

**Worcester County Planning Commission  
Meeting Minutes**

**Meeting Date:** September 3, 2020

**Time:** 1:00 P.M.

**Location:** Worcester County Government Office Building, Room 1102

**Attendance:**

**Planning Commission**

Jay Knerr, Chair

Marlene Ott

Rick Wells, Vice Chair

Brooks Clayville

Jerry Barbierrri, Secretary

Mike Diffendal

**Staff**

Roscoe Leslie, County Attorney

Ed Tudor, Director

Phyllis Wimbrow, Deputy Director

Jennifer Keener, Deputy Director Emeritus

Jessica Edwards, Customer Service Representative

Robert Mitchell, Director of Environmental Programs

**I. Call to Order**

**II. Administrative Matters**

**A. Review and approval of minutes, August 6, 2020** — As the first item of business, the Planning Commission reviewed the minutes of the August 6, 2020, meeting. Following the discussion, it was moved by Mr. Diffendal and seconded by Ms. Ott and carried unanimously to approve the minutes as submitted.

**B. Board of Zoning Appeals agenda, September 10, 2020** — As the next item of business, the Planning Commission reviewed the agenda for the Board of Zoning Appeals hearing scheduled for September 10, 2020. Mrs. Keener was present for the review to answer questions and address concerns of the Planning Commission. No comments were forwarded to the Board.

**III. Proposed Access Gate on Approved Private Road**

As the next item of business, the Planning Commission reviewed a request for a proposed access gate on Inlet Isle Lane, an approved private road providing access to the Estates at Inlet Isle, Tax Map 27, Parcels 227 and 573, District 10, C-2 General Commercial District. Mark S. Cropper, Esquire, Brian Tingle, on behalf of the developer, and Steve Engel, landscape architect, were present for the review.

Mr. Cropper testified that the approved private road is owned and maintained by the Homeowner's Association, on lands previously known as Shantytown Island. This road extends from US Route 50 on the westerly end to the cul-de-sac within the community. This gate would limit access to the residential lots within this area.

Mr. Cropper also explained that a permit application was submitted addressing all the items required by Resolution No. 10-3. Mr. Cropper proceeded to review the staff report indicating he agrees with staff findings.

Applicants Exhibit No. 1 was a site plan, completed by Mr. Engel, illustrating the proposed gate location, call box and the bail-out route through the parking lot. Mr. Engel explained that if guests are unable to get through the gate, the bail-out route will be through the parking lot shared by the Mickey Fins restaurant and the Ocean City Fishing Center. He further explained that this is the only functional layout for the project. Mr. Tingle testified that the bail-out route was approved by over 80% of the Estate's residence and all support the project and bail-out route.

An enlarged image of the gate layout and callbox were submitted as the Applicant's Exhibit No. 2. Mr. Cropper again referenced the staff comments regarding the concerns for winter boat storage (Item 4 of the staff comments). Mr. Tingle testified if the gate was approved, all boat storage would be arranged so as not to interfere with the bail-out route. Since there are existing fuel tanks in the bail-out area, the gates would be left open when those tanks are being filled.

Mr. Barbierri referenced Number 9 of the Staff Findings, mentioning that 16 transmitters were proposed. He suggested that one knox box be installed with one transmitter. Mr. Tingle agreed to provide the knox box as requested.

Mr. Knerr questioned if there will be a service contract for testing and maintenance. Mr. Tingle indicated that they have not yet entered into a contract pending the outcome of this meeting; however, they will pursue an arrangement upon approval from the Planning Commission. Mr. Knerr also asked how the residents will gain access through the gate; Mr. Tingle indicated that their access would be automatic; however, the method, whether by transmitter, license plate identifier or other method, has not yet been decided.

Mr. Cropper testified that the original plans for the community included a gate, but it was never constructed. He also reiterated that they gate would have one knox box.

Following the discussion, a motion was made by Mr. Diffendal, seconded by Mr. Barbierri and carried five to one, with Mr. Clayville in opposition, to approve the gate request.

#### **IV. Map Amendment – Case No. 426**

As the next item of business, the Planning Commission reviewed Rezoning Case No. 426, a request to rezone Tax Map 33, Parcel 347 from A-2 Agricultural District to C-2 General Commercial District. This property consists of 1.74 acres on the westerly side of MD Route 611 (Stephen Decatur Highway), south of Snug Harbor Road, in Berlin. Mark S. Cropper, Esquire, David Lane and Susun Lane, property owners, and Steve Engel, landscape architect, were present for the review.

Mr. Cropper indicated the property owners own and operate Sun Signs, a sign manufacturing business, on the subject property. Mr. Lane testified that he purchased the property in 1988 and that the land was rezoned to a commercial designation as a condition of the purchase.

Applicant's Exhibit No. 1 was a copy of the property deed from Mr. Lane's purchase. Mr. Lane explained that Sun Signs has been in operation for 32 years in this location and that he was unaware the land was rezoned in the 2009 comprehensive rezoning. This has caused his business to be considered a non-conforming use.

Mr. Cropper testified that the rezoning request is being made based upon both a change in the character of the neighborhood and a mistake in the assigned zoning district. Since the parcel retained a commercial zoning from 1988 through 2009, and had active commercial activity occurring on the lands that entire time, it should not have been rezoned during the 2009 comprehensive rezoning. This change has caused a burden on the owner as they must now comply with regulations for nonconforming uses, when the use was previously allowed by right.

Submitted as Applicant's Exhibit No. 2 was a copy of the Technical Review Committee agenda for September 9, 2020, referencing a proposed commercial use, Salt Grass Point Mini Storage, on commercially zoned lands located directly across MD Route 611 (Stephen Decatur Highway), on Tax Map 33, Parcel 136.

Submitted as Applicant's Exhibit No. 3 were chain deeds of the property reflecting that this parcel was previously part of Parcel 136 and separated when the creation of MD Route 611 split the lands. Both the subject parcel and Parcel 136 were commercially zoned prior to 2009. In 2009, Parcel 136 was vacant while this parcel, which contained an active business, was changed to an agricultural zone. Mr. Lane confirmed these events.

Mr. Cropper explained that the petitioned area is 1.74 acres in size and is not large enough for a farming operation. Mr. Lane explained that has no intention of stopping the current commercial activity or beginning a farming operation. Mr. Engel confirmed Mr. Lane's testimony.

Mr. Cropper further indicated the purpose of the Comprehensive Plan is to minimize nonconforming land uses. The Land Use map also identifies this parcel as Existing Developed Area (EDA) making a commercial zoning more compatible than an agricultural zoning.

Mr. Cropper submitted the Findings of Fact from Rezoning Case Number 395 as Applicant's Exhibit No. 4. This case rezoned 36 acres in the current Frontier Town campground from C-2 General Commercial District to A-2 Agricultural District. Mr. Cropper read the third paragraph on page one of the aforementioned Findings, indicating that he would like to adopt the definition of the neighborhood as read with one exception. Mr. Cropper noted the lands on the west side of MD Route 611 should be included in the definition of the neighborhood. He then submitted a copy of the Zoning Map reflecting the properties fronting on the west side of MD Route 611 as Applicant's Exhibit No. 5.

Submitted as Applicant's Exhibit No. 6 was a map of the Mystic Harbor Sewer Service Planning Area. Mr. Cropper explained that the lands on both the easterly and westerly sides of MD Route 611 are included in this sewer service area. These lands contain a mixture of uses and zones; additionally, there is a vast amount of traffic on MD Route 611 that affects properties on both sides of that road. Mr. Cropper explained the neighborhood is defined more holistically in this

document as it includes the lands on the westerly side of MD Route 611 as part of the aforementioned neighborhood. Mr. Engel indicated that he agreed with this observation.

Mr. Cropper then reviewed the staff report for this case, first indicating that he agreed with the contents on pages one and two. He further explained that the intent is not to rezone the property for further development, but to allow the current activity to remain and be in conformance with the Comprehensive Plan.

Mr. Cropper referenced the commercial land supply noted on Page 3 of the staff report. He testified that since 36 acres of previously commercial land was downzoned through Rezoning Case No. 396, there is an overall reduction in available commercial land in this defined neighborhood.

Mr. Cropper continued to discuss the staff report, first indicating that the rezoning will not affect traffic flow on MD Route 611 at this time. Mr. Cropper also explained that he agreed with comments provided by Mr. Mitchell relative to water and wastewater facilities. He also agreed with the comments provided relative to emergency services, roads, schools and critical area regulations. Mr. Cropper reiterated that he agreed with the vast majority of staff's analysis.

Submitted as Applicant's Exhibit No. 7 was an email from Mr. Mitchell with a chart of the Mystic Harbor Sewer Service Area to accompany the previously submitted service area map. This chart reflects that there has been an increase in the number of EDUs allocated due to the expansion of the service area, thus constituting a change in the character of the neighborhood.

Mr. Cropper returned to discussing the Findings of Fact from Rezoning Case Number 395. He explained that since that rezoning case in 2016, the Mystic Harbor Sewer Service area expansion extended the availability of public facilities.

Mr. Cropper further expressed that there would be no change in transportation patterns, or additional threats to endangered species. This rezoning would make the land more compatible with the comprehensive plan and that the land is designated EDA on the Comprehensive Land Use Map.

Mr. Lane explained that he was displeased to learn that his property was rezoned in 2009 without this knowledge or consent after going through the rezoning process in 1988. He has operated a commercial business from the location since his purchase and the use is now no longer conforming to the zoning regulations. He believes this has diminished his property values.

In response to a question from Mr. Knerr, Mr. Lane explained that he was unaware of the rezoning until approximately three months ago. Upon learning of this, he contacted Mr. Cropper in regards to filing a rezoning application.

The Planning Commission discussed each one of the findings to determine whether they had a consensus. They were as follows:

1. With respect to the definition of the neighborhood, they found that while Mr. Cropper's definition of the neighborhood is appropriate, there has been no change in the character of the neighborhood, and therefore this request should only be considered on the merits of a mistake in the existing zoning.
2. Relating to population change, the Planning Commission finds there has been no change since the last comprehensive rezoning.
3. Relating to the availability of public facilities, the Planning Commission finds that sewer availability has increased by virtue of the Mystic Harbour wastewater treatment plant expansion. In addition, the Planning Commission noted that public services such as fire, police and schools were not impacted by this request.
4. Relating to present and future transportation patterns, the Planning Commission finds that present transportation patterns are sufficient as no significant changes to the property are anticipated.
5. Relating to compatibility with existing and proposed development, and environmental conditions in the area, the Planning Commission finds that there would be no adverse impact to existing environmental conditions, and that the property had been previously designated with a commercial zoning classification, and was consistent with the existing development in the area at that time. Therefore, the Planning Commission found that the proposed rezoning would be compatible.
6. Relating to compatibility with the Comprehensive Plan, the Planning Commission finds that the rezoning of this parcel would be compatible with the Comprehensive Plan. The property is in the EDA Land Use designation, and 36 acres at Frontier Town campground was downzoned from C-2 District to A-2 District, therefore reducing the amount of commercially zoned lands within the applicant's defined neighborhood.
7. Relative to the consideration of whether there has been a substantial change in the character of the neighborhood since the last Comprehensive Rezoning, the Planning Commission determined that there has not been a substantial change. The Planning Commission found that the rezoning should be granted due to a mistake in the zoning designation rather than a change in the character of the neighborhood.
8. Relative to whether the change would be more desirable in terms of the Comprehensive Plan, the Planning Commission found that it would.

Following the discussion, a motion was made by Mr. Diffendal, seconded by Ms. Ott and carried unanimously, to find the map amendment for C-2 General Commercial District zoning of the parcel consistent with the Comprehensive Plan based on a mistake in the zoning of the property. A favorable recommendation will be forwarded to the Worcester County Commissioners based on the findings as outlined above.

#### **V. Map Amendment – Case No. 428**

As the next item of business, the Planning Commission reviewed Rezoning Case No. 428, a request to rezone Tax Map 10, Parcel 167 from E-1 Estate District to A-2 Agricultural District.

This property consists of 2.88 acres on the southerly side of Saint Martin's Neck Road, east of Aramis Lane, in Bishopville. Mark S. Cropper, Esquire and applicant, and Steve Engel, landscape architect, were present for the review. Mr. Cropper testified that the request is being made based upon a mistake in the assigned zoning district.

Mr. Cropper began by confirming the previous zoning referenced in the staff report. He explained that almost all of the lands to the south of this property are within the E-1 Estate District or A-2 Agricultural District; to the north there are agriculturally zoned properties and some industrially zoned lands.

Mr. Cropper continued to reference the staff report indicating that he agreed with the staff comments, bringing special attention to page 2, where the elimination of the E-1 District is discussed in the Comprehensive Plan. Mr. Cropper explained that this portion of the staff report reiterates the removal of large lot zoning as noted in the Comprehensive Plan. He continued to explain that the E-1 district should have been eliminated during the 2009 comprehensive rezoning but was not. If that district had been eliminated, this property would have likely been assigned an agricultural designation.

Mr. Cropper expressed that this would be considered a downzoning of the lands and it would be more consistent with the Comprehensive Plan. Mr. Engel confirmed these observations.

The Planning Commission discussed each one of the findings to determine whether they had a consensus. They were as follows:

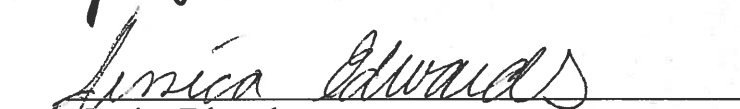
1. With respect to the definition of the neighborhood, they noted that defining the neighborhood was not necessary as the request is based upon a mistake in the current zoning.
2. With respect to the Planning Commission's concurrence with the definition of the neighborhood, they noted that this was not applicable as Mr. Cropper had asserted that there is a mistake in the existing zoning rather than a change in the character of the neighborhood.
3. Relating to population change, the Planning Commission finds that there has been no change.
4. Relating to the availability of public facilities, the Planning Commission finds that there has been no change, and that the property is currently served by private water and septic.
5. Relating to present and future transportation patterns, the Planning Commission finds that present transportation patterns by means of MD Route 90 and US Route 113 are sufficient.
6. Relating to compatibility with existing and proposed development, and environmental conditions in the area, the Planning Commission finds that the downzoning would be more consistent.
7. Relating to compatibility with the Comprehensive Plan, the Planning Commission finds that the Land Use Map within the Comprehensive Plan reflects that this parcel should have been rezoned during the 2009 comprehensive rezoning. The rezoning of this property would be more compatible with the Comprehensive Plan.

8. Relative to the consideration of whether there has been a substantial change in the character of the neighborhood since the last Comprehensive Rezoning, the Planning Commission determined that this is not applicable as the basis for the rezoning is a mistake in the assigned zoning.
9. Relative to whether the change would be more desirable in terms of the Comprehensive Plan, the Planning Commission found that it would be more desirable as the E-1 district should have been eliminated in 2009.

Following the discussion, a motion was made by Mr. Barbierri, seconded by Mr. Wells, and carried five to one, with Mr. Diffendal in opposition, to find the map amendment for an A-2 Agricultural District zoning of the parcel consistent with the Comprehensive Plan, and to forward a favorable recommendation to the Worcester County Commissioners based on the findings as outlined above.

**VI. Adjourn** – The Planning Commission adjourned at 2:00 P.M.

  
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Jerry Barbierri, Secretary

  
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Jessica Edwards