

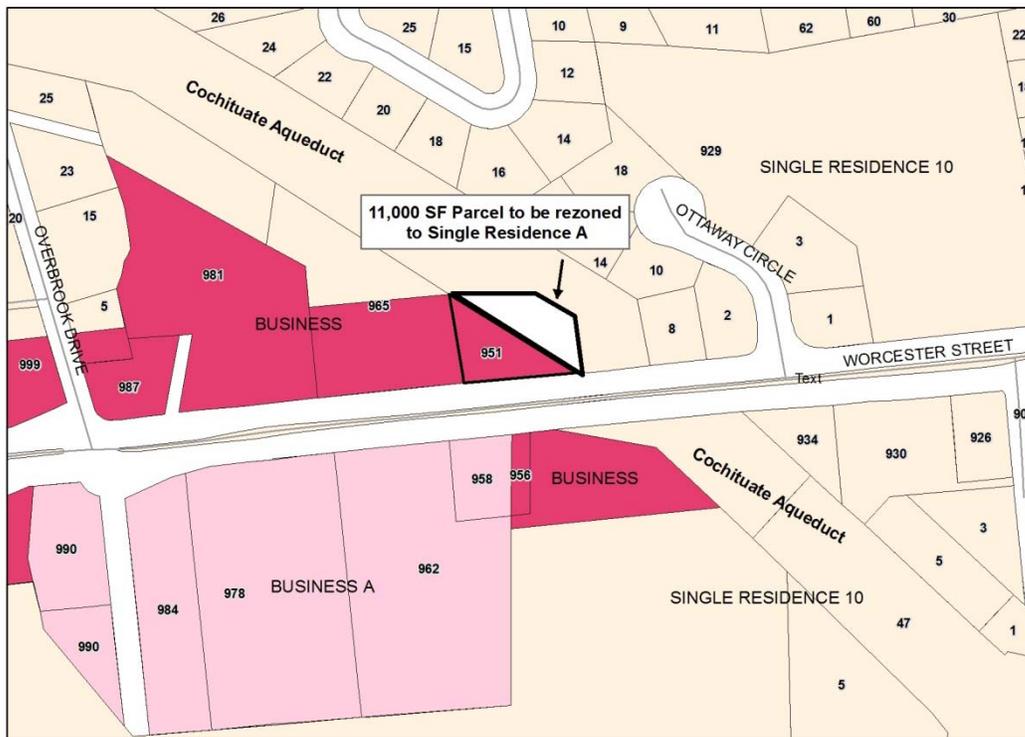
REPORT OF THE PLANNING BOARD
REVISED AND ADOPTED DECEMBER 2, 2013

In accordance with the provisions of the Zoning Bylaw, SECTION XXVIA, and the General Laws of the Commonwealth of Massachusetts, Chapter 40A, the Planning Board convened a duly advertised public hearing on Tuesday, November 12, 2013 and Monday, November 18, 2013 on the proposed amendment to the Zoning Map as contained in the Warrant for the December 9, 2013 Special Town Meeting.

Article 10 – Zoning Map Amendment

Final Recommendation – Adoption
(3-2 Vote)

Article 10 is a Zoning Map Amendment to rezone an 11,000 square foot parcel of land (Parcel A), which is proposed to be removed from the larger Cochituate Aqueduct parcel, purchased from the Commonwealth of Massachusetts, and transferred to Bike Realty, the owner of record for the Dunkin’ Donuts property located at 951 Worcester Street. Parcel A is currently zoned as a Single Residence District and the proposal is to rezone the parcel to a Single Residence A District. The remainder of the Cochituate Aqueduct parcel would remain zoned as Single Residence and would be transferred to the Town with jurisdiction of the land being held by the Board of Selectmen for municipal purposes.



Single Residence A is a zoning district that was established by Town Meeting in 1950 to create a provision for properties abutting the Business and Industrial Districts to expand parking, while not expanding the commercial districts themselves. In substance it provides for an expanded use solely for the parking of motor vehicles. The Zoning Bylaw defines the uses permitted as:

1. Any purpose authorized in the Single Residence District;
2. The temporary open surface parking of passenger cars of persons residing within 400 feet of such land, and the guests of such persons (originally drafted to account for parking for multi-family properties adjacent to Single Residence A land);
3. The temporary open surface parking of passenger cars of employees, customers or guests of establishments which constitute a use permitted by this Bylaw in the district
 - a. in which such land is situated or,
 - b. on which it abuts or from which is separated by a way, provided said cars are not serviced or held for sale or lease on such land.

The Town further expanded the permitted uses in 2011 in the Single Residence A to also allow for outdoor sales of farm produce with a special permit.

The Planning Board, in review of the annual drive-through special permit petitions to the Zoning Board of Appeals for the Dunkin' Donuts property recommended denial in 2007 and 2008 due to queue lengths, sight lines, and other safety concerns for motorists entering and exiting the property. In September of 2008, Bike Realty suggested acquisition of a portion of the Cochituate Aqueduct to improve the circulation of the site. At the time the Planning Board found the acquisition unlikely, but desirable. From 2008 to 2011, the Planning Board has recommended use of the Cochituate Aqueduct land, where and how feasible, for the expansion of the parking lot to improve site circulation, parking, sight lines, stacking and queuing of vehicles. The proposal to rezone the parcel to Single Residence A allows for the expansion of the parking lot while limiting the development of the site. The majority of the Planning Board is satisfied the future development of the site will ameliorate the aforesaid negative traffic conditions. The majority of the Board finds the Town is safeguarded from negative consequences with the Board of Selectmen's execution of a Memorandum of Agreement and deed restriction, which will limit Bike Realty and/or future owners from using the area of Parcel A to compute the eligible Floor Area Ratio for the site. The majority of the Planning Board is also of the opinion that acquisition by the Town of the State-owned Aqueduct parcel (less the 11,000 sq. ft. transferred to Bike Realty) will enable the Town to control the Aqueduct land and allow for it to be used for municipal purposes, rather than leave it to be controlled by the Massachusetts Division of Capital Asset Management and Maintenance (DCAMM), who are anxious to sell this surplus property.

The minority (2/5) of the Board opposes the proposal on policy, legal and precedent grounds. The policy point is that the Town should not be involved in the conveyance of public open and recreational space, containing wetlands resources areas, to a private commercial enterprise for commercial use involving paving over the property for increased parking and drive-through activities. This is especially true when the property in question has been in recreational use since at least 1948 and there is absolutely no threat to its utilization for anything other than open space and recreational use. It already contains a trail and that trail will continue in such use whether owned by the Commonwealth or the Town. It is even more true when nothing was presented to the Board as evidencing any restrictions on drainage or landscaping/buffer requirements. Moreover, absolutely no evidence was presented to the Board to support the notion that

increasing pavement, parking and drive-through length will ameliorate traffic concerns on Route 9. The minority felt that history teaches us that increases in traffic pavement simply results in more traffic. Finally, to the extent that there is a traffic concern caused by the existing Dunkin' Donuts drive-through, the minority felt that such a traffic concern was a problem that the private commercial owner should address and fix, at its sole cost and expense, and failing that the traffic nuisance on a State highway should be discontinued.

The legal concerns include, but are not limited to, violation of Article 97 of the Massachusetts Constitution. That Article prohibits transfer of recreational or open space land for other uses without a 2/3 vote of the State Legislature. No such vote has been taken. The minority further questioned the enforceability of the as-yet undrafted "deed restriction" as any restriction that would "run with the land", that it would survive beyond the statutory limit of 30 years for such restrictions. In short, the minority found that the proposal was quite likely violative of the Massachusetts Constitution and that the undrafted deed restriction could not be relied upon to protect future development utilizing the land area to be conveyed for floor area purposes.

The precedent points dealt with the fact that it sets a bad precedent for the Town to be involved in the sale of public open/recreational space to a private commercial enterprise (see above). This precedent is even more questionable when it became clear to the minority that the sales price was significantly under fair market value. The sales price was based on an appraisal (which was never revealed to the Board) that was at least 7 years old. It is then, by any commercial measure, stale and useless. Moreover, the "appraised value" is approximately 1/3 to 1/4 of the value calculated by utilizing the Town's own assessment of value per square foot of the existing land of Bike Realty and multiplying that value times the square footage of the land to be conveyed. In short, the open space/recreational land is being sold to a private commercial entity at substantially less than fair market value. What can the Town say to the next private developer or commercial land owner who seeks to purchase public property, and how can the Town insist on a fair market value for such transaction?