed restrictions that don't go into effect in 50 years. The people affected by a by-right use in the B4 district in this area will not get DRB. While this board does a good job in dealing with DRB as part of site plan, it is not part of zoning.

Mr. Rieder clarifies that the activity use limitation (AUL) does not sunset, it is in perpetuity. Mr. Daniel confirms. Ms. Hamilton responds, but the B4 zone allows certain uses by right. Chair Anderson also notes that they can petition to change the AUL. Thus, Ms. Hamilton comments that she is struggling with saying yes to this.

Helen Sides comments that she is also struggling with saying yes to the rezoning application, largely from the DRB standpoint. The board has been making efforts to discuss the need to expand the oversight of the DRB. She explains that she has sat on many boards to help businesses through this process when they do not naturally have to have the DRB involved, and that is a lot of pressure for a couple people to decide when it should be seen by the entire DRBDRB board. While she does trust the Planning Board can review the design due to the number of qualified people on the board, it is not really what they there for; it is what the DRB board is for. She also notes that this is a different proposal than the first one, and these are different things to consider.

Chair Anderson responds, the lots have shifts, the board is being asked to rezone the Webb site and the Universal steel site rather than the alpha auto site. Ms. Sides comments that it is not clear to her that B4 is appropriate. Tom Daniel asks if the core of her concern is the design review aspect, Ms. Side replies, yes- and forfeiting the NRCC. She explains that the NRCC has value. The board has seen many projects developed with the NRCC in a positive way. While it is taking a while for the project to be built, she has seen the positive aspects to the DRB with every one of those projects in the NRCC, and it is tough to say give it up on this project. It is on a really important corner entering the city. She clarifies that she does believe the board can handle the project through site plan review, but it is tough to give up the opportunity for design review through the DRB when it has been such an important part of the development of the everyone one of the other NRCC projects.

Mr. Daniel comments that he has reflected on the role of the DRB relative to the NRCC. He supposes that the DRB is the design expertise, so the city relies on them. But wonders if that could be augmented, i.e. to have a peer review of the architectural design as part of the site plan review process. Ms. Sides responds that a few years ago when the city extended the master plan they were under the gun and didn't have enough time to consider the opportunity to expand. But one of the major things they wanted to consider was expanding the SRA district, (downtown).

Mr. Venio states that this is not an entrance corridor within the ECOD overlay. He thinks expanding the scope of the DRB is a further discussion he would like to have, applying it to entrance corridors is one way to do that.

Mr. Rieder says his feeling is if the proposal before them was can we switch everything to NRCC with Planning Board discretion to approve or disapprove this permitted use, it would be a much faster discussion. But that is not what they are being asked to vote on. For him, this is not a Greenfield; it was a steel warehouse up until not so long ago. It is not a tear down of residential houses. The legal opinion on is it or is it not a spot zoning seems to answer that question. He is curious as to what the new proposal is. It has been referenced several times, but the board has not

seen it, so he has not conception of what the proposal is. He explains that it is very odd and counterproductive to the applicant's effort to persuade approval.

Mr. Daniel responds that he also has not seen a detailed proposal either. It has been a conceptual, "this is an 8,000 square foot piece." Chair Anderson comments that he has not seen the proposal either, but has just heard discussions about it.

Mr. Rieder asks if the board can approve with DRB as a contingency, mandating that it must be part of the approval. Mr. Daniel replies that the board is making a recommendation to council, and they can include the considerations that they feel are important.

Chair Anderson comments that he questioned to himself, is putting a B4 next to R2 and NRCC setting a bad precedent for the future? But in looking at the city zoning map, there are instances within the city that have a B4 next to a residential zoning. Other board members respond that this is true of every city. Chair Anderson replies it seemed initially and emotionally difficult, but understanding that it exists today and it seems to work in other areas relieves some of the angst. But he kept going back to the master plan, and thinking about the strides the city made since 1996. The Chair then reads recommendations from the Master Plan to elaborate the important pieces for the development of the city in economic development for that decade:

- The city is working hard to retain its remaining industries.
- City government depends on businesses. Back then it was 53% of the tax revenue.
 - o He notes that he does not have the exact number of what it is now but senses it is something similar; Mr. Veno suggests it is probably a good deal lower.
- The committee was especially concerned about improving the business climate by retaining existing businesses and attracting new ones, and pointed to a perception of high business taxes as a liability.
- Some goals and strategies include:
 - o Existing firms retained
 - o New businesses attracted
 - o Contamination issues resolved at vacant sites
 - He believes the city has worked hard to do at this site
 - o Strengthen existing businesses downtown
 - He comments that this parcel is not downtown, it is very close
 - o Eliminate problem properties

Chair Anderson says he keeps going back to the business owner we have adjacent to the site, and the efforts they have put to remain in the city and money they are willing to invest in the city. He questions, what could happen on the site if this is not rezoned. Maybe an R3 with a PUD, but that could result in a denser development. So in looking at what is in front of the board today and the potential and benefit to the city and the effect that it will have on the neighborhood. Without understanding or seeing a plan he feels this is a better project for the city and that neighborhood as it stands today. He is confident that as a board, they can deliver a project along with the property owner that will be a benefit for the city and the neighborhood.

Bill Griset comments he sat on a Planning Board for a community that was at best antagonist to business, and watched great businesses that operated in the Town of Reading be chased away.

When he first moved to Salem what drew his interest to this Planning Board is that this community does not chase business away, nor is it in opposition to business. This community welcomes, strengthens and helps business owners grow their businesses. He notes that in any city there is always friction with a neighborhood in which the business is located. Given that this business has been operating for 60 years, long before the NRCC, long before those concerns, it strikes him that the conceptual project brings with it less intrusion on the neighborhood. He would like to see the DRB have input, the DRB has changed the nature and quality of projects in the city. But he is reluctant to do something to discourage this business. While he recognizes the rezoning it is not tidy, he is supportive of it. He was initially concerned about spot zoning but not anymore. He is generally supportive of the project.

Mr. Rieder comments that he thinks it is important to see a site plan since they are asked to look at a draft deed restriction which raises all sorts of questions. For instance, restriction of structure- should it be habitable structure, climate controlled structure... it is unclear what structures are being restricted. Loading dock- it is unclear whether it is a loading dock for 17 trucks, wb55 trucks or box trucks. He explains that he is asking these questions and raising these issues is he would like to see something graphic, so he can weigh in on what the appropriate limitations should be and he would like to have a great deal of understanding/comfort that the “structure” is not a 3 story tall habitable structure. He would expect to see more fine grain editing.

Mr. Daniel responds that the deed restriction is still be negotiated. The board is not voting on the deed restriction as it is not their purview. It is here as a courtesy to understand the intent.

Mr. Venio comments that while the draft deed restriction is not before the board for any action, as part of the boards overall opinion on the rezoning they could express an opinion as to what should be included or added to the draft deed restriction. Mr. Rieder feels that the deed restriction is the carrot to get the rezoning approved. Mr. Daniel views it differently; he says that the matter before the board is the rezoning, period. While other considerations are that they added in the deed restriction to address neighbors’ concerns. If the board has things they would like the City Council to consider, such as the DRB or additions to the deed restriction, the board can raise those as part of the recommendation tonight.

Chair Anderson says he would generally be supportive of recommending the DRB review. Kirt says he would go a step further and say not recommending, but requiring, Ms. Sides agrees and elaborates that it should be more than a subcommittee of the DRB, it should be the full DRB. Chair Anderson clarifies that the board cannot require, they can recommend then the City Council will take it into consideration.

Mr. Daniel comments that he is not certain how the “requirement” of DRB review would be put into effect since it is not currently required in the ordinance. As such, he suggests that the board express their intent behind the recommendation. Mr. Daniel explains that the intent is important because if there is no legal mechanism to implement it as a “requirement” there is something more than just a site plan review, such as his earlier idea of an augmented peer review.

Mr. Rieder is not in favor of the augmented review suggested by Mr. Daniel. Mr. Rieder explains that the intent behind the suggestion of a required DRB review is consistent with more than 9 months of discussion on other topics before the Planning Board they have been looking for

opportunities to expand the DRB's overview to specifically improve projects on very highly visible avenues into the City.

Chair Anderson asks if the board is being asked to come up with the final language tonight, or will the board make suggestions that will be brought back to them for review. Mr. Daniel recommends doing the work tonight. He explains that there is a means to elaborate on additional thoughts in the recommendation, as they did in February. Chair Anderson asks the board members if any of them have a recommendation to add before going forward with a motion.

Mr. Daniels suggests that the board look at the recommendation from February as a guide.

Mr. Veno says his motion would be that the City Council adopt the rezoning as proposed with recommendations. He suggests that paragraph 2 from the February decision be included in the recommendation. Staff Planner Erin Schaeffer reads said paragraph into the record,

"It allows commercial redevelopment in a historically industrial area; (2) conforms to the City's Master Plan; (3) preserves and expands services from a company that has provided plumbing supplies to local contractors in the City for decades; (4) increases the tax revenue through new growth on two underperforming lots historically used for commercial enterprises; (5) creates additional jobs for area residents; (6) retains existing jobs that are threatened; (7) properly zones a lot that has not been remediated for residential use and would otherwise remain vacant and underutilized."

The last statement of that paragraph is discussed: "and (8) maintains public access between Beckford Way and Bridge Street." Ms. Schaeffer explains that this is not part of the zoning consideration before the board. Mr. Griset comments that it is relevant and important to the board. As such, Chair Anderson says it should be added to the list of recommendations.

Additional recommendations are discussed:

- The Planning Board strongly recommends the City Council require DRB design review concurrent with the Planning Board's site plan review. The DRB's recommendation would be made to the Planning Board before site plan review was completed. The intent of this DRB recommendation is to ensure quality design on this site. This recommendation is consistent with recent Planning Board discussion of expanding DRB to key corridors in the City.
- The Planning Board requests that there be a 50-year restriction on construction of habitable structures.
 - The board notes that the deed restriction should be measureable but not too restrictive.

Matt Veno made a motion, seconded by Bill Griset to recommend approval of the rezoning of parcels at 293 Bridge Street (Assessor Map 26, Lot 634) from North River Canal Corridor to B-4 Wholesale & Automotive Zoning District; and the former Universal Steel site at 297 Bridge Street (Assessor Map 26, Lot 635) from R2 Residential Two-Family to B-4 Wholesale & Automotive Zoning District because the proposed project promotes the public welfare for the following reasons:

(1) It allows commercial redevelopment in a historically industrial area; (2) conforms to the City's Master Plan; (3) preserves and expands services from a company that has provided plumbing supplies to local contractors in the City for decades; (4) increases the tax revenue through new growth on two underperforming lots historically used for commercial enterprises; (5) creates additional jobs for area residents; (6) retains existing jobs that are threatened; and (7) properly zones a lot that has not been remediated for residential use and would otherwise remain vacant and underutilized.

In making this recommendation, the Planning Board made note of the following:

- Public access between Beckford Way and Bridge Street will be maintained.
- The Planning Board strongly recommends the City Council require DRB design review concurrent with the Planning Board's site plan review. The DRB's recommendation would be made to the Planning Board before site plan review was completed. The intent of this DRB recommendation is to ensure quality design on this site. This recommendation is consistent with recent Planning Board discussion of expanding DRB to key corridors in the City.
- The Planning Board recommends the language of the deed restriction clearly indicate there is a 50-year restriction on construction of habitable structures on the former Universal Steel site (293 Bridge Street).

The Planning Board voted, seven (7) in favor of the motion (Ben Anderson, Matt Veno, Bill Griset, Kirt Rieder, Helen Sides, Carole Hamilton) and none opposed, to recommend the proposed zoning amendment with the above listed findings.

A motion to adjourn is made by Kirt Rieder, seconded by Carole Hamilton, and passes with all in favor.

The meeting ends at 8:08pm.

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,
Amanda Chiancola, Staff Planner

Approved by the Planning Board on 11/17/2016

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