

TOWN OF NEWTON
PLANNING BOARD
OCTOBER 19, 2016
MINUTES

The regular meeting of the Newton Planning Board took place on the above date. Chairman Le Frois read the Open Public Meetings Act and requested Mrs. Citterbart to call the roll. Mrs. Citterbart stated there was a quorum.

SALUTE TO THE FLAG: Was recited.

OATH OF OFFICE:

None

ROLL CALL: Was taken

Attendance: Mr. Marion, Mr. Ricciardo, Mrs. Diglio, Mr. Levante, Ms. Larsen, Chairman Le Frois

Excused: Mr. Flaherty, Mr. Hardmeyer, Mr. Russo

Professionals present: David H. Soloway, Esq. of Vogel, Chait, Collins & Schneider; Jessica Caldwell of J. Caldwell & Associates; David Simmons, Harold E. Pellow & Associates, Inc.

THE SUNSHINE STATEMENT: Was read.

CONSIDERATION OF MINUTES

September 21, 2016

A motion was made by Mrs. Diglio and seconded by Mr. Ricciardo to approve the September 21, 2016 meeting minutes.

AYE: Mr. Ricciardo, Mrs. Diglio, Mr. Levante, Ms. Larsen, Chairman Le Frois

The motion was carried.

HISTORIC RESOLUTIONS

None

RESOLUTIONS

None

OLD BUSINESS

None

NEW BUSINESS

The Samaritan Inn, Inc. (#PBSP-9-2016)
Block 15.01, Lot 47
21 Union Place

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T-5 Zone

The applicant is requesting minor site plan and bulk variance approval for the installation of an emergency generator for a multi-family dwelling.

Michael Hanusek, Esq. of Fein, Such, Kahn, & Shepard, P.C. is representing the applicant.

Mr. Soloway stated: Just so it's clear for the record, if you look closely at the application you will see a deed with my name on it. The survey that was submitted with the application was certified to me among other people. I represented the Samaritan Inn when they purchased this property in 1993. I just want to note for the record that I haven't had any involvement with them since then. Whatever knowledge that I may have learned as part of that representation has no relevance at all to this application. I do not believe that I have a conflict of interest. Perhaps counsel can weigh in also.

The Board and counsel have no objections.

Mr. Hanusek described the application and stated: The Samaritan Inn is a non-profit institution. It is a homeless shelter at the subject premises, although you wouldn't necessarily think so by looking at the building. We are looking to install an emergency stand-by generator at the subject premises. I underscore the word "emergency". I will confirm with testimony from Ms. Metzger from the Samaritan Inn, but its purpose and only use would be with loss of power beyond the owner's control. Secondly, with respect to the maintenance of the generator we are talking about once every two weeks for 5 minutes at a time and contains a muffler. It will be less than the maintenance permitted. There are no visibility issues. If you look at the premises from the front, you won't see it. It is in the back and to the side. It is not going to be directly under anyone's window. We need a variance because it is a proposed location which is 5' from the property line. This is to prevent obstruction to our parking and walkway in the back and safety concerns to the families residing there. Regarding the noise levels, it does have a muffler. We have some decibel information from our engineer. It is only during an emergency situation. In the NJ Administrative Code 7:29-1.5(a)(14) which does include providing exception for exactly this kind of a device from the noise standards for a community service facility. We may not exactly fit that definition but it is a homeless shelter and it does provide an inherently beneficial public function that goes beyond an ordinary residence.

Mrs. Diglio questioned: Approximately how far from the property line is the other house?

Sworn in: Dawn Metzger, Director of Samaritan Inn, 901 Swartswood Road, Newton, NJ

Ms. Metzger stated: On the property to the right of where the generator is going is a driveway.

Mr. Hanusek marked a photo of the front of the building as Exhibit A-1 and a photo of the back of the building as Exhibit A-2 with October 19, 2016 and passed them around.

Mr. Ricciardo questioned: Why are you putting it 5' when you have sufficient room on your own property to move it and you wouldn't need a variance?

Ms. Metzger stated: Because the place you are referring to is the back corner which is where they plow the snow. It would destroy the generator.

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Mr. Ricciardo continued: The area to the right of where the generator is when viewed from the front, there is sufficient room in this whole area to put it anywhere up there 10' away and you won't need a variance.

Ms. Metzger stated: It would be in the center of the property and the kids would have no place to play.

Mr. Hanusek asked Ms. Metzger to describe Exhibit A-1.

Ms. Metzger stated: I took the picture of the front of the building on October 17, 2016 at 7 PM.

Mr. Hanusek questioned: Can you see it from the front of the building?

Ms. Metzger stated: No.

Mr. Hanusek asked Ms. Metzger to describe Exhibit A-2.

Ms. Metzger stated: This is the back of the building. This is where we are proposing to put the generator up against the retaining wall so there is still an area for the children to play.

Mr. Hanusek questioned: Will the generator be positioned before the long sidewalk starts so it's positioned closest to the house?

Ms. Metzger showed on the photo where the generator will be positioned and stated: It is from the corner of this building. So it's directly across from the house at the end of the house.

Mr. Ricciardo questioned: What is under the deck in the back?

Ms. Metzger stated: Apartments 1, 2, 3, and 4 are under the deck.

Mr. Le Frois questioned: Can you put the generator under the deck?

Ms. Metzger stated: We are actually in the process of extending that deck out by 9'. So where the generator will be would be right in line with the deck and the house.

Mr. Le Frois questioned: Are you aware of any conflicts between the gas and the electric line in that proposed drainage pipe?

Ms. Metzger stated: According to the contractor who's doing the work, no.

Discussion ensued on placement of generator.

Mr. Simmons reviewed his report dated October 13, 2016 and stated: The front page is a listing of the documentation submitted. On the top of page 2, there was a cut sheet from the Generac Generator propane driven model 006055-0. I only point that out because at the TRC meeting the applicant had one generator that brought up some of the concerns that were brought up with noise. They went back and selected a better generator for sound attenuation. The size is approximately 2' wide, 4' long and 2 ½' high.

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Mr. Soloway questioned: Your report indicates it's a propane generator. The application materials say natural gas. Which is correct?

Mr. Simmons stated: It is natural gas. I stand corrected.

Mr. Simmons continued with his report and stated: We talked about the dimensions of the side of the property line on the variance that the Board talked about. I do point out that at 23' under this enhanced generator the decibel level is 57 decibels in 23'. Sixty five is the normal day time limit. It's going to be slightly louder than 57 at 5' but since it is only running for five minutes every two weeks it is going to be pretty close to the limit subject to the manufacturer. Under the number 5 they talked about 5 minutes in the day light during normal working hours once every two weeks. Number 6, the Construction Official will review the controls. The utility lines will come from inside the house where they already have them available. The property lines were based on Dykstra Associates. The previous survey done in the early '90s by Pittenger and Keith pointed out in several places on the plan where the lines were approximate. My assumption based on looking at the map they took a couple offsets from the building to the property line. As one of the conditions of the approval that the Board might consider is that the applicant get a licensed surveyor to accurately locate that side property line before they measure the 5' offset to the generator to make sure it's not any closer.

Mr. Simmons continued: On number 9, one of the documents submitted to the TRC showed screening around the generator. Is this still proposed or are you asking for a waiver for that?

Mr. Hanusek stated: We are asking for a waiver.

Mrs. Diglio stated: How safe will the children be if they are going to be able to get to the generator?

Ms. Metzger stated: The only problem with putting a fence around it, and Generac will tell you, is it will suffocate the unit and cause a fire. There is a letter in your packet from Generac stating that.

Mr. Le Frois stated: He was talking about a noise dampening enclosure, not necessarily a fence.

Mrs. Diglio stated: At Merriam Avenue School we approved the chain link fence. The chain link allows the generator to breathe, but it will also prevent anyone from getting to the generator to cause any damage to it or themselves.

Ms. Metzger stated: We are receptive to that.

Mr. Simmons continued: On number 10 there are no detailed plans for the proposed steps and deck so I defer to the Construction Official. Finally, approvals are required under the Construction Official and the Fire Subcode Official as far as the gas, parking, and the generator.

Ms. Caldwell reviewed her report dated October 12, 2016 and stated: This is a multi-family, four apartment site. Even though it is a homeless shelter, they do house families in four separate apartments, so under the ordinance it is considered multi-family. This requires a 15' setback and the proposal is for 5' which requires the variance. If it was a residential single-family with the same size generator it could have the 5' setback. That is important to think about in regards to the variance. Since it is a multi-family we will see a larger generator. It is a 20KW Generac and it

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will be 5' from the property line. They testified to the noise. We have the 65 decibel requirement at the property line. We mentioned that the timing should be between 10 AM and 5 PM on the week days and not to exceed more than 30 minutes at a time. There is natural gas that will be connected so there won't be a need for fuel storage. They confirmed that they are not proposing screening. They will do a chain link fence for safety so the kids won't get near the generator.

Mr. Ricciardo questioned: Is the generator sufficient to provide power to the full facility?

Mr. Simmons stated: For emergency purposes, I believe it would. You wouldn't want to run four separate stoves, microwaves, and furnaces.

Mr. Simmons continued: I'd like to suggest that they put a bottom rail on the fence as opposed to a retention wire in case any kids kick the fence.

Mr. Ricciardo questioned: How many children reside in the facility?

Ms. Metzger stated: Six. But that changes every three months. It's a 90 day program. Sixty five percent of their income needs to be put into an escrow account so at the end of those 90 days they get that money back. So you're saving that money to give them security deposit and first month's rent and sometimes an electric bill as well. We have an 88% success rate moving families into permanent housing; less than a 5% recidivism rate seeing those families come back after 2 years.

Portion opened to the public. None stepping forward, portion closed.

Mr. Soloway stated: To put this in the negative criteria, there is an anomaly in this ordinance in that the need for the variance is based on the nature of their use, not the adjoining use. If they converted this house back to a single-family house tomorrow, that single-family house could put up this identical generator in this identical location and not require a variance because it complies with the 20KW limitation. I assume they treated multi-families different for this purpose based upon that the multi-family use would require a larger generator. But this particular case they don't exceed the limit that's allowed for single-family residential property. So it's kind of easy in the context of variance finding that in terms of an impact on the adjoining property there's none because you would have the same thing if it were a single family.

Mr. Soloway crafted a motion and stated: A motion to approve the application to grant a variance to allow this generator to be 5' from the adjoining residential property line in addition to the usual conditions, the applicant would have to comply with the DEP noise limits. They would be required to put up a chain link fence for safety reasons with a top and bottom rail to the satisfaction of Mr. Simmons. They will have to get it staked out by a surveyor because when you get a variance for 5' you can't miss. They will exercise it once every two weeks during the hours of 10 AM and 5 PM for 30 minutes or less as per the ordinance.

Mrs. Diglio made a motion to approve the resolution as stated. Mr. Levante seconded it.

Aye: Mr. Marion, Mr. Ricciardo, Mrs. Diglio, Mr. Levante, Ms. Larsen, Chairman Le Frois

Application approved.

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Mr. Soloway stated: I will prepare a resolution and it will be approximately two months because I don't think the Board is meeting in November.

Mr. Hanusek stated: We would like to waive the reading of the resolution so we can get started.

Mr. Soloway stated: The applicant is asking the Board to waive the reading of the resolution. Typically, when permits are obtained they must also have a resolution. The Board can waive this and let the Zoning Officer know that the applicant can submit application for permits in advance of the formal adoption of the resolution. If the Board votes in favor then the applicant has to understand that they are proceeding at their own risk and that somebody can challenge this approval. We don't need to include it in the resolution, but we can take a voice vote.

Mrs. Citterbart called roll to waive the resolution:

Aye: Mrs. Diglio, Mr. Ricciardo, Mr. Levante, Mr. Marion, Ms. Larsen, Chairman Le Frois

Mrs. Diglio made a motion to approve the application. Mr. Levante seconded the motion.

AYE: Mr. Marion, Mr. Ricciardo, Mrs. Diglio, Mr. Levante, Ms. Larsen, Chairman Le Frois

Motion carried.

DISCUSSION – None

CORRESPONDENCE - Reviewed

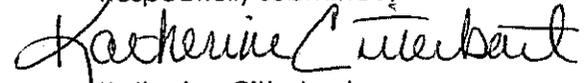
EXECUTIVE SESSION - None

PUBLIC PORTION - None stepping forward

ADJOURNMENT

Mr. Ricciardo made a motion to adjourn the meeting. Motion seconded by Mrs. Diglio. The meeting was adjourned at 7:51 PM with a unanimous "aye" vote. The next meeting will be held on November 16, 2016 in the Council Chambers of the Municipal Building.

Respectfully submitted,



Katherine Citterbart
Planning Board Secretary