

TOWN OF NEWTON  
PLANNING BOARD  
MARCH 15, 2017  
MINUTES

The regular meeting of the Newton Planning Board took place on the above date. Vice Chairman Marion 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:**

None

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

**ROLL CALL:** Was taken

Attendance: Mr. Flaherty, Mr. Ricciardo, Mrs. Larsen, Mr. Levante, Mr. Majewski, Mr. Wink, Mr. Marion

Excused: Mrs. Diglio, Mr. Russo, Mr. Le Frois

Absent: Mr. Butterfield

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

**CONSIDERATION OF MINUTES**

February 15, 2017

**A motion was made by Mr. Ricciardo and seconded by Mr. Levante to approve the February 15, 2017 meeting minutes.**

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

**The motion was carried.**

**HISTORIC RESOLUTIONS**

None

**RESOLUTIONS**

None

**OLD BUSINESS**

None

**DISCUSSION**

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**North Park Urban Renewal Associates – Bonds – by David Simmons.**

Mr. Simmons stated: This is the area near the Holiday Inn Express, the Applebee's, and the vacant pad where some development is proposed on that dirt pad. Years ago, the Board received site plans for the Applebee's and Holiday Inn Express and those facilities were built. However, the third pad is still waiting for development. What happened at the time, there was some depressed curbing put in and what have you so that excavation can go back and forth around the site and when there was a bond posted for some of that work, some miscellaneous landscaping or guide rail, we put in there some items about replacing the depressed curb with a full height curb and some things that will be done when the third pad is developed. We were approached by the Martins to see if we can get that bond released. It's been several years now and they are not sure when they are going to get another developer in to develop that third pad site. We ran into this in another town and I suggested in that town that if the Board was agreeable we could release the bond for that work and when they come in for a site plan for the third pad, put a new bond together at that time. So the Board would need to decide if they agree to that.

Mr. Ricciardo questioned: What did the bond cover? Curbing and what other items?

Mr. Simmons stated: I believe there was some pieces of guide rail if you came out of the entrance onto the loop road. There was some clearing of some of the existing vegetation on the inside of the horizontal curb so you had good sight distance and some of that may need to be done again in the spring because it keeps growing up. Some of that has to do with stop bar, striping, the left turn arrows and that type of thing that may have worn away. Those items I would recommend that they be redone because they have worn down over the years. It is mainly the item that's over by the third pad where they put a depressed curb to go back and forth between the Hampton and the Newton side, they put a couple of swing, triangular gates in there. I think they are waiting to see what they get before they change it around.

Mr. Marion questioned: Is there a pile of dirt there now and two trailers on the ground? Are they allowed to be there? We should know what is going on there before we release the bond.

Discussion ensued on location and existence of dirt and trailers.

Mr. Soloway stated: If it's a cash bond it would be fairly easy to give them back everything for what's done.

Mr. Ricciardo stated: They haven't done anything on that site.

Mr. Soloway stated: If it's a bond then it would be the Council and not the Planning Board that makes that call. It would be part of the Developer's Agreement.

Mr. Ricciardo stated: Do they still have to maintain the vegetation and the striping?

Mr. Simmons stated: Yes.

Mr. Ricciardo stated: The pile of dirt needs to be removed and the striping needs to be done for public safety. Until that is completed, I recommend to the Council to not release the bond.

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Mr. Marion stated: If the trailers and dirt are there, I don't want it turned into a storage lot. Can you double-check that?

Mr. Simmons stated: Yes. I can follow up on that.

Mr. Ricciardo questioned: We should also find out if it's a cash bond or not. If it's a cash bond it's paid for already. If it's a bond, it's done.

Mr. Simmons stated: I will also follow up with that.

**Cellco Partnership dba Verizon – Emergency Generator – by David Simmons**

Mr. Soloway stated: For the record, I can't speak on this at all as it is a conflict of interest.

Mr. Simmons stated: Verizon in 2013/2014 received site plan approval to install a generator to provide back-up power in that facility. At the time, the Town ordinance was written the maximum noise level at the property line was 50 decibels. They installed a generator, all the wiring, and Mrs. Citterbart and I went up to the site for a test with their sound engineer. That was July 29, 2015. With the generator running it was measured at 60.9 decibels. However, later in 2015, the Town passed a revised ordinance regarding generators and they referenced the DEP Noise Control Act. The Noise Control Act during the daytime hours has a limit of 65 decibels. Having said that, the test in July was 60.9 and the new limit in the new ordinance is 65. So the new generator meets the new ordinance based on the DEP Noise Control Act.

Mr. Ricciardo questioned: Did they meet the noise level requirements at the time of the application?

Mr. Simmons stated: No. It was 60.9 db and the requirement was 50 db.

Mr. Ricciardo questioned: Had the DEP regulations changed?

Mr. Simmons stated: No. I believe the Town adopted it when they rewrote the ordinance for generators in 2015.

Mr. Marion questioned: Do you know when?

Mr. Simmons stated: After the application.

Mr. Marion stated: I remember the applicant was assuring us that they would meet that 50 db. They were putting it further back from the building so they did not meet the 50 db requirement.

Mr. Simmons stated: They did not meet 50, no.

Mr. Flaherty stated: The night time DEP regulation is 50 db. So they still wouldn't meet that if they had to run the generator after 10 pm.

Mr. Simmons stated: The applicant is to exercise the generator during daylight hours which is the 65 limit. If it was an emergency and they had to run the generator, the limits don't apply.

Mr. Marion questioned: Did they complete the adequate screening in the agreement?

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Mr. Simmons stated: I don't recall seeing any screening around the generator. They were going to have the screening if they didn't meet the original noise level.

Mr. Ricciardo stated: The whole approval was based on them screening it if they didn't meet the standard of 50 db. They exceeded it without screening. Maybe if they screen it properly, they would meet the 50.

Mr. Marion stated: They would have tested it themselves knowing it was over 50 and then they should have screened it before you came.

Mr. Simmons read condition 24 from the Resolution and stated: In the event that the decibel level of the property line complies with the ordinance requirement of 50 decibels then installation of an acoustic barrier around the generator would not be required and landscaping would suffice subject to review and approval of the Board Engineer. In the event that the decibel level would exceed 50 decibels at the property line then an acoustic barrier would be needed in order to achieve that standard. So that is how the original resolution was written up. I will have to check with them, but they may have just not finished it.

Ms. Caldwell stated: I think the acoustic barrier was going to be some kind of wall. The screening was just something they were going to do to screen it from the street.

Mr. Marion stated: The ordinance may have changed, but in my opinion they should be held to what we already agreed to. So, if you can go back to Verizon and double-check the screening that is there now and if there is not enough, remind them that they need to fulfill what was in the resolution about the requirements to get it down to 50 db.

Mr. Majewski stated: I would agree with that. They should have to abide by the original protocol they implemented at the time of.

Mr. Marion stated: If you can double-check the screening out there now or if there is nothing or not enough, go back to Verizon and let them know they need to fulfill what was in the resolution to get it down to 50 db.

Mr. Simmons stated: The only issue I might have is, if we talk to their counsel and engineer and they may want to make an application to amend the condition of the resolution.

Mr. Levante stated: If we've changed the law, I'm not looking to give these guys a hard time. There's a new standard that we've put in place. I have no problem with them being at 60 if the new standard is 65. I don't want them to have to jump through hoops for this. To have to spend money and go back and forth, it's not an environment that's conducive to business.

Mrs. Citterbart stated: That would also be additional escrow.

Mr. Levante stated: Yes. That is something this Council does not want to do.

Mr. Ricciardo stated: That would lead me to believe that if a prior regulation, even going back 20 years, and the law changes which would allow them to do what they want to do, does that applicant have the right to come in and say the new regulation says this, so that is what I want to do.

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Mr. Levante stated: That's a good point.

Mr. Marion stated: I understand your viewpoint. But I was on the Board for that. We took everything they said in good faith. They were going to meet these requirements or they were going to screen it. I understand that the ordinance has changed. But how many times could this happen that we would have the ordinance change and people coming in and wanting to change things. Where does it stop and where does the ordinance lose its authority? We're going to say, ok, the ordinance changed, you're fine. But if we say no to someone, they could say you permitted the change for these other people, why won't you change for me. I don't want to put anyone through hassles but they agreed to the conditions and now the ordinance has changed and they want to be approved at 65. I have a problem with that.

Mr. Flaherty stated: I have a hard time understanding what's taking three years to do this. It does not take three years to put in a generator and screen it.

Mr. Ricciardo stated: It sounds like a very simple application, but they were here three times. Originally they had it stuck in the corner close to the building.

Mr. Marion stated: Yes. They had to find a spot on the property further back.

Mr. Flaherty stated: It originally was heard in 2013.

Mr. Simmons stated: It's been there for years.

Mr. Flaherty stated: And they've done tests and knew it wasn't compliant?

Mr. Simmons stated: Yes. They had a problem with one of the tests. At the second test, which Mrs. Citterbart and I were both there for, the neighbor at the back of the property asked what we were doing and said they did not have a problem with the way it was.

Mr. Marion stated: They may not, but the next person might. Apparently, this is just sitting out in the open.

Mr. Simmons stated: I will have to check and see if they've done landscaping.

Mr. Ricciardo stated: I don't want to see anyone spend money they don't have to spend. But they've agreed to screen and landscape so they should do that.

Mr. Marion stated: If they had screened it and shrubbed it and its still 60 I can say they've fulfilled their obligation then we can try and work with them. If they have done nothing except put a generator in, then I have an issue with that.

Mr. Simmons stated: The reason I wrote the letter is because of issues we've had at other locations. For instance, when Barn Hill was going to put landscaping between the generator and the curb, then when they got everything put in to satisfy the generator company they couldn't get any landscaping in. So, if you recall, they had an artist put faux brick paint on the generator. I wrote a letter similar to this so there is something in the file. There was a chain of events to memorialize what happened and we brought it to the Board so everyone knows what is going on.

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Mr. Ricciardo stated: I ask that you check it to see if they've screened it and landscaped it and then let us know next month.

Mr. Simmons stated: Ok. Good enough.

**Merriam Avenue School – by David Simmons**

Mr. Simmons stated: You have maps in your packet. I just wanted to give everyone all the information. I was contacted by the Board of Education about the plans for Merriam Avenue School. My assumption is they will be coming in for a courtesy review. I wanted you to know two particular parts of the project. One was they asked me about any restrictions around the Gardner Avenue well as far as building the parking lot over there for the additional traffic. I told them my recollection was that for that piece of property for the well to satisfy DEP the owner of a public water system, i.e. the Town of Newton, has to either own or control a minimum of 50' around a public community well. I think that was how the property lines were set up when that was subdivided from the Board of Education property and conveyed over to the Town of Newton. I have the subdivision map and straight from the center of the well 50' to the back line and 50' to the side line, that is basically how that was set up to satisfy DEP criteria. My point was to let them know that I don't think you will be able to use that land for school purposes based on what I just said and to let you folks know that there is a fence around the well house that doesn't necessarily go out as far as the property line. I wanted you to be aware of that so you know what the restrictions are on that end of the property.

Mr. Simmons continued: The other item that I wanted to make everybody aware of is at the other end of the school property by the Sussex Annex cul-de-sac. There is a stormwater basin in that area. It is unique in that water doesn't flow out of that through an outlet structure. It is pumped out because you are in a sump in that part of the Town. So the sump system draws water out of that base and conveys the water over to Gardner and Sussex Street and eventually to the swampy area on Diller Avenue. They talked about filling some of the ball fields in. I sent them the maps of that area because I was concerned that there have been times when that has reached capacity over the years. Taking any capacity away from that is not a good idea given the history of the stormwater in that area.

Mr. Marion stated: I can think of once when it actually flooded the homes in that area because it backed up so much.

Mr. Simmons stated: I haven't received a response back yet. The pipes that go from the discharge pump in that stormwater basin towards Gardner Avenue, I wanted them to know approximately where that was so they aren't putting a building over utility lines or they can relocate utility lines if necessary.

Mr. Marion questioned: Is the road they are proposing to put through there ok?

Mr. Simmons stated: Yes. That is fine. But they will have to do an as-built to check out where the utilities are so they can avoid conflicts as much as possible

Mr. Marion questioned: Are there any issues with the underground wells in that area?

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Mr. Simmons stated: Based on what I've seen over the years, it is a sink hole area. When I reviewed the deed, there was a sketch attached of that sink hole area which is where the stormwater basin is. They may have to do a program similar to what Bristol Glen did when they built. They should do a boring program to see if there are any voids in that area in the limestone and possibly do some grouting to support the building to support any issues in the future.

Mr. Ricciardo stated: Some kind of geotechnical base to put their building on.

Mr. Simmons stated: I don't want them to go there with a stormwater issue.

Discussion ensued on prior flooding issue.

Mr. Soloway stated: I suggest you be pro-active with the Board of Education on this because the Planning Board is in somewhat of an awkward position. There is a lot of law that basically says the Board of Education is exempt from the zoning ordinance, except for use restrictions. So when they come here it is the typical courtesy hearing where in theory, all the Board can do is recommend. It's not for the Board to approve or deny. I think that on stormwater there is a State law and they are obligated to comply with the State requirements and the DEP requirements. I don't know if the Planning Board can force anything on them. I would hope they would do the right thing of their own volition.

Mr. Simmons questioned: Would the Board like me to contact the Board of Education to see if there are any issues with this?

Mr. Marion stated: Yes. That would be fine.

Mr. Ricciardo stated: I think you should say that in the benefit of the community and the Board of Education you want them to be aware of these issues and that they should please do the proper investigation. Otherwise they will have to suffer the consequences of it.

Mr. Soloway stated: I'm a little surprised that they were doing engineering plans that were seemingly ignoring stormwater issues.

Mr. Simmons stated: I think it was primarily a concept map. But one thing that stood out was when I saw the recreation and utility fields over top of that basin, how is that working. In the cover letter they are talking about putting in underground chambers. The only problem when you do something like that is you are not going to have the same volume as you do with an open hole. I spoke with the Water Department, Joe Carr. He told me that at the end of the Sussex Street cul-de-sac there was a pump station and they wrapped it and saved it from getting flooded during the other storms.

Mr. Marion questioned: I was looking at the parking lot they want to propose on Merriam. Where the ball field currently is to the right of the school. If you have that parking lot come in off the cul-de-sac and have the parking lot over there, is there a way to run a storm drain out to Merriam so we have the problem go away forever for those people? I would think it would be cheaper than putting in massive tanks under the ground.

Mr. Simmons stated: I'd have to check. There is a study going on. Possibly some of the drains on Merriam drain into the same basin.

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Discussion continued on flooding.

Mr. Ricciardo stated: Whatever the Board of Education wants to do to better the educational system that they're producing, as long as they consider the things we talked about this evening then I don't see anything wrong with this as long as they don't create a flood hazard.

Mr. Simmons stated: I'll give the Board of Education secretary a call.

Mr. Levante excused himself at 7:35 PM.

**NEW BUSINESS**

Andrew J. Charnogursky (#ZBV-13-2016)  
Block: 13.06, Lot: 8  
72 Woodside Avenue  
T-3 Zone

Applicant requesting "d" variance for changing a two apartment/beauty salon to a three unit residential.

William Haggerty, Esq. representing Andrew Charnogursky, and stated: The property was purchased in 1984. He hasn't made any changes to the property other than interior and residing the building. There is a resolution in your packet from 1984. He was a contract purchaser at that time. The contract was conditional upon the approval to have a beauty parlor put in the lower portion of the building. There is a history in the resolution that was set forth. The Dobbins owned the property at one time and had a general store. The Hoofnagle's who had an appliance store and used it as an appliance warehouse. After that Mr. Charnogursky applies to the Board for a use variance approval to have a beauty parlor use in that area. The approval is granted and he goes ahead with it. At one time there were three stylists. The parking demand for a beauty parlor would be less with a one bedroom apartment. The end result would be three one bedroom apartments. A lesser intense use of the property than what was there when the beauty parlor operated. Nothing is changing or being removed. There is adequate parking for the proposed use.

Sworn in: Andrew J. Charnogursky Sr., 5 Windsor Drive, Oakridge, NJ

Mr. Haggerty questioned: Was I accurate that you purchased the property in 1984 as a contract purchaser contingent upon the application for a use variance being approved by the Board to allow a beauty parlor to be occupied in that space?

Mr. Charnogursky stated: Yes.

Mr. Haggerty questioned: Have there been any exterior changes?

Mr. Charnogursky stated: The siding.

Mr. Haggerty questioned: Is the parking the same now as it was then?

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Mr. Charnogursky stated: The parking was moved to Nelson from Woodside to satisfy the conditions of the use variance approval to have the beauty parlor. This gave us six spaces, not including the space in front of the garage.

Mr. Haggerty questioned: What is the garage used for?

Mr. Charnogursky stated: Personal storage.

Mr. Haggerty questioned: Are you proposing to add a third one-bedroom apartment?

Mr. Charnogursky stated: Yes.

Opened to public. None stepping forward. Portion closed.

Ms. Caldwell reviewed her report dated March 3, 2017 and stated: It's in a T-3 zone. It's a single family duplex zone with a one lot for 9000 square feet. There is actually a base residential density which comes to 4.84 units per acre. Because of this proposal there is a density variance because of the building type and because of the density. Everything else is pre-existing. We did have a question about the trash enclosure and how trash will be handled on site.

Mr. Charnogursky stated: Hamm's trash company picks it up on Woodside Avenue. I've been paying for the garbage pick-up. Each unit brings the can out on Thursday morning for pick up.

Ms. Caldwell continued: So there's a d1 use variance for the use of the three family. And there's a density variance, d5, for the additional unit in a T-3 zone. The parking complies. Parking placement is not permitted in the first or second layer. It is adjacent to Nelson Street on the secondary front entrance; does not require a variance.

Mr. Haggerty stated: It was actually approved as pre-existing prior to the 1984 approval. We're doing another d1 variance, but it is a less intense parking situation.

Ms. Caldwell continued: There is a requirement for screening of the parking area that requires a variance. And a minimum 10 foot buffer plating strip between the parking area and adjacent property line.

Mr. Haggerty stated: We are limited because of the size of the property and the size of the parking on it. We have a prior approval with the County that requires a site triangle easement that we gave to the County.

Ms. Caldwell stated: That's all I have.

Mr. Simmons referenced his February 27, 2017 report and stated: As Mr. Haggerty mentioned, the County required a site triangle easement at the intersection of Nelson and Woodside. I wanted to point out that the one parking area with the asphalt drive on the southwesterly side of the property, any tenant who parks there should not park within the site triangle easement. So someone coming up to the intersection and looking to the southwest can still see.

Mr. Simmons described the site triangle.

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Mr. Simmons stated: I suggest that the Board make a condition of the resolution that nothing can be parked in that site triangle easement.

Mr. Simmons continued: The only other thing I have is that the applicant provided a sketch of the proposed apartment layout. Just to bring that to your attention.

Mr. Marion stated: My only concern is that one lot on the site plan where the asphalt parking is. I would like to see that one disappear, because there is nothing to prevent anyone from parking there.

Mr. Majewski agreed.

Discussion ensued on parking.

Mr. Ricciardo stated: To summarize, they need a d5, a density variance; a d1 variance, and three d3 parking variances, which includes one for being in the first layer of the lot, one for screening, and one for buffering. The applicant will also need to eliminate the parking space on the southeast side along with the bollard so it doesn't interfere with the site triangle easement.

**Mr. Ricciardo made a motion to approve the application. Motion seconded by Mrs. Larsen.**

**AYE: Mr. Flaherty, Mr. Ricciardo, Mrs. Larsen, Mr. Majewski, Mr. Wink, Mr. Marion**

**Motion carried.**

Mr. Soloway stated: The applicant is asking that the Board recommends to the Zoning Officer that a zoning permit be issued in advance of the adoption of the resolution to allow the applicant to proceed to implement the approval that will be memorialized in the resolution. It will be at the applicant's own risk.

The Board agreed.

**CORRESPONDENCE** - None

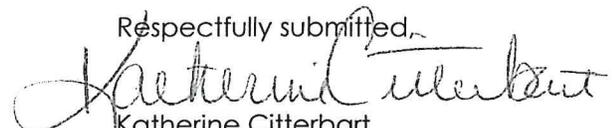
**EXECUTIVE SESSION** - None

**PUBLIC PORTION** - None stepping forward

**ADJOURNMENT**

**Mr. Riccardo made a motion to adjourn the meeting. Motion seconded by Mr. Flaherty. The meeting was adjourned at 7:56 PM with a unanimous "aye" vote.** The next meeting will be held on April 19, 2017 in the Council Chambers of the Municipal Building.

Respectfully submitted,

  
Katherine Citterbart  
Planning Board Secretary