

TOWN OF NEWTON  
PLANNING BOARD  
FEBRUARY 15, 2017  
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.

**THE SUNSHINE STATEMENT:** Was read.

**OATH OF OFFICE:**

Sworn in: George Wink – Alternate Member

**SALUTE TO THE FLAG:** Was recited.

**ROLL CALL:** Was taken

Attendance: Mr. Flaherty, Mr. Marion, Mr. Ricciardo, Mrs. Larsen, Mrs. Diglio, Mr. Levante, Mr. Majewski, Mr. Wink, Chairman Le Frois

Excused: Mr. Russo, Mr. Butterfield

Professionals present: David H. Soloway, Esq. of Vogel, Chait, Collins & Schneider; Jessica Caldwell of J. Caldwell & Associates; Paul Ferriero of Ferriero Engineering

Chairman Le Frois designated the Alternate Members as follows:

Alternate 1 – Mr. Majewski

Alternate 2 – Mr. Butterfield

Alternate 3 – Mr. Wink

**CONSIDERATION OF MINUTES**

January 18, 2017

**A motion was made by Mr. Ricciardo and seconded by Mr. Marion to approve the January 18, 2017 meeting minutes.**

**AYE: Mr. Flaherty, Mr. Ricciardo, Mrs. Diglio, Mr. Levante, Mr. Majewski, Mr. Marion**

**The motion was carried.**

**HISTORIC RESOLUTIONS**

Ronald Barbagallo (#HPC-01-2017)  
Block: 14.01, Lot: 4  
115 Main Street

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Recommendation to have applicant replace the dilapidated slate roof with a GAF Slateline asphalt shingle, the flat roof to be in gray, and no aluminum or vinyl siding on the dormers. Can be stucco, hardiplank or cedar plank with 4 inch reveal.

**Mr. Flaherty made a motion to approve the resolution. Motion seconded by Mr. Levante.**

**AYE: Mr. Flaherty, Mr. Marion, Mr. Ricciardo, Mrs. Larsen, Mrs. Diglio, Mr. Levante, Mr. Majewski, Mr. Wink, Chairman Le Frois**

**Motion carried.**

**RESOLUTIONS**

Robert Occhinfinto (PSPV-05-2012)  
42 Hicks Avenue  
Block 20.02, Lot 1

Resolution approving extension of time to October 17, 2017 for preliminary site plan approval granted on October 17, 2012.

**Mr. Ricciardo made a motion to approve the resolution. Motion seconded by Mrs. Diglio.**

**AYE: Mr. Flaherty, Mr. Marion, Mr. Ricciardo, Mrs. Diglio, Mr. Levante, Mr. Majewski**

**Motion carried.**

Brian Giblin (MSD-07-2015)  
36 Halsted Street  
Block 14.03, Lot 11

Resolution approving extension of time for a minor subdivision approved on 1/20/16.

**Mr. Marion made a motion to approve the resolution. Motion seconded by Mrs. Diglio.**

**AYE: Mr. Flaherty, Mr. Marion, Mr. Ricciardo, Mrs. Diglio, Mr. Levante, Mr. Majewski**

**Motion carried.**

**OLD BUSINESS**

None

**NEW BUSINESS**

2016 Zoning Summary

Mr. Soloway stated: One thing a Zoning Board of Adjustment is required to do under the Land Use Law is to make a report once a year to the governing body about variance applications as granted. Included in that report are recommendations for any zoning changes that the Board thinks should be reviewed. This is a joint board, so the way the Zoning Summary is set up is it

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contains a report on the variance applications that were granted by the Board that would if you still had two boards be under the jurisdiction of the Zoning Board of Adjustment rather than the Planning Board. It is self-explanatory. There weren't many. It is attached to the letter. Sussex Car Wash got a use variance for technical expansion of a non-conforming use. Sussex County Habitat for Humanity was granted a use variance for the storage and office use on the utilities property where nothing but utilities is permitted. 19 Merriam Avenue LLC, as part of a larger application, certified a pre-existing non-conforming use as a six unit residential building, also got a use variance because it was a technical expansion of a use that the Board ended up certifying as a pre-existing non-conforming. These were the only three applications that would have been Zoning Board applications. This is summarized in a letter from me to the Board dated January 11, 2017. Typically when this has come up there are no recommendations to the governing body regarding ordinance changes, but during the year things come up, usually initiated with Mrs. Citterbart. She will then get Ms. Caldwell and I involved where there are problems or issues or questions. The three of us talked about this before I drafted the letter and we put four things in the letter as possible subject areas of recommendation to the Council to address in the ordinance. The first two items we consider very important. The third and fourth items are more discretionary.

Mr. Soloway continued: The first item is that the ordinance recognizes a category of an application called a Minor Site Plan. The fee ordinance which establishes fees from all the different applications doesn't have a fee for the Minor Site Plan. What Mrs. Citterbart has been doing is charging Preliminary Site Plan fees; probably a little higher than what you would get in a Minor Site Plan. The three of us think it is important that the Council review this and put in a fee provision for a Minor Site Plan. The second item is something that apparently got overlooked in the transition from the old zoning code to the new form based code. When you go through the ordinance, it establishes parking requirements for different uses. There is an important category of uses that are called Assembly Uses. They include houses of worship, schools, theaters, and community halls.

Ms. Caldwell stated: Schools can come in for a courtesy review. However, if a new church came before us we might have an issue because there is no parking requirement listed.

Mr. Soloway stated: There was a parking requirement in the old ordinance. I definitely think there should be one in the new ordinance. It's not the easiest substantive issue and it's complicated, but the nature of Newton in most cases, properties here, may not have a lot of parking. But you should have some parking standard for these types of uses that generate a lot of activity and people and cars. We had a situation a couple of months ago involving a house of worship that had previously received a variance. It was on a property with some other uses and somebody was switching one use to another and it was going to increase the parking requirement which would technically require a variance. Because there is no parking requirement for the house of worship use there, it just went through on a zoning permit. All three of us strongly recommend that the Council look at that and try and come up with something. It's a tricky thing in the context of houses of worship because that kind of application has its own complications in terms of Federal statutes requiring that they be handled in a certain way and exposes the Board.

Ms. Caldwell stated: We ran this by Mr. Russo last month and he directed me to draft something for the Council.

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Mr. Ricciardo stated: If public schools are a courtesy review and a parking requirement was established would they have to abide by it and get a variance and come in?

Mr. Soloway stated: No.

Mr. Ricciardo questioned: Then why bother even looking at it?

Mr. Soloway stated: There is more than just schools affected. Interestingly enough there has been a fair amount of case work on the issue of schools and the applicability of the zoning ordinance to schools. Generally, other governmental entities enjoy some degree of zoning immunity. Particularly, as you'll see in a few minutes with the Town, County, State and Federal governments. The schools are subject to the zoning ordinance in only one respect. They have to be permitted uses in the location where they are proposed otherwise they would need a use variance. There have been a series of cases over the years that clearly state that in all other respects they are not subject to the zoning ordinance. I've seen other governing bodies in other towns be very frustrated by it. The rationale behind it is that all of the other aspects of school; facilities, buses, time, are under the jurisdiction of the Commissioner of Education. There is a comprehensive regulatory scheme there that they have to meet. When they come in on a courtesy review there are some good faith obligations in terms of considering your recommendations. In theory, if they did something totally off the wall against the recommendation of the Board there may be an argument. But if it's not use based, it's not subject to the ordinance.

Mr. Ricciardo stated: We are not curing an existing problem in our community regarding schools.

Mr. Soloway stated: You won't cure it through the ordinance. My suggestion would be that you might want to bombard the Commissioner of Education with letters. There is nothing that says the Town Council can't write letters to Trenton expressing the concerns.

Mr. Ricciardo questioned: When was the courtesy review and the lack of meeting the zoning requirements established?

Mr. Soloway stated: It's been over a series of years. The original use variance case came out of Denville in the 1960's. The principle I talked about was reiterated and summarized recently. I would say within the last ten years.

Mr. Ricciardo stated: So the Commissioner has not really addressed this since the 1960's when kids were bussed or walked to school. It seems to be a tremendous problem that has been swept under the rug for many years. I think someone should address it now.

Mr. Soloway stated: It is a complicated subject.

Mr. Levante stated: I've noticed a huge disconnect between the municipalities and the Boards of Education. Over the last couple of years we've been able to improve those relationships. They are much better than they've ever been. However, at the State level there doesn't appear there is any formula used at all. So the logic or reasoning they seem to be using at the State level in terms of education I simply don't understand. As we go forward into the future we must work more collaboratively hand in hand. It's almost like my wife and I living in the same household and operating from different budgets. I look at the municipality as the revenue producing arm of Newton. If we don't have development, if we can't increase State aid, if we

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can't bring in ratables, then the school system is going to suffer as well. We are making progress but we need to continue going forward.

Discussion ensued.

Mr. Ricciardo stated: There seems to be nothing we can say about it. Ever since they took the citizens' right to vote on the School Board budget away, there is no avenue to control the Board of Education.

Mr. Flaherty questioned: What are the third and fourth recommendations?

Mr. Soloway stated: One of the things that came up with Kathy that we answered but we are not sure it's the right answer in terms of what the Council might prefer is, whether there is any limitation to the number of accessory structures that are permitted on a single residential lot. In the ordinance there is no limitation. I don't know if there is a problem in Town with there being too many. I guess I can picture being two on a typical lot. But that's not even the limit. So maybe you want to look at that.

Ms. Caldwell stated: The issue is that sometimes the garage is bigger than the house.

Discussion ensued.

Mr. Soloway stated: The fourth one is the only one that relates to an application that went before this Board. It was the Samaritan Inn. They came in on an application for a generator and they needed a variance because they were not meeting the required setback from the adjoining residential lot. There was an anomaly in the ordinance. The reason the setback was applicable to the Samaritan Inn was because it was a multi-family residence. Under the ordinance, if the Samaritan Inn was a single family residential dwelling as it used to be, it wouldn't have needed the variance. So the need for the variance and the rationale for the setback weren't because the adjoining property was residential. It kind of didn't make sense.

Ms. Caldwell stated: The thought process behind it was that a multi-family dwelling would have a larger more commercial generator. However, in this case it wasn't the case. In reviewing this we think that maybe we should tie the setback issue with the size of the generator. In this case it would have been ok.

Mr. Soloway stated: These are the four items. Again, we think the first two are urgent.

Mr. Le Frois questioned: I would like to ask about one topic that didn't show up on the letter. When going through the Taco Bell application there was a potential for possibly changing the definition of the different transect zones to specifically exclude fast food restaurants with drive-throughs or somehow differentiate regular restaurants from fast food restaurants.

Ms. Caldwell stated: Drive-thru is a permitted accessory use in the T-5.

Mr. Soloway stated: I don't think the problem with Taco Bell wasn't the zone or location, but that the property wasn't big enough to handle what they were proposing. I think if it was 50% larger it might not have been problematic. That was going to court but there was a falling out between the applicant and Taco Bell Corporate.

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Discussion ensued on Taco Bell application.

**Mr. Flaherty made a motion to adopt the Zoning Summary along with all four recommendations asking Mrs. Citterbart to transmit to the Town Council. Motion seconded by Mr. Ricciardo.**

**AYE: Mr. Flaherty, Mr. Marion, Mr. Ricciardo, Mrs. Larsen, Mrs. Diglio, Mr. Levante, Mr. Majewski, Mr. Wink, Chairman Le Frois**

**Motion carried.**

**COURTESY REVIEW**

Newton Firehouse #2  
13.05/15  
56 Woodside Avenue

Courtesy review by Cory Stoner of Harold Pellow and Associates, Thomas Kosten of FKA Architects, and Jason Miller, Newton Fire Chief

Mr. Ricciardo stated: My company is bidding for this project. Does this make it a conflict of interest?

Mr. Soloway stated: No. It is just a courtesy review. The Board cannot take any formal action on this. They can review for consistency with the Master Plan and input any recommendations. They can't approve or disapprove.

Mr. Le Frois stated: If I were a competitor I would think you had an edge.

Mr. Ricciardo stated: I will recuse myself.

Mr. Ricciardo stepped down at 7:50 p.m.

Mr. Stoner stated: A large part of this presentation is from the Town's architect, Thomas Kosten. We are here to show you the proposed capital improvement project that the Town is pursuing at this time which is the replacement of Firehouse #2. It is located at the intersection of Woodside Avenue and Lawnwood Avenue. It is an existing firehouse that has run its course in regards to age, condition, and usefulness. It was built in the late 60's or early 70's. Inside is all the original décor from that time period; from the carpet to the walls to kitchen equipment. The existing structure used to house two separate fire companies in one building. It is separated down the middle except for the kitchen area; it looks like two identical buildings. Citizens would vote in that building. For the last two years, the Town has been pursuing this. Tom and I have been looking at it. Tom, in regards to the architectural structure itself and what we have now which is the pre-engineered steel. The property is less than 15,000 square feet. It is a municipal project and we are trying to keep setbacks we have today in the same location. The property is maxed out at 8 parking spaces. They can barely fit the trucks in the building. With this design we are trying to maximize the size of the structure so we can get every truck that they have in this building. It will be approximately the same location as existing structure but will be about 8' closer to the road. We had to drop the grade elevation on Lawnwood Avenue and build a concrete apron off Lawnwood. There will be 9 parking spaces so we are gaining one space which is a handicap space which we don't have today. We will have shoebox lights to minimize

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the glow light in residential area. There will be two lights on western property line. We have a spot for the generator. It is preliminary. It is subject to change a little bit. There are two half structures. This is the bay where trucks are located. This is where dispatch and kitchen and resting quarters, restrooms, and laundry. We will add some landscaping to try and buffer the structure. Trucks will not be able to sit outside of the structure because it is such a small lot.

Mr. Kosten described the site plan submitted: There is a U shaped mezzanine which will be used for storage. Underneath the mezzanine, the little boxes are all lockers and they surround the apparatus bay. When you go through the door into the bay room side you can either go through the office area or through the hallway which is towards the middle. Through the middle is a woman's room with a shower on the lower side. Up above there is laundry room with a slop sink and the men's toilet which has four fixtures and two showers. When you go to the den room area you have a large seating area and an area for dining and/or meetings and a residential kitchen with residential appliances only. There is also a little vestibule from the kitchen into the building. Plan A101 shows the mezzanine around the building. We do have elevations. We used two different colored schemes. We are proposing a pre-engineered building. From the floor to the height of the garage doors will be a brown faced unit. The request was that anything around the apparatus bay be very durable. So even though it's a pre-engineered building the base will be masonry. As will the base of the day room area in the front. Above that would be insulated metal panel which is a little different than the insulation that is typically done in a pre-engineered building which is metal siding, wrapped in plastic behind it. The request was for a more durable surface. So we are proposing an insulated metal panel, which is metal on both sides. The roof is a pre-engineered metal roof. One scheme has a red roof and the other a more charcoal color.

Mr. Stoner described scheme A201 and stated: In the first scheme there was a series of windows high on the garage bay. Those were removed to minimize the light on the residential property behind them. The bottom view on A201 is the side that you would see from the parking lot. Today there is very limited parking. They park by the Dollar General and walk to the facility. Some of the options they did consider, what if they did away with this building and kept the one on the other side of Town. This wasn't favorable since they picture the Town as two parts. Once you go across Route 206 they need another station. Plus they wouldn't have enough space for all the equipment that they own. The Town did not have another piece of land that could house this structure. Schedule wise, the formal design construction will go out to bid in June for a July award and the construction will start in the middle of July. It will take a year to construct. The firehouse will need to house their equipment during that time.

Mr. Marion questioned: Where will the fire trucks be housed?

Mr. Stoner stated: They will use the DPW garage.

Mr. Miller stated: A lot of stuff will be boxed up and stored. A rescue truck will be taken out of service which will leave an empty bay.

Mr. Stoner stated: The Fire Department does act as one department and one unit even though it's split between two houses, correct?

Mr. Miller stated: Yes.

Mr. Stoner stated: We did the best we could on the property. If this house were being built as a

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commercial property there would be a couple of variances. But it would be very similar to what they are today except for the offset to Lawnwood but that is because the truck bays are deeper. But the setbacks to the residential properties are the same.

Mr. Le Frois questioned: Is a new structure more energy efficient?

Mr. Stoner stated: Yes. The bays will have heating and ventilation. Not air conditioning. It will be much more efficient than it is now. The living area will have HVAC.

Mr. Le Frois questioned: You have space for but no plan yet for a generator?

Mr. Stoner stated: We have a spot in the back corner. After talking to David Simmons from my office and hearing the experience you've been having with the generators we are going to look a bit further.

Mrs. Diglio questioned: Do you want to put the generator closer to the building? You could move the trees and put the generator closer to the building and the trees could screen the generator.

Mr. Levante stated: There is also a question regarding visibility. It came up in our discussions.

Mr. Kosten thought Mrs. Diglio's recommendation would be a good idea.

Mr. Marion stated: Are you proposing a natural gas generator that would run every week or month?

Mr. Stoner stated: Yes. It would be once a week in the middle of the day.

Mr. Flaherty questioned: Will the garage doors be closer to Lawnwood? Will it make it more difficult for the trucks to back in?

Mr. Stoner stated: The doors will be closer to the street but the doors are much larger than they are today so it will be easier.

Mr. Soloway crafted a motion to find that the plan is not inconsistent with the Master Plan and recommend that strong consideration be given to putting the generator at the southerly point along Woodside. That finding should be transmitted to the Council and Jason Miller. The Board prefers the red roof.

**Mrs. Diglio made a motion. Motion seconded by Mrs. Larsen.**

**AYE: Mr. Flaherty, Mr. Marion, Mrs. Larsen, Mrs. Diglio, Mr. Levante, Mr. Majewski, Chairman Le Frois**

**Motion carried.**

**DISCUSSION** - None

**CORRESPONDENCE** - None

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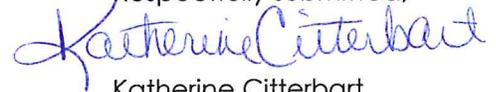
**EXECUTIVE SESSION** - None

**PUBLIC PORTION** - None stepping forward

**ADJOURNMENT**

**Mr. Flaherty made a motion to adjourn the meeting. Motion seconded by Mrs. Diglio. The meeting was adjourned at 8:15 PM with a unanimous "aye" vote.** The next meeting will be held on March 15, 2017 in the Council Chambers of the Municipal Building.

-Respectfully submitted,



Katherine Citterbart  
Planning Board Secretary