

TOWN OF NEWTON  
PLANNING BOARD  
APRIL 19, 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:**

None

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

**ROLL CALL:** Was taken

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

Excused: Mrs. Diglio, Mr. Russo, Mr. Ricciardo

Mr. Levante excused himself at 7:15 pm

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

**CONSIDERATION OF MINUTES**

March 15, 2017

**A motion was made by Mr. Marion and seconded by Mr. Flaherty to approve the March 15, 2017 meeting minutes.**

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

**The motion was carried.**

**HISTORIC RESOLUTIONS**

None

**RESOLUTIONS**

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

Resolution granting a use variance, bulk variance and minor site plan approval to permit a three unit residential building.

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**A motion was made by Mr. Flaherty and seconded by Mr. Marion to approve the resolution.**

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

**The resolution was approved.**

**OLD BUSINESS**

None

**NEW BUSINESS**

**John & Angela Kweselait (#SPV-03-2017)  
Block 5.05, Lot 19  
62 Water Street**

The applicant is requesting a preliminary and final site plan approval, use variance, and parking variance.

Sworn in: Wayne McCabe, Professional Planner of McCabe and McCabe at 125 High Street, Newton, NJ. Mr. McCabe's license is current; applicant, John K. Kweselait from 23 Sweetwater Lane, Hamburg, NJ.

Mr. Soloway stated: For the record, Mr. McCabe has testified many times before this Board and has been accepted as an expert and professional planner.

The Board accepted Mr. McCabe's credentials.

Mr. McCabe stated: You have before you the plans, three sheets regarding a site plan, use variance, and a parking variance for the property that was referenced by Counsel. Take a look at the second sheet on the plans. This is where a school bus depot was for the last 40 to 45 years. In terms of history of this building you would have to look first at the corner building where the County Seat restaurant is now. That was constructed in 1893 by Damian Broder who was the first owner of the repair shop in the County. His office was in the first floor where the bar is and ultimately he expanded to the point where he had to build a new building. In the early 1920's he built the right hand half of this building. That was his auto repair shop and has been in that sort of commercial line of use, industrial line of use, since the 1920's. So it is just short of 100 years of that use. It has expanded over the last ½ century to incorporate the building configuration that you see now is essentially a horse shoe with the open end of the horse shoe facing out and away from Water Street. The past use that was operated there was school buses. It was a bus depot. There were approximately 40 buses maintained on this site, including longer and shorter ones. They were all diesel driven. So you had 40 drivers, not counting staff, going in and out of this building every day and the buses going in and out twice a day to pick up kids. So this place was a bustling commercial site in terms of private vehicles in and out and the buses. The service stopped a few years ago. What the Kweselait's are proposing is to acquire the building and renovate it and to use it for custom wood furniture. Their other business is on E. Clinton and has been there for 18 years. The business has been in Town for 26 years. He has rented all these years and now there is an opportunity for him to acquire the building and move his operation in

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here. So we took a look at what his needs are and what we can configure on this site. What we are proposing is limited in terms of disturbance of the site. First, the building and the site are 100% covered between sidewalk, the building, asphalt paving and parking areas. The only place that is not covered is within the embankment area that runs along the northeast side of the property. The improvements we are looking to make are as follows: first there is a chain link fence that extends around the back parking area. We propose to remove that and replace it with a board on board cedar fence which John will be making and installing himself. We are also going to restripe the parking lot so you can get 19 spaces configured in there for his staff. We are also looking to propose to install two new lights on the back ends of the two sections of the horse shoe building. They are replacement of existing lights. The other proposed change is on the front façade of the building. That is to put a sign on there. We've noted on the third sheet of plans in terms of the design. You can see on the plan on sheet two where it says 7 x 12 wall mounted wood business sign attached to the side it would be on that small section projecting out. The sign itself is well underneath the maximum allowable square footage for the building. It has been designed so it will be proportional to the façade so it looks like it fits in correctly. Again, you can see that on sheet three where we also have the details on the lighting and the fence that's over there that we are proposing. That's basically all the improvements we are looking to make on this site. We are not looking to change grading or drainage. Mr. Simmons noted that in his report. I would note a couple of other things. On the back of the building you see a "w". Those were monitor wells that were there that have all been removed and there is a certification that everything on the site has been cleaned up and we have documentation to that affect that we can give you. That's in the form of a CD. That will indicate the test results. There is no longer any contamination. The contamination on that site was from a diesel pump that had some spillage on the ground. The DEP has signed off on it so we have that documentation for you. We have also met with the Technical Review Committee a month ago. They asked for a couple minor clarifications and changes. One of those was the sewer line that extends along the driveway and leads to the back of the property is directly underneath the front corner of the building and then goes out to Water Street. So we added that to the plan. That was also confirmed by the owner that that is where it is located. And that is everything. It is going to be a dramatically different type of site in terms of the impact on the community because there won't be 40 diesel buses going through every day. Basically you will have two step vans/trucks owned by the company and kept in the back of the building for pick up and deliveries of materials. There may be some larger trucks coming in but there is more than ample room to bring that in to the site. We have designated 12 x 30 delivery areas in the back of each section. I would also add that at the front of the building there are four overhead garage doors. None of them will be used anymore. They are being sealed off so they won't have vehicles coming out all over the place. Only through the driveway which belongs to the subject property. It is not somebody else's land.

Mr. Le Frois questioned: Will the doors be removed?

Mr. McCabe stated: No. They will be secured inside. At some later date they may be removed and an architectural plan added to make the façade blend together a little better but right now we are stipulating that there will be no use of that at all.

Mr. Soloway stated: So the driveway along the southerly side of the property will be the sole point of ingress and egress and that's your property.

Mr. McCabe stated: Yes.

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Mr. Soloway questioned: Does anyone else have easement rights to use it?

Mr. McCabe stated: Yes. The property that is adjacent to us which is the little building on the south side has parking for itself in back, they have the right of access to come down the driveway and park where there is a concrete pad. So that's the permitted area now for access. Also, on the other side where Wealth Management is and there's an auto body repair shop, they also have the right of access across there. The only difference is in terms of the auto repair shop there is also an alley way they have on the south side of their lot of their building that does provide access also.

Mr. Soloway questioned: So the auto repair shop to the left and side of the driveway further south has the right to access it and the 5.05, lot 21. And lot 20 also has an easement. Do either of those properties have the right to park on this property?

Mr. McCabe stated: No. The driveway has to be kept clear.

Mr. Marion asked: What are the hours of operation?

Mr. Kweselaït stated: The hours of operation are 7:00 AM to 5:00 PM, Monday through Friday. On Saturday we are sometimes open from 7:00 a.m. to 12:00 p.m. No Sundays.

Mr. Le Frois questioned: Does the public come to visit the shop or is it strictly manufacturing?

Mr. Kweselaït stated: It is typically just manufacturing. We usually go to a client's residence or place of business. So it is minimal public. No foot traffic at all.

Mr. McCabe stated: If there is a pedestrian coming in they would park in the back and come in through the rear. There would be a sign leading through the office area.

Mr. Le Frois questioned: Would there be separate parking for the public in case they do show up? Or are the 19 spaces enough to have several open spaces if the public does decide to show up?

Mr. McCabe stated: Seventeen and eighteen can be made for public.

Mr. Soloway questioned: How many employees?

Mr. Kweselaït stated: We employ about 18 people. They don't work in shifts. We have the facility that is behind this municipal building now and we are going to be maintaining it for a two year period. So we are going to be split staff between the two locations. Eventually we will want all the staff at the new location.

Mr. Soloway questioned: Do you anticipate hiring more people if you move to this new location?

Mr. Kweselaït stated: Not really. Maybe one or two positions. We are really just looking to own our own space.

Mr. Soloway questioned Mr. McCabe: Is there street parking available in the front?

Mr. McCabe stated: No.

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Mr. Marion questioned: When this property was a bus company there were approximately 40 buses and 30 plus cars. Is that correct?

Mr. McCabe stated: Yes. If you look at the aerial photos they were stacked up in the back. They also were stored inside the building. They were all over the place.

Mr. Marion questioned: So the use is a lot less than it was?

Mr. McCabe stated: Yes. It was a very intense use.

Mr. Soloway stated: For the record, this was asked at the TRC meeting, if you look on the plans that were submitted, two spaces I believe are shown to be located as some kind of an access easement. Is that really an access easement?

Mr. McCabe stated: No, it is a drainage easement. The 42" metal pipe coming out there that's serving as drainage for Upland. Exactly where it is coming from, I'm not sure. There is a right-of-way that's noted for common usage.

Mr. Soloway stated: So it's an easement to nowhere. Based on your investigation is it self-evident to you that while theoretically somebody might be able to walk the length of the right-of-way, no one can drive it?

Mr. McCabe stated: Correct and they would get their feet wet. Regarding the fence, we do propose to cover the areas for parking areas one through thirteen with a wood fence. We are not proposing to replace the steel guardrail that is from fourteen all the way down to the point where it connects to the back side of the building. We felt that that was still open for drainage and as you can see from the topography lines there's a natural drainage going out through that whole site. And we are not changing that. As Mr. Simmons noted there's no change in drainage so we don't need to worry about changing our calculations for that.

Mr. Flaherty questioned: Are there any trucks larger than a small box trucks making deliveries?

Mr. McCabe stated: There may be a longer truck, but it will not be an articulated vehicle. If you look at the kind of truck that a lumber yard carries where you get a 20 or 30' boards, that's about the maximum you'd be seeing coming in.

Mr. Flaherty questioned: Is there a possibility they could try and deliver to the garage doors?

Mr. Kwesela stated: We have five or so suppliers that deliver to us and we use them regularly. We will send them a notice of where the deliveries will be.

Mr. Majewski questioned: Will there be trucks coming to do pick-ups?

Mr. Kwesela stated: No. We deliver to our clients.

Mr. Le Frois questioned: Are there any major modifications that you need to make to the HVAC system? Adding blower units or filtration units?

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Mr. Kweselait stated: There is currently a blower unit that was used to expel fumes from the bus. We will use that for cooling the space. There is a system for the offices currently but we don't use it.

Mr. Flaherty questioned: What about a dust collection system?

Mr. Kweselait stated: We absolutely have a self-contained dust collection system.

Mr. McCabe stated: You have to keep the outer doors closed for the system to work properly.

Mr. Flaherty questioned: How much saw dust do you end up collecting?

Mr. Kweselait stated: It depends what we are doing from week to week, but we probably generate about 4 to 5 black garbage bags a week or so. Sometimes less. Typically, horse farmers pick it up.

Mr. Le Frois questioned: Will there be a dumpster?

Mr. McCabe stated: Yes. It is in the horse shoe. None of the houses that front on Clinton will see it. North of it you have the high rise. From the 8<sup>th</sup> floor it can be seen, but that is why we asked for that specific design. By pushing it as far back as we can, we tried to have the building block it from the high rise. Getting a garbage truck in will not be a problem.

Mr. Majewski questioned: Is there a noise level that the neighbors will hear?

Mr. McCabe stated: No. The only noise will be the cars coming in in the morning and the garbage truck coming for pick up. The garage doors will be down. You're not going to hear this outside. All the years he has been on E Clinton there have been no complaints about noise level, ever.

Mr. McCabe continued: One more thing, on the lights we put on we didn't want to have them glaring so we had a downward light. Right now there is a light on as we speak on the utility pole. It is a streetlight and it does provide a lot of illumination in the back. I can park in the back of this building at the very back and count the diamond pattern on the chain link fence. There is that much illumination. So it is not something we have to worry about adding. The lights will be on when needed and then turned off. They will not be left on all night.

Mr. Wink questioned: Will there be a spray booth?

Mr. Kweselait stated: Yes.

Mrs. Citterbart questioned: Will you have emergency generators?

Mr. Kweselait stated: The current owner has hook ups for one but there isn't one on site right now. I might do something in the future to run our computers, but not currently. It wouldn't be to run my equipment because I don't think there is a generator alive that could run my equipment with the amount of power required.

Mr. Butterfield questioned: What are the monitoring wells for?

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Mr. McCabe stated: There was a diesel fuel station in the back. It was dripped onto the ground. When the tanks were pulled out they were found to be ok. When they took the pump out they found some contamination in the upper crust of the soil around that area. So they excavated that area out and found everything was clean and the monitoring wells were emptied of any contaminate. The wells were just filled in last week.

Mr. Butterfield questioned: Where will the chemicals be stored?

Mr. Kweselait stated: In a vault. We have permits from the MUA NJDEP for handling that stuff.

Mrs. Citterbart questioned: What about snow removal?

Mr. McCabe stated: That is also why we didn't put the board-on-board fence all the way down. We will have to have someplace to plow it over. If the fence was there it would damage it. This way we can push it up against the steel guardrail.

Mr. Le Frois questioned: Is the light on the pole on the property?

Mr. McCabe stated: No.

Mr. Simmons questioned: Is the light owned by JCP&L?

Mr. McCabe stated: I have no idea whose it is.

Mr. Simmons stated: I have seen JCP&L flood lights that are added on to your power bill. If someone next door decides to shut it off, will you make arrangements to continue its operation?

Mr. McCabe stated: Yes. That is not a problem at all.

Mr. Majewski questioned: Will there be any landscaping?

Mr. McCabe stated: No. Section 320-24 states that the landscaping standards sub-section 7 says "all open spaces not covered by buildings, paving and sidewalk shall be graded and landscaped". We are 100% covered so we are exempt from the requirements of buffering trees and anything else.

Mr. Simmons reviewed his report dated April 12, 2017 and stated: Most of the items in the applicant's testimony got covered. I would point out on page 2, item 4b is an existing situation and we can't change it much. Just so the Board and the applicant are aware this property is in the 100 year flood plain. Dam site #2 was constructed in Fredon Township to help mitigate that. We touched base on item #9b about hazardous materials. I just wanted the Board to know that one of the documents we received was from W.J. Malone Associates regarding the sprinkler. It was found to be satisfactory and the applicant would have to satisfy Mr. Butto's office.

Mr. Le Frois questioned: Who handles the proper storage of hazardous and flammable materials? Is it something the Town handles?

Mr. Kweselait stated: No. The State handles it.

Mr. Simmons continued: Is the proposed sign on the front of the building illuminated?

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Mr. McCabe stated: We would like to add gooseneck lighting so it's not spilling out anywhere and it is just on the side. If the Board is agreeable to that we can amend our plan to show what we would put there in greater detail.

Mr. Simmons stated: That covers the main points.

Mr. Le Frois stated: Mr. Simmons, can you address the lighting levels in the parking lot? Do you think the one flood light is sufficient?

Mr. Simmons stated: I would suggest that either the applicant or our office go out one night and take some light levels to verify and have the applicant provide the plan with some spot candle limits on it. Normally, it supports 5' candles throughout the parking lot. If the applicant can take a light meter and check that and submit a plan with candle limits on it, then we know. I know about the JCP&L floodlights. I just had one put on a piece of property that I have. So I know that it is added on the bill.

Mr. Le Frois stated: I agree with that.

Mr. Soloway stated: If the light is on the other property and they don't want it anymore, they might have to put a new pole on your property.

Mr. McCabe stated: We will find out whose bill it is.

Ms. Apte went over J. Caldwell report dated April 11, 2017 and stated: As Mr. Simmons stated, most of the questions have been answered but I am going to review it quickly. The first question was regarding deliveries. Are there specific times for deliveries?

Mr. Kweselait stated: We typically get deliveries on Tuesdays and Thursdays between normal business hours. But it is not every week.

Ms. Apte continued: I know it is an existing building, but is it a one story or two-story building? Can you explain if both the floors will be used?

Mr. Kweselait stated: It is basically a one-story building with a loft for storage. There is no occupancy on the upper level. It will be used for storing materials.

Ms. Apte continued: The ordinance requires it to be a two-story building. In terms of parking it would require 30 parking spaces. Do you have the layout?

Mr. McCabe stated: The ordinance says that you need a minimum 9'x 18' parking area and we have a 9' x 20'. So it is permitted it's a non-issue. In terms of the layout, I've tried different configurations with the layout and angle parking. This is the one that will most efficiently let cars in and out. It's because of the configuration of the lot. It's not like a true rectangle; it's a trapezoid that's closing in on you. In this instance we need a c variance because we have a lot that is peculiar and we don't have another area to park because the rest is taken up by the building. We tried to maximize the parking and the reason we stopped at 19 is to have turning room for trucks making deliveries.

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Ms. Apte stated: That's what I thought. The other item required in the ordinance is the fence. It is not all around. On one side of the fence you have stopped short of the board-on-board fence because you have structure of the building.

Mr. McCabe stated: We put the board-on-board fence to try and minimize the light from spilling out. We tried to provide containment of that as best as we could. There is one other thing in your report that talked about the height of the fence minimum is 6' and the maximum is 8'. The ordinance states that 6' is the maximum we can go. We talked about 8' wide sections, and not high. We would have done 8' if it was permitted but it would require a modification. It does not go all the way because we need to get rid of snow.

Mr. Soloway stated: Unless they've changed it, Section 320-23C4 states that fencing must be at least 6' in height and no more than 8' in height.

Mr. McCabe stated: The website states 6'.

Mr. Soloway stated: If the board approves the application and you decide you want the fence to be 8' then you'll do it. If it turns out that it requires a variance, then you will do 8'.

Mrs. Citterbart stated: I understand that anything over 6' would need a variance.

Discussion ensued over ordinance.

Mr. Soloway stated: The 6' limitation is only for fences along the redevelopment lot.

Mr. Le Frois stated: Ok. Six feet it is.

Ms. Apte continued: A 10' buffer strip is required in the parking lot per section 320-23C(5). No such buffer is proposed.

Mr. McCabe stated: Section 320-24(B)7 states that open spaces that are covered by pavement and building do not require it. We are 100% covered.

Mr. Soloway stated: Ms. Apte is referring to section 320-23C referring to parking lots and Mr. McCabe is referring to 320-24B referring to landscaping.

Ms. Apte stated: Since it is referring to a parking lot, it requires a variance.

Mr. McCabe stated: I believe it is a design waiver. We will have to apply for a variance if we need it.

Mr. Soloway stated: Section 24 is a design standard. I don't know if section 23 is related to design standards.

Mr. Le Frois stated: What does section 24 have to do with a 10' buffer?

Mr. Soloway stated: Mr. McCabe's point is that section 24 only requires landscaping in areas that are not paved. Whereas the parking lot ordinance has buffering standards. I would tend to think that when you are dealing with a parking lot the more specific standard would cover the more general one. Having said that, to the extent a variance for section 23 is required it is

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certainly a supportable finding on the part of the Board to determine that this is a pre-existing condition and there isn't anything the applicant can do about it. It's a classic hardship because you have existing conditions and structures and the parking lot is technically a structure that makes it impractical to make landscaping unless you put it in giant flower pots.

Mr. Marion questioned: Is a fence considered buffering?

Mr. Soloway stated: The surface parking standards say that board-on-board privacy fencing is screening. But there are other provisions that require a 10' minimum buffering planter strip between a surface parking lot and an adjacent property line. If you dig deep enough into this you can go a little crazy. You're not going to rip up pavement to put in some landscaping or buffer strip. There are a lot of reasons why that wouldn't make any sense.

Mr. Marion stated: In this case it is a hardship variance.

Ms. Apte continued: Regarding landscaping they are requesting two design waivers. Parking lots requiring more than 10 spaces should have 15% landscaping. But it is an existing condition. For the record, can you briefly talk about the site suitably?

Mr. Soloway questioned Mr. McCabe: In your professional planning opinion do you feel that this property is suitable for the use that requires a use variance.

Mr. McCabe stated: Yes. I would also add that the site has been used for various commercial uses including manufacturing. This is not something that is new to this site. It's not conducive to the type of use that T-5 requires in this area. It requires on street parking and parking is in the rear. The configuration of the building is not conducive to retail. Simply, the type of building it is the use is suited for the type of use.

Mr. Le Frois opened the application to the public. None stepping forward. Portion closed.

Mr. Soloway crafted a motion to approve the application granting a use variance to allow wood working fabrication/manufacturing as described in the testimony, granting a variance to allow 19 parking spaces instead of 30, granting variances and design standard waivers from a number of requirements relating to landscaping and buffering to the parking lot, variance for the fence which complies with height and not to extend all around, leave guardrail, and grant preliminary and final site plan approval with the conditions that you consider 1. Mr. McCabe mentioned that they have documentation regarding approved closure of monitoring wells be provided to Mr. Simmons. He should condition it on compliance with sections 10a and b and 12a in Mr. Simmons' report, 10a show the class of concrete being used on the fencing footings and provide handicap signage details for the handicap parking space. And an as-built plan by a licensed NJ surveyor after the improvements are completed. The applicant may amend the plan to have a gooseneck light appended to the sign to satisfaction of Mr. Simmons. The applicant should provide a lighting plan which would show foot candle limits to Mr. Simmons' satisfaction. Sealing the garage doors would be a condition also. The only other item that occurred to me is that the applicant may eliminate the garage doors in the future.

Mr. Le Frois stated: I want to discuss the 19 parking spaces. Based on testimony, they have 18 employees now and if they do grow where are new employees going to park?

Mr. Soloway stated: That is something for the Board to discuss.

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Mr. Le Frois stated: To go back to the doors, if everyone is in favor we could allow them to take those out and put something back that is consistent with the remainder of the building subject to our engineers review and approval.

Discussion ensued on doors.

Mr. Soloway stated: If the Board wants to see it you could do it in isolation as a site plan waiver. It is a lot less cumbersome and expensive. In this case it wouldn't necessarily require a formal notice. The Board would have the ability to review it.

Mr. Kweselait stated: For me to close that off, I would think that I would have to get a building permit. I just want to note that I design beautiful things for the world and I'm very good at it. When we finally unveil the Spring Street property that we're working on, your eyes are going to pop and you'll be invited to that unveiling. I will always do what's in the best interest of the beautification of this Town. Also, it is on a state highway so we have to consider that. And it will be at least a year until we do anything.

Mr. McCabe stated: So it would be a waiver of site plan with no legal notice when we come back.

Mr. Soloway stated: Yes.

Mr. Le Frois stated: I'm concerned about the parking.

Mr. Kweselait stated: We plan on using this location as a satellite space for the next two years and grow and move out of the current building. We can't hope to accommodate what we are going to produce in the two buildings in that one building. So we will still need an alternate location in addition to this property.

Mr. Le Frois stated: That is very different. Ok.

Mr. Marion questioned: Is their parking in the horseshoe area by the dumpster?

Mr. Kweselait stated: We plan to use that for executive parking!

Mr. Soloway stated: The number of employees require the number of parking spaces.

Mr. Kweselait stated: Some of the employees walk to work.

Mr. Soloway stated: I want to know how the bus company parked 40 buses and drivers.

Mr. Simmons stated: That was stacked parking. I'm thinking out loud, if you park between the hours of 7-5pm, and the Board would allow stacked parking if everyone is going to be there during that time.

Mr. Soloway stated: It's not an issue to have that kind of an arrangement between employees. It's only a problem if you have strangers coming in. The testimony was that it doesn't happen too often.

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Mr. Le Frois stated: Maybe I'm unnecessarily concerned. Do we have to say something specific that stacking would be ok. Or do we just leave it open?

Mr. Soloway stated: Leave it open. I think the sense of the Board is that they will work around and it's not a situation. It's in the back and not in the front where people will see it.

Mr. McCabe stated: There are three extra spaces in front of the dumpster.

Mr. Soloway stated: I'll add to the resolution that they would need a waiver of site plan for the garage doors.

Mrs. Larsen made a motion to approve the application. Mr. Marion seconded it.

Aye: Mr. Flaherty, Mr. Marion, Mrs. Larsen, Mr. Majewski, Mr. Butterfield, Mr. Wink, Mr. Le Frois

Motion carried.

Mr. McCabe requested a waiver of the 30 day rule so they can begin to move forward.

Mr. Soloway stated: What Mr. McCabe is asking the Board to do is what is sometimes called waiving the resolution. So the applicant can apply for construction permits before the resolution is adopted. So they are requesting the Zoning Officer to allow that because technically she is the one that signs off on that. If the Board ok's it it is at the applicant's risk. If anyone appeals or there is something in the resolution they don't like they are moving forward at their own risk.

Mr. Flaherty made a motion to extend the 30 day rule to the applicant. Mr. Marion seconded it.

Aye: Mr. Flaherty, Mr. Marion, Mrs. Larsen, Mr. Majewski, Mr. Butterfield, Mr. Wink, Mr. Le Frois

Motion carried.

### **DISCUSSION**

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

Mr. Simmons stated: To update the Board, I visited the site after our last meeting. As of today there are five storage box containers on the site. Mrs. Citterbart and I spoke with Mr. Martin and they are redoing some of the rooms at the Holiday Inn and the containers are just there temporarily and then will be taken away. The received a zoning permit for that from Mrs. Citterbart. I looked for piles of soil but was only able to find them on the Hampton Township side of the line. As far as the bond for the remaining work and the gate, when they get that done I will write a letter to the Town Council recommending the bond be released at that time.

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

Mr. Simmons stated: Subsequent to our meeting I visited Liberty Towers. The generator is there. The yellow painted concrete bollards are there to protect the generator from vehicles in the parking lot that might jump the curb but there is no landscaping there. Mrs. Citterbart wrote a letter to the attorney for Verizon indicating that they still need to comply with that.

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**Merriam Avenue School – by David Simmons**

Mr. Simmons stated: I spoke with Donna Snyder at the Board of Education and updated her with the information about the Gardner Avenue well and the utilities in back of the existing school where I thought they might be proposing some of the proposed buildings. I also mentioned the existing sump detention basin in the back and outlined various things. Apparently there was a miscommunication with their engineer. He was supposed to have called me and he hadn't. He called me the next day and I explained to him all the background information that I explained to the Board the last time we met. As far as the Gardner Avenue well was concerned they were talking about using 3 or 4 feet of the Town's property in terms of the parking lot. I explained that the DEP required a minimum of 50 feet around the well head in order to have that as a controlled area by the Town. I said my assumption is that if you did propose to use that for a relatively benign use my suggestion would be that they have to obtain permission from the Town, approval from DEP Bureau of Water System Engineering to see if they would even consider that to make sure it didn't invalidate anything with the Town's well. I also said that the information I forwarded about the utilities in the back of the school where they might be proposing the addition I recommended and put him in contact with Joe Carr, the Town's licensed Water and Sanitary Sewer Operator, to go out there in the system with any layout/mark out as far as any utilities in the back and dig some test holes so they don't end up on top of the utilities. I also gave their engineer the whole background in the history of Castle Ridge, the Stratford Lane extension on Jersey Place and how the cul-de-sacs and storm drainage systems tie together. He is looking for alternatives to that basin. I also strongly recommended that they consider a boring program because of sink holes. I explained to him how when Bristol Glen went in they had to get involved in a grouting program to fill some voids in the limestone so they didn't have problems with their building.

**CORRESPONDENCE –**

NJ Planner

**Ordinance 2017-6: An ordinance amending Section 100 "Fees & Costs" of the Newton Town Code to add a fee for minor site plans, amending Section 320-2.C "Permitted Uses" to permit additional uses in the T-6 Zone and amending Section 320-23.A "Minimum Parking Requirements" to add a parking requirement for assembly uses.**

Ms. Apte spoke on the ordinance 2017-6 amendments and stated: They are broken up three different sections. The first one is the "Fees & Costs". At the end of the zoning ordinance review it was discovered that these were fees that needed to be added so it was recommended through the Council to adopt an ordinance addressing minor site plan application and escrow fees.

The second one is the "Permitted Uses". The two uses that have been added to the T-6 Zone are the drive-thru capabilities and the office. Currently, office is permitted but only on the second floor. This amendment will permit offices on the first floor. The important point to note here is that it is an inconsistency with the Master Plan. The MLUL does allow certain uses as long as the reason for it is consistent. What we have come up with is office use originally was not permitted on the first floor because of foot traffic reasons. Currently, in this day and age with the number of vacant store fronts, this office use would be a beneficial factor. We feel that offices that do

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require more foot traffic are the ones which would be located on the first floor rather than offices that don't have that much foot traffic.

The third one is the "Minimum Parking Requirements" in which we added parking requirements for assembly and gathering spaces. These requirements came from the previous ordinance.

Mr. Soloway stated: That was another item that the Board recommended that the Council address in the Ordinance 2017-6. This was transmitted to the Planning Board to review in the context of the Master Plan and any other recommendation that you may want to make. Ms. Apte is going to elaborate.

Ms. Apte stated: The only inconsistency with the Master Plan is the location of office uses on the first floor. The Master Plan specifically states that offices should be on the second floor. The reason for consideration of that would be to permit more uses on the first floor and on Spring Street. We believe that with the changing times that could be added and amended in the T-6 zone and it could be beneficial to the offices that produce more foot traffic. They could be located on the first floor.

Mr. Le Frois questioned: Will the fact that it is inconsistent be noted?

Mr. Soloway stated: You should make a finding that the entire proposed ordinance is not inconsistent with the Master Plan except for the provision that will allow offices on the first floor in the T-6 Zone which you do find to be inconsistent with the Master Plan. If you have any other recommendations you can put them in. The effect of making that final is that when this goes back to the Council, the Council in order to adopt the ordinance with that inconsistency has to approve it by a full majority of its authorized members. It's clear from what Ms. Apte stated, there are three different subject areas. Section two is not consistent with the Master Plan.

Mr. Flaherty questioned: Should we recommend to the Council to amend the Master Plan on that particular point?

Mr. Soloway stated: You can do that. I can go over the procedure in more detail if you want. But I don't think you have to do that. The Council has the right to adopt an ordinance that is inconsistent with the Master Plan. They just have to do so by a super majority and they have to explain why they are doing that.

Mr. Soloway stated: The only minor comment I have is on section 3 where we are putting back in the ordinance a parking standard that is assembly type uses. At the end of that they are setting up a standard in a circumstance where they are basing it on seating. However, there can be assembly uses where there isn't seating. If it was me, I wouldn't use the word "public" because I don't want there to be an inference that to be an "assembly" use it has to be open to the public and not a private thing. What I came up with is one space per 40 square foot of floor area for assemblage purpose, for instance a House of Worship, which isn't necessarily something where the public is coming in. Or it could be some kind of club that's used as a dance hall. You don't have seats and the concept of square footage is a good one, but I'm not sure that it's necessarily open to the general public either.

Mr. Majewski stated: Do we need more transparency in the word "public"?

Mr. Soloway stated: Yes. You should be more specific.

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Portion opened to public.

1<sup>st</sup> Public: Wayne McCabe, 125 High Street, licensed professional planner since 2009. My license is current. I am speaking as a Planner, Historian, and someone who has practiced planning in our County for 43 years. This concept of allowing conversion of commercial retail on the first floor of Spring Street is the most hare brained thing I have heard in years. Mr. Flaherty, you talked about learning from history. Look at Franklin Borough. They had the realignment of the State Highway which took a lot of their commercial retail downtown. They thought the best thing to do was convert it to offices. They saw their entire downtown slide down the tubes in ten years. When offices moved out, they converted to residential on the first floor. That is history in our County this year. That is real. I don't want to see that happen here. You are talking about a major change in our policy for Spring Street which is the core of our commercial area. It is what our back bone is supposed to be. We are talking about a SID opening up and functioning here. Why are we even considering this until we have something take place where we are having marketing done by people who know what they're doing and give us a chance. I think this is all out of order for trying to consider anything until we get the SID in place. I would ask the Board to not act on that recommendation at all.

Mr. Marion asked: What is the SID?

Mr. McCabe stated: It is the Special Improvement District that the Council is looking into. I'm asking you as a taxpayer and a planner, there is no logic to this. This hasn't been run by the Chamber of Commerce yet and I think you would find a strong opposition to anything like this. I fought for 10 years to keep the County government downtown and we succeeded. But that was a starting point. Let's not make this the ending point, please!

Mr. Soloway stated: For clarification, this isn't the ending point. The Board doesn't say "yay" or "nay" to the adoption of the ordinance. The only actual obligation you have is to determine whether it is consistent or inconsistent with the Master Plan. You can make a recommendation substantively to the Council as to any changes and whether to approve it. But the approving gets done at the Council. That will be noticed as a public hearing and the public will have an opportunity to stake for and against it. This Board can give a recommendation to mean something and an explanation. Mr. McCabe recommends that you don't act. Not acting means that the Council would just have to wait 35 days from the time it is referred to the Board before they can vote on it. I'm not demeaning the Board's role.

Mr. McCabe stated: I would like to recommend to the Board that you find the proposal is in total contradiction to our Master Plan and that you recommend to the Governing Body that it not be adopted.

No more public stepping forward. Portion closed.

Mr. Le Frois stated: Mr. McCabe made good points. We certainly won't find the entire three issues that were discussed here as inconsistent with the Master Plan. Mika acknowledges that the item regarding first floor offices is inconsistent with the Master Plan. Unless anyone feels differently, that will be our finding. I would not be against adding recommendations that the change be more seriously considered by the Council and that they do a little more research and discuss it before just blanketly approving it with or without our recommendation that change in the ordinance. Are there any other comments from the Board?

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Mr. Soloway stated: Whatever motion you adopt, Mrs. Citterbart will send a letter or memorandum to the Council with your recommendation.

Mr. Le Frois made a motion that sections one and three are consistent with the Master Plan with the modifications suggested by Mr. Soloway for changing the verbiage of public use in the last sentence of section three. Section two is inconsistent with the Master Plan and stating such and with a recommendation that the section two modifications be considered in much more detail and perhaps additional research performed to look at the implications of making such a change to the Master Plan.

Mr. Flaherty approved the motion. Mrs. Larsen seconded the motion.

Aye: Mr. Flaherty, Mr. Marion, Mrs. Larsen, Mr. Butterfield, Mr. Majewski, Mr. Wink, Chairman Le Frois

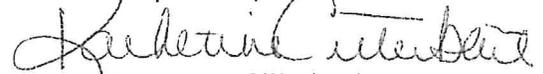
**EXECUTIVE SESSION** - None

**PUBLIC PORTION** - None stepping forward

**ADJOURNMENT**

**Mr. Marion made a motion to adjourn the meeting. Motion seconded by Mrs. Larsen. The meeting was adjourned at 8:41 PM with a unanimous "aye" vote.** The next meeting will be held on May 17, 2017 in the Council Chambers of the Municipal Building.

Respectfully submitted,



Katherine Citterbart  
Planning Board Secretary