

SEPTEMBER 19, 2016

**JOINT PUBLIC HEARING
OF THE CITY COUNCIL AND PLANNING BOARD**

A Joint Public Hearing with the Planning Board and the City Council was held in the Council Chamber on Monday, September 21, 2016 at 6:00 P.M., for the for the purpose of discussing a petition for amendments to the Zoning Map for the parcel of real property located at 293 Bridge Street, Assessor Map and Lot No. 26-0634, currently zoned North River Canal Corridor (NRCC), be rezoned to Business Wholesale and Automotive B-4 Ordinance. Also, a 52,491 square foot portion of real property located at 297 Bridge Street, Assessor Map and Lot No. 26-0635, currently zoned Residential Two Family (R-2) to be rezoned to Business Wholesale and Automotive (B-4). Notice of this meeting was posted on August 29, 2016 at 1:22 P.M. and advertised in the Salem News on September 9, 2016 & September 12, 2016.

Councillor McCarthy was recorded as absent.

President Josh H. Turiel presided.

President Josh H. Turiel introduced the members of the Planning Board along with Mayor Kimberley Driscoll.

Mayor Driscoll – she gave a presentation regarding the rezoning of the F.W. Webb lot. She recapped how we got here and the alternative plan that was submitted. She stated this is to rezone the area to help Webb to expand their operation by making it B-4 zoning. It will be further away from abutters. There will be a no build restriction on the present parking lot, this will protect the concerns raised by citizens in previous meetings. This will also need a site plan review for the project. She stated we are hoping to get a favorable recommendation from City Council and the Planning Board.

Attorney Joseph Correnti – representative for F.W. Webb, stated they will be ready to put in that it's agreed to that no vertical construction wording for footings for a ramp but no building. This is the revised plan. We need the Universal Steel site to be rezoned, it cannot get variances or special permits because currently it's zoned R-2. Case law states you cannot drive over R-2 lots to get to commercial lots. We have been hearing the concerns of residents and Council. There are use of B-4 that we wouldn't want on the site. Webb will add to the restrictions, building restrictions and use restrictions, the intent that Webb use will continue. It will allow for it to be continued if sold but no other uses can be done. This is another attempt to address the concerns. This will be enforceable with the deed restrictions. We need the B-4 for both parcels, but offer the deed restrictions.

Councillor Eppley – asked a question, if the City Council does not rezone, what is Webb's intent.

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Attorney Correnti – response was that we cannot go forward.

Councillor Dibble – in regards to the Use Restrictions, applauds Webb for agreeing to these restrictions will this encompass both sites.

Attorney Correnti – responded yes the restrictions will cover both sites.

Councillor Dibble – asked will this prohibit attorney's offices to go in on the third floor?

Attorney Correnti – responded yes

Mayor Driscoll – stated this is a protection build in, the no build is for fifty (50) years instead of the usual thirty (30). This is a balance with the hope the zoning goes through.

Councillor Dibble – asked can it be changed to allow lawyers to rent.

Attorney Correnti – stated we decided not to carve out other uses, it could be done.

Councillor Dibble – stated the parking lot is more than adequate it should be considered.

Councillor Lovely – asked would it be a rezoning to allow offices.

Attorney Correnti – stated we want to keep it to current restrictions

Councillor Dibble – asked why would you prohibit it for 50 years from allowing professional offices in the B-4 which are allowed.

Mayor Driscoll – stated there might be things in the B-4 that no one would like.

Attorney Correnti – stated we can talk about it.

Councillor Lovely – asked why 50 years why not longer.

Attorney Correnti – stated the law is that 30 years is the maximum, we sometimes see 20 year extensions. The 50 year allows for to be changed, why would you want it in perpetuity. All parties would have to agree and it would be recorded at the registry of Deeds.

Councillor Lovely – asked will the abutters have a say

Attorney Correnti – We will have to get back to you

Councillor Furey – stated that Webb should be commended. There are positive exciting results. We will be a better city with webb.

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Councillor Famico – The 30 year, 50 year would it go away after it expires>

Attorney Correnti – state yes that's correct

Councillor Sargent – stated past planning boards created the zoning. If they didn't have the foresight we could have a much different Salem. Deed restrictions can be undone.

Attorney Correnti – Deed restrictions are always used. It's probably true that a Council and Planning Board can overturn a deed restriction.

Mr. Anderson planning board member - stated look at it as a Special Permit, what is the compatibility with the master plan and compatibility to surrounding uses and the public benefit.

Attorney Correnti – Economic growth and development. Rezoning fits well with the city's master plan. Public benefit are jobs and not an empty building. Webb site draw circle 500 feet, you will hit 4-5 zoning districts. We can't be compatible with everything but this company has been a good neighbor.

Mr. Veno planning board member – asked the NRCC what was the zone prior to being zoned.

Solicitor Rennard – stated it was Industrial zoned.

Planning Board member (woman) – stated outside of the S.R.A. this is an important site which needs over site.

Attorney Correnti – stated that he understands the concern. We have many projects outside the SRA and this will get a thorough review.

Mayor Driscoll – apologized but needed to leave for the School Committee Meeting.

Councillor Famico had asked prior to the meeting for an opinion from the Zoning Commission as to whether the B-4 Zoning District allows the operation of a mixed retail and wholesale Contractor supply establishment where the wholesale operation exceeds 50%.

In a letter dated September 19, 2016, the Zoning Commissioner, Thomas J. St. Pierre, stated that after reviewing his opinion with the City Solicitor she concurred with his determinations that a mixed retail and wholesale business where the wholesale operation exceeds 50% is allowed in a B-4 zoning district. The by-right use allowed in a B-4 zone as listed in the Zoning Ordinance Table include 1. Retail store, except department store; 2. Sale and storage of building supplies; and 3. Wholesale, warehouse and distribution facility (see pages 4 and 6 of table of uses). The table of uses includes a use entitled "retail-wholesale contractors supply establishment, provided, however, that the Wholesale operation does not consist of 50% of the business: This special use appears as "N" (not allowed) in the B-4 Zone and "Y" allowed in the B-5 zoned where it is understandable

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that the City would want to limit a predominantly warehouse in the downtown. If you look at the enclosed section of the City's Zoning Ordinance in effect prior to the recent recodification where a table of uses was created for the first time you will see that this special use appears by right strictly in the B-5 zone. It is my opinion that when the uses were transferred to a table, it was not intended to limit the combination of the retail and wholesale uses because these two uses are allowed by right 100% in the B-4 Zoning District. (complete letter and attached tables can be reviewed in the city clerk's office)

The matter was then open to the Public. There was no one present in favor.

In Opposition. Written letters and emails were submitted by the following:

Darryl Lebovici, 122 Federal Street
Federal Street Neighborhood Association
Jane & Richard Stauffer, 28 Beckford St.
Barbara Cleary, 104 Federal Street
Victoria V. Sirianni, 6 Botts Court
Meg Twohey, 122 Federal Street
Jane Curtis Arlander, 93 Federal Street

Charles Vonbruns, 3 River Street – asked why is the city rushing this zoning change? Why is the city ready to throw away 500,000 if done before October 2017. We pay after we sell.

Lou Sirriani, 6 Botts Court – He stated that he is a homeowner and a 30-year practicing Architect he is appealing the NRCC leave it as is. Neighbors have endorsed this plan. It is currently NRCC both sites are preferred as NRCC.

Barbara Cleary, 104 Federal Street – submitted a letter, if we left it alone we don't need to change the zoning it works better as NRCC

Carol Carr, 7 River Street – there is a lot of progress made so far, rezoning is bad for the neighbors. R-2 offers us protection. The NRCC protects the city and its residents. Rezoning to R-4 is spot zoning. We want to work with Webb.

Josiah Fisk, 358 Essex Street – As a business owner you have deals and contracts to look over, what the unintended consequences are. This situation makes me want to join the neighbors on this. Why do we have to rezone this now, I hope the deed restrictions do what we want.

Justin Whittier, 10 River Street – read a letter into the record for the Federal Street Neighborhood Association.

Meg Twohey, 122 Federal Street – stated the NRCC is important to us. Why not have Webb go through what other developers have to go through. We need to work under a master plan.

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Jane Arlander, 93 Federal Street – stated she is opposed to the zoning not opposed to Webb's expansion. They can expand without changing the zoning. Why should we not have them go through the permitting phases like any other developer. This is spot zoning. The solicitors gave her opinion that this is not spot zoning, if it quacks like a duck, looks like a duck then it's a duck. NRCC allows commercial and residential. We don't know if current Webb property is contaminated. We don't know anything about the new building. It is irresponsible to rezone to B-4 without many questions being answered.

Darryl Lebovici, 122 Federal Street – stated that he agrees and supports the comments and concerns of the previous speakers. He asked if we will be able to see the deed restrictions before the zoning is done.

Attorney Correnti – stated that the City Solicitor will craft the Deed Restrictions

Fred Biebesheimer, 17 ½ River Street – stated that he is against the rezoning and would like details on the design, hazardous waste site, financials, and wording of the deed restrictions. We need to protect the character of Salem. Carefully consider the decision. Do not allow spot zoning.

Connie Arlander, 91 Federal Street – stated since I moved here 38 years ago Mayors all wanted to improve the entrance corridors. She held up a picture of Webb in Connecticut. She stated she is opposed to the rezoning.

Ann Whittier, 10 River Street – read a letter from Lisa Spence against the rezoning.

John Carr, 7 River Street – complimented Webb and Attorney Correnti for the work they have done but stated we are not there yet. Zoning is proactive not retroactive. The proposed rezoning should be met with an open mind. That the plan fully be explained, but we have heard nothing. How did we get here, we met bi-monthly for 3 years. Goody Clancy was retained from Boston to be the Architects. Webb on July 21st told by Correnti a B4 Zoning wasn't decided. Webb is currently in the NRCC, public benefits there are none, compatibility uses none. He asked that this go slow and get it done right.

Councillor Dibble – Blame me and doodled and talked to Webb about moving it on the other side. It seems we were closer at our last meeting. Can we get the Solicitor to discuss spot zoning and use restrictions? What is the final number for paying back the State.

Solicitor Rennard – Deed restrictions protect the city and the direct abutters. She stated she already started the wording. Mass. Development opinion is our tax lien is on the top of that payment. When we auction it will convey restrictions, contamination remains and merger for zoning.

Councillor Dibble – Spot zoning issue, can we get deed restriction before we vote on zoning.

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Councillor Turiel – We will not have the Planning Board Decision until next weeks meeting and more likely the wording for the deed restrictions.

Councillor Dibble – Thanked the Solicitor, residents, Webb and the Planning Board.

Councillor Sargent – Zoning affects neighbors around the city. The planning board should walk along the back side of the building.

Attorney Correnti – If the Universal lot stays zoned as NRCC we would not be able to proceed with the project. NRCC does not allow for a warehouse, Webb use currently is prohibited in the NRCC zone.

Councillor Lovely – stated he thought the use was not allowed in the NRCC. We could have amended the NRCC for the use.

Attorney Correnti – why the B-4 zoning is because it's the only one that permits Webbs use.

Councillor Famico – asked is it a requirement to go before review or contingent

Attorney Correnti – stated it's confusing, land use law and zoning

Councillor Ryan – When did the deed restriction come up

Attorney Correnti – As we kept looking at B-4 and why people don't like the B-4 the deed would be coming before us so we could put restrictions.

Councillor Turiel – stated the DRB has no official role but Planning Board can influence the design.

Councillor Famico moved that the hearing be closed. It was so voted,

Councillor Famico moved that the matter be referred to the Planning Board for their recommendation. It was so voted.

On the motion of Councillor Furey the hearing was adjourned at 8:05 P.M.

ATTEST:

CHERYL A. LAPOINTE
CITY CLERK