

TOWN OF NEWTON
PLANNING BOARD
APRIL 18, 2018
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. Board Secretary Mrs. Citterbart stated there was a quorum.

SALUTE TO THE FLAG: Was recited.

OATH OF OFFICE: None

ROLL CALL: Was taken

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

Excused: Mrs. Vrahnos, Mr. Russo

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

THE SUNSHINE STATEMENT: Was read.

CONSIDERATION OF MINUTES

February 21, 2018

A motion was made by Mr. Marion and seconded by Mr. Levante to approve the February 21, 2018 meeting minutes.

AYE: Mr. Marion, Mrs. Larsen, Mr. Butterfield, Mr. Wink, Mr. Ragsdale, Mr. Levante, Mr. Elvidge, Mr. Le Frois

The motion was carried.

TECHNICAL REVIEW COMMITTEE MEMBERS:

Chairman Le Frois added George Wink as the Alternate to the Technical Review Committee - No need to vote; Planning Board in unanimous agreement.

HISTORIC RESOLUTIONS

None

RESOLUTIONS

One Summit Avenue, LLC (#ZB-10-2017)
Block: 4.05, Lot: 21
1 Summit Avenue

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The resolution is granting expansion of a preexisting nonconforming use for a proposed new multipurpose room and for a bulk variance/minor site plan amendment to allow an emergency standby generator without screening.

Mr. Marion made a motion to approve the resolution. The motion was seconded by Mr. Butterfield.

AYE: Mr. Marion, Mrs. Larsen, Mr. Butterfield, Mr. Wink, Mr. Ragsdale, Mr. Le Frois

The motion was carried. Resolution approved.

North Jersey Healthcare Properties (#SV-1-2018)
Block: 1.02, Lots: 3 & 4
200 High Street

The resolution is granting minor subdivision and preliminary and final site plan approval with related variances and design waivers.

Mr. Butterfield made a motion to approve the resolution. The motion was seconded by Mr. Marion.

AYE: Mr. Marion, Mrs. Larsen, Mr. Butterfield, Mr. Wink, Mr. Levante, Mr. Elvidge, Mr. Le Frois

The motion was carried. Resolution approved.

OLD BUSINESS

None

NEW BUSINESS

James Devine (#ASP-3-2018)
Block: 3.01, Lot: 22
29 Slate Hill Road

The applicant is requesting an amendment to previously approved plans from June 20, 2007.

Sworn in: James G. Devine, 29 Pigeon Hill Road, Wantage, NJ
Wayne McCabe

The Board accepted Mr. McCabe's qualifications.

Mr. Devine stated: I am the owner of 29 Slate Hill Road. Mr. Simmons did a great job with his report dated April 4, 2018 so I am going to review it. We start in 1985. The owner of the property was Mr. Belish. He owned block 301, lot 2.01 containing 7.3 acres in Newton. The property was at the end of the cul-de-sac on Slate Hill Road. He also owned the adjoining property which was in Fredon Township. In 1985 Mr. Mulhern made a deal with Mr. Belish to purchase the property in Newton. The only problem there was that it created a land lock situation for Mr. Belish's property in Fredon. So the solution was to grant an easement from the Mulherns after they purchased the property back to Mr. Belish where he could utilize the 20' driveway

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easement for ingress, egress, and installing utilities on the property. It was perpetual in nature and is still used today. It is the only driveway located on either of those properties at this time. Mr. Mulhern also retained the easement rights to himself. The easement also contained a maintenance agreement that the parties agreed to maintain the easement. Ultimately they paved the easement. For a long time it was only Mr. Belish as purchaser and Mr. Mulhern who resided there. They both decided to build houses on the properties. Mr. Mulhern built his family house and raised his family there for many years. The easement ran from the cul-de-sac, bisected the Mulhern property, all the way up to the Fredon property. In 2007, Mr. Mulhern came before this Board and subdivided block 301, lot 2.01 into two new lots which were lots 209 and 210, plus the remainder lot 2.01. The revised subdivision plan for him showed a new driveway to be constructed entirely on lot 2.10 which is my property. However, the subdivision deed made no mention of such proposed driveway and when I purchased the property in 2017 I did my title work, there was no mention at all that there was any obligation to install that driveway. I received the deed from Mr. Mulhern which included the right for me to utilize the existing driveway easement on the adjoining property. I purchased it from Mulhern thinking I was going to use the ingress and egress on the existing easement. We got to the point where I obtained a septic permit, and I had my builder attempt to obtain a zoning permit and it was denied. I was perplexed by this. Kathy Citterbart provided me with the paper work to investigate this. I came up with the third page of the map that was approved by the Town which did show a driveway. It wasn't on the original application; it came during the process. If you look at the driveway that's indicated on that map you will see it is a very steep slope on the part of the driveway that goes from Slate Hill and runs for 150' where there is approximately 14.66% grade which is extremely steep. What that would mean if I had to put that driveway in, I would have to put a driveway on an extremely steep slope, remove a lot of forestry on both sides of the driveway, and the driveway would have to be over 400' long. So that brings us to today. My request of this Board is to permit me to continue the use of the easement and do away with any requirement that I should put in another driveway right next to the existing driveway easement and authorize the zoning permit be issued and let me proceed with the construction of the house. If you look at Mr. Simmon's letter dated April 4, 2018 it spells out very nicely what the history was and you can go down to his comments and his first comment, number 1 and it states "based on a Newton Planning Board Resolution for the 2007 subdivision application, I believe the Planning Board will have to approve the proposed use of the common driveway on lot 2.01 and remove any condition that requires a separate driveway on lot 2.10".

Mr. Soloway stated: The history is summarized in Mr. Simmons's report. When Ms. Citterbart denied the zoning permit it was after consultation with me and after I had consulted with Mr. Simmons. The problem is Mr. Devine wants to build a house and use this existing driveway easement, which under the easement grant has the right to use. It is just underneath the lot. The problem is that when the subdivision was done in 2007 that created this lot there was a condition attached to that subdivision that required that when a house was put on this lot, 2.10, it would have its own private driveway rather than being permitted to use the easement. That came about according to the resolution from them. Mr. McCabe testified during the course of the hearing in response to a Board member or attorney that there was no intention for that lot to utilize the easement and that if a house was ever put on that lot it would have its own private driveway out to the cul-de-sac. It wasn't formally put as a condition of the resolution but the Board attached an approval. In addition when the deed was filed perfecting this subdivision it did have language in it, albeit imperfectly, that you were not to have the driveway "because the premises will be accessed by a private driveway from the cul-de-sac terminous of Slate Hill Road". The driveway access across the easement Mr. Devine was proposing actually violated the resolution so I suggested to Mr. Devine that he make application to this Board by a

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combination of an appeal from the denial of the zoning permit and a request to amend the prior approval to eliminate that condition so he'd be allowed to utilize the easement. Mr. Mulhern claims he doesn't know this happened. Mr. Devine didn't know this and bought the lot and is asking the Board for relief. Mr. McCabe will testify if there is any reason for imposing that restriction in the first place.

Mr. Le Frois questioned: Would Mr. Mulhern have to abide by the easement? His acceptance or non-acceptance of the shared use is a moot point?

Mr. Soloway stated: Mr. Mulhern's deed to Mr. Devine included in this application package specifically references that easement and says it can be utilized. The issue is whether the Board is willing to amend that prior approval to eliminate the restriction on using that easement.

Mr. Devine stated: You quoted the deed as saying "the premises will be accessed via a private driveway from the cul-de-sac terminus at Slate Hill Road". The easement is a private driveway that emanates from the cul-de-sac termination of Slate Hill Road. That's my understanding of what the access would be.

Mr. Soloway stated: It is imperfectly expressed but to me private means singular.

Mr. McCabe stated: I would disagree with the statement that such an easement that's only singular can't be multiple. I've seen it many times over the years in my profession. The driveway is not 400' but 600'. We were told initially that we had to have a separate driveway and we could not come in on this. One of the concerns was whether or not emergency vehicles could get in there. Whether there was enough area for by-pass of vehicles if there was one coming and one going. After inspecting the driveway, there are four places that are wide enough to get a car coming down and off on the side. The shoulder is more than 10' wide in some areas off the pavement. So you can get a vehicle pulling off the by-pass in multiple locations on that existing driveway. The other thing is that if you look at this, the driveway that we had to design there is a very long driveway just a hair under 15% grade, the driveway comes in off an existing driveway that enters off the cul-de-sac off Slate Hill Road and goes right hand before it makes a hefty left hand turn to start going up the grade of 15%. If you are going to bring a loaded pumper system up there in an emergency you are not going to be able to do it in a bad weather situation. You would have to make the turn and then start going up.

Mr. Soloway questioned: Are you talking about the proposed new driveway?

Mr. McCabe stated: Yes. You will also have to cut down a lot of trees from the area. Another thing with the design is that we have an existing paved driveway that serves several houses and it is discharging stormwater on to Slate Hill Road. The design for this driveway would be putting an additional 600 linear feet of stormwater from the driveway to go down there. We want to minimize that impact. With the design of the property being what it is as a result of the subdivision, the existing driveway has a description by deed on the center line with 10' on either side, it comes within a couple of feet of the actual property line. So when the deed from Mulhern to Devine was prepared and he had Mulhern's authorization to access from the existing driveway on to lot 2.10 the change was only going to be two or three feet outside of the described easement of the driveway that is existing across Mulhern's old property onto the lot that Mr. Devine now owns. What I'm suggesting is that from a planning point of view it makes more sense to not use the proposed driveway because of the deforestation that would need to take place, the stormwater that is going to be generated, and because it provides a problem

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with access for emergency vehicles. If you have any emergency vehicle coming up the existing paved driveway there are numerous places at the end where they can turn around and come back down. If you came up the driveway that is being proposed there is no turnaround to get an emergency vehicle back down. So from a planning, and common sense, practical point of view we are trying to eliminate problems that could be caused as a result of construction of this 600' driveway and to use the existing driveway for this one additional house that will not pose any imposition on the use of the existing driveway. The people living in this house won't add considerably to the number of trips generated on this site to the point that it would be detrimental to the integrity of the road or the use of the road.

Mr. Le Frois questioned: Do you recall why it was proposed in the first place?

Mr. McCabe stated: We were told from someone on the Planning Board that we had to do our own driveway. Otherwise I would have just come in off the existing paved driveway.

Mr. Butterfield questions: Is there currently only one driveway to access this property?

Mr. McCabe stated: You have the property that is in Fredon that the driveway extends to, there is the house that Judge Mulhern occupied. If you drive down the length of this driveway you will see one house, which is in Fredon. This is not shown on the plans. There is also another house on lot 2.09 and you can see on sheet 3 that we have a 30' wide access easement to lot 2.09. And there is a house that's there now with one of the lots that was created as a result of the subdivision.

Mr. Devine stated: I would also point out that that lot utilizes the easement.

Mr. Le Frois stated: So there are two houses utilizing that easement.

Mr. McCabe states: This would be the fourth house, it includes Mulhern's.

Mr. Devine stated: There is no further subdivision permitted on this lot.

Mr. McCabe stated: So what we are looking at here is these three houses, one in Fredon and two in Newton, which use the road. We are proposing to add a fourth house.

Mr. Wink questioned: How much of the existing driveway easement would the fourth house be using?

Mr. McCabe stated: You would be using about 650 feet total. On sheet 3, you will see a turn around by the Mulhern house. The access into the lot 2.10 is about where the first part of the driveway is.

Mr. McCabe continued: I concur with what counsel has said. We would have to amend the previous resolution vacating the requirement of the proposed driveway permitting this house on lot 2.10 to use the existing paved driveway in that access easement as it's noted in the deed from Mulhern to Devine which is approved.

Mr. Le Frois questioned: Back in 2007 it was ok to put a driveway. Now it's not such a good idea.

Mr. McCabe stated: I didn't think it was a good idea in the first place.

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Mr. Le Frois stated: We are not here to debate what was at that meeting, although I believe I was there. But I don't recall specifics. However, I don't think it's a bad idea to continue to use the existing easement driveway.

Mr. Flaherty questioned: Would the proposed driveway be a higher elevation than the existing driveway and would it cause extra water to run off onto the existing driveway?

Mr. McCabe stated: In some areas where the existing driveway is it might have added that, but if you drive up there and look at it, when you get to around 300' you will see that the road is pretty flat. So it would be pretty much even. It's just when you get to the bottom you get a cyclone, roller coaster operation.

Mr. Flaherty questioned: So it could cause a detriment to the current situation?

Mr. McCabe stated: It could, as well as throwing stormwater onto Slate Hill Road.

Mr. Wink questioned: If the existing driveway collapses, who pays for it?

Mr. McCabe stated: You would have four people involved. It is the four people whose houses lead onto it.

Mr. Wink questioned: Wouldn't it make sense to amend the agreement to more specifically spell out the maintenance of it.

Mr. McCabe stated: Mr. Mulhern had arranged for a maintenance agreement with the different property owners.

Mr. Wink stated: My concern is more with the maintenance agreement. It is not very explicit.

Mr. Le Frois questioned: Can we comment on the maintenance agreement?

Mr. Soloway stated: I think it's within the scope of your authority to make sure there is a provision. I understand Mr. Wink's point. There should be a recorded document that details it. It could be more specific. To be honest I don't know if it would be a burden or not to have Mr. Devine get the other three parties to agree upon a more detailed maintenance agreement.

Mr. Devine stated: To the best of my knowledge there is nothing else written other than what is in the easement. It states that they share it equally. I'm not sure how much more you can add. It says they need to join equally in the maintenance of the property.

Mr. Le Frois questioned: Maybe one question would be who determines when it is time for maintenance?

Mr. Soloway stated: This is not an uncommon situation particularly in rural municipalities where there is a shared driveway or easement. I've seen agreements that are no more detailed than this and I've seen agreements that spell out a whole procedure.

Mr. Elvidge questioned: Is this currently a paved road?

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Mr. Devine stated: The easement? Yes.

Mr. Elvidge stated: I guess I could see back then doing a subdivision that a driveway would be part of the site plan to utilize the piece of property if it's a future issue. I think there is some common sense to the fact that you would want a shared driveway. My only consideration is that now it is being utilized for another piece of property it becomes in a sense more than a driveway and more like a road. Do you think there is a requirement for safety reasons or a fire truck that there be a bump out?

Mr. Soloway stated: I think the Board could grant approval with a condition that the Fire Official approve the easement in terms of running the fire engine.

Mr. Marion stated: This road has been here for a long time and there are already three homes on it. Is it unduly for the applicant to have to get the Fire Chief to approve it?

Mr. Soloway stated: That would be up to you. I think it would be appropriate, but that doesn't mean it's necessary.

Mr. Ragsdale stated: So there will be four houses using the road. I agree with Mr. Wink that an agreement be put in place to attach to the property and users. I wouldn't put it on the Fire Chief to make conditions. Maybe the Town Engineer could make some suggestions to put into the easement. It's a rural road. The property owners don't always share their own ideas about when it needs maintenance.

Mr. Simmon's reviewed his report dated April 4, 2018 and stated: Mr. Devine, McCabe and Soloway covered most of it. My recollection is that one of the comments that I'd had on the report back on 2007, if you look on sheet 2 of the plans, off the cul-de-sac of Slate Hill Road where lot 2.10 has frontage on it there is another existing driveway that goes up to the north. I remember bringing up the question as to where that goes to and I believe it goes to the County College driveway. So looking at that driveway and the driveway that at the time before the subdivision was approved serviced the Mulhern's house, my question generally was what kind of driveway situation will service lot 2.10. My recollection was, the answer was its going to have its own separate driveway and it was left there. Having said that, I'm not disagreeing with utilizing the common driveway tonight. The second thing I want to point out is under comment two I note this clause which refers back to the easement agreement because adding lot 2.10 adds an additional dwelling onto the existing paved driveway. It should be confirmed that adding the lot 2.10 dwelling to the driveway will not overburden the easement and possibly prevent the owner of block 101, lot 12 in Fredon from subdividing his existing lot into two lots in the future. I don't know if the owner of the lot in Fredon plans on doing that in the future or not, but there is some language in the easement that specifically limited it to two lots before it was overburdened. I just want to put it on the record that you are adding an additional lot on there now. I just want to make sure you don't take the other person in Fredon Townships spot because there could be potential for a fifth. If the Board wants me to I can check out the existing status of the paved driveway. If anything, I think we could find a place for bump out in case a fire truck is coming down and another vehicle is going up.

Mr. McCabe stated: There are at least three spots where you can pull off and you have about a 10' wide area.

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Mr. Simmons stated: I think the concern is that vehicles can pass. Not so much that any grades are going to be changed but the concern is being able to cross any two lane traffic.

Mr. McCabe stated: Which they can do now.

Mr. Le Frois questioned: Paved or unpaved?

Mr. McCabe stated: Unpaved.

Mr. Le Frois stated: You may want to pave it.

Mr. Simmons stated: I have a suggestion. When Mr. Devine gets his house built up on the top, my assumption is that he will be paving the driveway to the end of the house. If he's got a paver up there already he could pave a little and pull off it's not so bad.

Mr. Devine stated: I would also point out that is why it's called Slate Hill Road. The shoulders are all slate.

Mr. McCabe stated: On page five of the May 16, 2007 minutes, Mr. Le Frois was concerned about access for emergency vehicles. Mr. Simmons confirmed that the driveway would have to allow for appropriate turning radii for emergency vehicles and it does at the top.

Application opened to the public.

1st Public sworn: Joseph D'Annibale, 25 Slate Hill Road. I've met the people up there, the builder who has been building. I've given him some maps. Don't take my opposition in any way to preclude them from building up there. The driveway is paved, it is in need of repair. I am here with the other two property owners who use this driveway. The person in Fredon, myself and the other Newton resident. It's approximately 10 to 12' wide in some spots. The bump outs that were discussed are there. You can pull over in some sections and vehicles can pass in the nice weather. As soon as it starts snowing you have a single driveway coming up and down and you meet another vehicle and someone has to back all the way up or down. The driveway is in need of repair. Winters are rough on that driveway. Every summer we have to fix the potholes. The driveway was paved 20 years ago. Adding another family is going to add more traffic and we already deal with a traffic issue with three homes. Reading the resolution, we all assumed that that property was going to have its own driveway. I wondered why things stopped and they cleared the lot up there and then we received the letter in the mail. I agree with the Fredon resident. He bought the house to be secluded with less people up there traveling his driveway. It was in his thoughts that if someone was going to build on that lot they would have their own private and separate entrance. Regarding emergency vehicles, yes they can get up there. If it's inclement weather it's going to be tough. In regards to a new driveway that would be put in where they are putting the house. It would be accessible to our house as well if needed. They would have to get a pump truck up there because the fire hydrant ends back at 18 Slate Hill. Mr. McCabe's concern about the stormwater being drained onto Slate Hill Road, I don't want to disagree with him, but the topography of that land when you would come down onto Slate Hill, I don't think you would get 600' of water going on to Slate Road. You would get about 40' that would come off the hill onto the road at best. Same with my property. We really don't get a lot of run off. So those are my concerns; the passage of more vehicles especially in inclement weather. The other issue is this maintenance agreement that we're talking about. We are three new residents and we are planning to stay there for a long time and we just call

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each other on the phone. By adding another resident and requiring us to do a maintenance agreement is an additional burden on us to get an attorney and draw something up. Thank you for your time.

2nd Public sworn: Mark Smolen of 65 Gunn Rd., Branchville, NJ. The snow is always an issue wherever you are. Right now there is an area dedicated for snow removal for Slate Hill Road which is the mouth of the proposed driveway. When the snow plow comes they pile all the snow where this driveway is proposed. I think the Town has an easement for the snow to be piled at the end because if you plow up there, there is nowhere for the snow to go.

Mr. Devine stated: The Town does have a snow removal easement that was established that is 10' wide. Obviously snow couldn't be put there is there is a driveway.

Mr. Soloway questioned Mr. Devine: Are you saying that the area where a private driveway would go has the snow removal easement? It has the right to stock pile snow?

Mr. Devine stated: I'm just saying you have an easement already.

Mr. Soloway stated: The use of a private driveway running up to where this house is proposed would access Slate Hill Road when there is snow.

Mr. Simmons stated: The usual way those snow removal easement are set up, they are usually parallel and concentric to the cul-de-sac. It lets the Town pack snow around the perimeter. From a practical standpoint, the area where the driveway comes off, the private party would have to plow through the area. But when subdivisions are normally done we don't know exactly where the driveway is going to go they make it a blanket across the entire area. We don't have that many of them in Newton.

3rd Public sworn in; Charles Danza, 27 Slate Hill Road on the Fredon property. I just purchased this property in August of 2017 for the privacy. I was told by my lawyer that there are 3 people that can use the road because that's the way the deed was written. We really get along and I'm concerned that if you add another person in that mix it will make it more complicated to get things done.

4th Public sworn in; Steven Pyskaty, 23 Slate Hill Road. I bought the property from the Mulherns three years ago. When we purchased the property there was this piece being questioned now and the closing attorney had said we could buy the piece of property and that would be a good addition for you and we said no we don't want it. We asked about it and asked about access to it. We were told that if it is developed it will have its own driveway. We understood that it was just going to be the three of us and the fourth would have its own thing. The three of us get along really well. We have no problems except in the winter time. The driveway is tight and needs to be wider. When we meet on the driveway somebody has to back down. As far as emergency vehicles if you are talking about the turnaround up there, you are not going to be able to turn a fire truck around up there with all the trees. If you try to access the first part of my driveway it is very steep. If it is winter time with a little bit of ice a fire truck is not getting up that to turn around. We have problems with cars and our four-wheel-drive truck. To get up there we have to put salt on the driveway. Even when you get there you are not able to use that part to turn a fire truck around.

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Mr. McCabe stated: I was there this afternoon. You are saying that from the driveway that services the houses right now that you have a steep incline off of that to get to your house?

Mr. Pyskaty stated: Yes. I do. It's about 30' and it's steep. If you don't have four-wheel-drive when it snows you are not getting up there.

Mr. McCabe questioned: That would be the first turn on the horseshoe, correct?

Mr. Pyskaty stated: Yes.

Mr. McCabe questioned: Theirs is the second turn.

Mr. Pyskaty stated: We don't even try it because it's steep too.

No more public stepping forward. Portion closed.

Mr. Devine stated: The neighbors indicated that they don't want to see a fourth house there. I already have the right to use that easement. It's in my deed. It runs with the land. It's perpetual in nature. If you have a fourth house, you have a fourth payer. There is a maintenance agreement that states the users will split the cost equally. So if it needs to be paved or potholes need to be fixed there is a fourth person to chip in and do that.

Mr. Levante questioned: Would you be willing to incur the cost to draft some kind of legal document that clearly states just what that maintenance agreement would be?

Mr. Devine stated: I would if the Board mandates it. But I like the "stupid" method. Keep it simple. We have an agreement that says the owners need to share equally in the maintenance. Otherwise it would be more complicated. I think it is best to abide by the agreement. Four people maintain it equally.

Mr. Le Frois questioned Mr. Soloway: I would like a little clarification. Is it a fact that Mr. Devine has the right at the moment to use the shared driveway? But there was an additional requirement in the 2007 resolution that states that if a house was built he would need to build a driveway?

Mr. Soloway stated: I think the easement originally drafted predated the subdivision. The subdivision gave rights to that 2007 easement. Mr. Devine bought this property from Judge Mulhern after 2007 and Judge Mulhern put something in the deed reinforcing the easement. It isn't the job of the Town or Zoning Officer for determining rights under that. The reason that this application is here is because the 2007 subdivision approval required that any house built on 2.10 have its own private driveway. So it's not so much a matter of what the easement agreement says, it's a matter of having to amend the prior Board approval to eliminate that if the Board is inclined to do that. I indicated in the beginning that I thought it needed to be addressed to determine any reason to impose that restriction. Mr. McCabe's testimony actually was when they were putting together their application somebody said they should do it that way and wanted to get it approved and they did that. He didn't think it was a good idea, but they wanted to get it approved so they agreed to it.

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Mr. Le Frois stated: The problem is it's been out there for ten years and these are all new property owners back there and they had an assumption and a condition when they purchased their properties. So that is what we have to look at when we are thinking about that.

Mr. Marion questioned: Have you looked into the cost of putting in this driveway?

Mr. Devine stated: I haven't actually got any quotes yet. It is a 600' driveway and you are looking at clearing all the trees to the south side of the property because when it slopes down it does so at 15% and then goes down to a gulley and makes a quick right turn to go up Slate Hill Road. I used to live on a 14% slope. We had no problem with sun, it was sunny all the time, but nobody could get up there in the snow. It was just terrible. If you look at the terrain, it is very difficult terrain. I can't fathom how much it would cost. The removal of the trees would also make the property look horrible. It would take away from the whole concept of trying to save trees and not create impervious service. That would be 6000 square feet of impervious surface. There would be a lot of run-off from that.

Mr. Marion questioned: With the existing easement, how far down from Slate Hill would your driveway start?

Mr. McCabe stated: You are going to come up 650' to get to the house where it's being proposed.

Mr. Marion questioned: Have you spoken to your neighbors at all about this?

Mr. Devine stated: No. I didn't think there was any problem with just coming before the Board. I thought it was just a technical problem. In doing the title work I didn't see any requirement to put a driveway on that property. Nothing in the deed spoke about it. There was just one clause that said the driveway should come up from the cul-de-sac and it would be a private driveway. I very much assumed they were talking about an existing driveway. In 2007 when creating the subdivision it was Mulhern's concept to have one driveway. I thought it was some kind of error. The same issue happened with the other subdivided lot. He was supposed to be down to Swartswood Road with his driveway and for some reason that all changed and that house uses the existing right-of-way. So I just thought it was an error that should be corrected.

Mr. Soloway stated: The "no" resolution is "no". The "yes" resolution could have conditions attached to it in addition to the regular conditions which could include a more robust maintenance agreement; and somebody from the Town i.e. Fire Chief or Mr. Simmons determine that the emergency access for the fire truck is adequate. If it wasn't they would have to come back to the Board or meet the requirements to make it adequate.

Mr. Elvidge stated: I'm inclined to not approve the amendment based on the testimony of the adjoining property owners. Because of the fact that their attorney's at the time of purchase had expressed to them that the adjoining property was not intended to use the easement.

Mr. Flaherty stated: If the Fire Official went out and said no it is not sufficient and needs to be widened or any other changes made to it, under the existing maintenance agreement in the easement wouldn't that cost fall on the current homeowners?

Mr. Soloway stated: Good point.

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Mr. Le Frois stated: I think if something is not right, the people who are already there would not have to do anything.

Mr. Soloway stated: I think Mr. Flaherty's point is that if the Fire Chief or Official recommended or required that it be improved in some way that the existing property owners would be responsible.

Mr. Le Frois questioned Mr. Soloway: Does it make sense for us to take a short break and let Mr. Devine speak to the other property owners and see if they can work something out instead of us trying to do it.

Mr. Soloway stated: Yes.

Mr. Elvidge stated: I agree. Maybe there is something they can work out.

Break for 10 minutes.

Re-opened to the public.

1st Public Joe D'Annibale, 25 Slate Hill Road. In the brief time we had we agree that we don't want a maintenance agreement with a fourth party. We are still saying that we would like to go by the resolution that precludes them from using our driveway for the access to their house. I did mention that if there was a problem with the first few feet from the driveway access, they could use 50' of our driveway to get to their property rather than the whole 600'. We didn't really agree on that, but it was brought up. Regarding the Fire Marshal, he was up there when I built my house. He did look at the land when I was building my house. We still want this driveway to be just the three houses that are on it as the resolution clearly states.

Public portion closed.

Mr. Devine stated: I would like to respond. Using the first 50' wouldn't do it. If we would go with that concept that we would all enter on the easement and somewhere along the line we would cut off, that somewhere along the line would have to be passed through the slope. Otherwise we would have to cut off and go down into that slope again and come back up and it would make even worse of a driveway. I guess we would have to come in through the 175' part and then cut over and put in a new driveway. That is just a concept. We didn't agree on it. I reiterate though that I still have the right to use that driveway. Regardless of what happens, I have the right to use it. I'm an owner of the property and I have the right to use it and it runs with the land. They can't preclude me from using it. Even if I put my own driveway in I would still have the right to use it because it runs with the land.

Mr. Le Frois stated: I think that is the part Mr. Soloway stated that we are not here to decide that.

Mr. Soloway stated: That would be for the courts to decide.

Mr. Soloway continued: If he was going to drive and force that, he will still have to cut a driveway from the easement driveway to his house and clearly would violate the conditions of prior approval.

Mr. Devine stated: I would come up the current easement and make a right onto my driveway.

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Mr. Soloway questioned Mr. Devine: Is there any point in giving you another month to try and work this out with your neighbors? Do you want that? You can ask the Board to adjourn it and consent to an extension of the statutory time.

Mr. Devine stated: Yes. I ask for an adjournment to try and work something out.

Mr. Le Frois stated: The Planning Board is fine with carrying the application to next month, May 16th so Mr. Devine can talk to the neighbors to work something out.

Mr. Devine stated: Can you give me a little direction as to what issues we discussed tonight that you are looking for us to work out?

Mr. Soloway stated: Maybe you can figure something out with them to allow you to use that and withdraw their objections. If they don't want that you will be exactly where you are at this moment.

Mr. Le Frois stated: The Board has already prepared a resolution from 2007 and there has been testimony in an attempt to have the current Board change that. That may not be an easy thing to do. You heard some opinions through the course of the meeting as well as statements from the three property owners which we didn't know before the meeting so that has enlightened some of us. If it's a decision that you can come to instead of us coming to it serves everyone in a better way.

Mr. Devine stated: I make the request for adjournment.

Mr. Soloway stated: This application is carried to May 16th at 7:00 p.m. with no further notice.

DISCUSSION:

Mr. Soloway stated: I have received a letter from Paul Ferriero and he also sent an email to Jessica Caldwell and David Simmons. Martorana is working on Phase Two and would like to switch the requirement of brick façade for a stone façade. They are having many customers that prefer the stone. He wanted to check with Board before he signs contracts. He didn't understand the brick façade to be a key factor in the approval, but he wants to see if this is ok or does he need to come in for an amendment.

Ms. Caldwell stated: It is a separate row of townhouses.

Mr. Flaherty questioned: Is it going to be a mix? I would like to see what they are talking about. If there are six attached units are we talking about two being stone, and two being brick?

Ms. Caldwell stated: We will get more information and bring it to you.

Mr. Marion stated: I would like to see it.

Mr. Soloway stated: Then the response would be to have them come in. Maybe a site plan waiver.

Mr. Le Frois questioned: What is the most economical way to do it?

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Ms. Caldwell stated: Maybe we can look at it. It can be informal just to look at the architectural plans.

Mr. Soloway stated: I don't think preparing a huge resolution for something that is a minor change is necessary. There is an escrow on this matter.

The Board will request that Mr. Martorana come in informally.

Mr. Levante and Mr. Elvidge recused themselves before the next application.

Rockywood Property, LLC (#MSV-2-2018)
Block 14.04, Lots 27, 29, 35
77 Madison Street, 71 Madison Street, 55 Madison Street

The applicant is requesting a lot line adjustment, "c" variance and "d" 2 variance.

Mr. William Haggerty, Esq. of Dolan and Dolan will represent the applicant.

We are seeking an approval of a lot line adjustment, classified as a subdivision. Which would augment and make lot 27 a larger lot. Lot 27 is the critical lot that my client is interested in. It would be used for agricultural purposes. That is a conditional use in the T-2 zone where the property is located. It is a transect rural area. It is now 4.52 acres and it will be augmented by .83 acres for a total of 5.35 acres. We also are dealing with lot 29. It is in the T-3 zone and it would be reduced by .33 acres to .493 acres. The line would be adjusted so the garage which is bisected by the lot line between lots 29 and 27, then it would be located totally on lot 27 which would remove that encroachment. Lastly, we are dealing with lot 35. We will acquire .5 acres from that parcel with brings it to 2.287 acres. This parcel is located in the T-2 and T-3 zone. We would acquire property primarily in the T-2 zone where agricultural is a permitted use. We would need variances for minimum side yard setback that is pre-existing and removing an encroachment of indicated area. We would have a 4' setback. The reason we propose a 4' setback for that detached garage is to accommodate a paved drive. If you look in your plans you see the entry from Madison Street there is essentially a flag lot entry. If you run down along that driveway you will see a turn. The garage is there showing a lot line running through that garage. We would relocate that lot line and it would provide a 4' setback. But if we increase the setback anymore we would have to remove a portion of the paved drive which would affect access to the house on lot 29. It vastly improves the encroachment situation of this building. This property has been owned by this family for four generations. I'm going to ask my client a series of questions to give a historical perspective and what she intends to do. The conditional use variance is due to the presence of a building on lot 27 that does not have a 200' setback from all the property lines. That building is proposed to remain. If you look at your plot you will see that building is above the designation of 14.04 and the block designation in the center and it is referred to as one-story framed building.

Sworn in: Maryanne Huff Casciano, 99 North View Road, Salem, CT. Owner of the Rockywood property, 75 Madison Street, lot 27, which is an adjoining property, 71 Madison Street which is lot 29 and lot 28.

William Stoehr of 129 Lincolndale Acres, Washingtonville, NY. Registered Land Surveyor. Licensed in NJ since 1982 and license is current.

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Mr. Haggerty questioned Ms. Casciano to describe property history.

Ms. Casciano stated: My great grandparents bought 63 Madison Street in 1895. Their son, Harvey Losey, bought additional properties down the street and the flag lot we are talking about starting in 1913 and 1922. The historic use of lot 27, aka the farm property, is that it was bought in 1922. My great grandparents, grandparents, and my mother used it as a chicken farm, sold eggs and the meat from the chickens. During the Depression they had problems with people stealing the chickens so they ended up selling all the meat. The property has remained in our family and it has two fields there surrounded by woodland and rocks. The name came from Rockywood. It is a name my family came up with. There are two fields that are basically like a bowl. There is no run-off from this property. It is very self-containing. So the residents on Madison Street are on a higher elevation. There is a rock ledge there and trees.

Mr. Soloway questioned: Have there been chickens there since they were butchered?

Ms. Casciano stated: No. I had a duck growing up.

Mr. Haggerty questioned: Is it the same building that is there now that was used for the chickens?

Mr. Soloway stated: So the chicken coop exists.

Ms. Casciano stated: Yes. It has a concrete floor. It exists as it did then.

Mr. Haggerty submitted Exhibit A1, an aerial view of the property with 4/18/2018; and Exhibit A2, a single sheet with 7 photographs taken by Ms. Casciano and a drawing; each labeled with the views of which they were taken.

Mr. Haggerty questioned: You have one photo of the chicken house and it's referred to underneath as livestock enclosure, yes?

Ms. Casciano stated: Yes. That's the variance for less than 200' from property line.

Mr. Haggerty stated: You have one that says accessory structure variance for less than 10' from the side yard and that's the one I talked about before where you would be relocating the lot line around it to provide a little buffer?

Ms. Casciano stated: Correct. My grandfather owned several properties in a row and it was a family compound so he didn't pay attention to lot lines when he was doing things. So he put up a single story garage on the property line. I'm trying to take care of that situation while I'm here.

Mr. Haggerty questioned: Underneath is a photograph of the south field. There's a fence around that. Is there any planting in that?

Ms. Casciano stated: Yes. I have 240 blueberry bushes and I'm working on raspberry bushes as well.

Mr. Haggerty questioned: On the right, the photograph refers to the north field with the livestock enclosure in the background. Do you have any livestock in there?

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Ms. Casciano stated: No.

Mr. Haggerty questioned: There's a photograph labeled parking area 130' wide. Could you describe the topography of the land there?

Mr. Haggerty submitted Exhibit A2, and distributed photographs to the Board.

Ms. Haggerty questioned: What do you propose to do with the property?

Ms. Casciano stated: My mission is to cultivate and preserve the family homestead while offering organic agriculture to Newton residents.

Mr. Haggerty questioned: What is your experience with this?

Ms. Casciano stated: I'm a Master Gardener. I took the class at UConn in 2004. The purpose of a Master Gardener is to educate the public and provide a service in regards to plants and trees. It's a resource offered to the State. We help homeowners, property owners, and farmers with problems they have. I've been a gardener my whole life and I've always had the desire to get this farm back. I am all about organic farming and produce. In 2013, I went to harvest strawberries at the local pick your own strawberry farm. I spoke with the young college kid there and mentioned that I'd passed a field planted with rye grass. That is a cover crop that is put in to nourish the soil. I asked him how you eliminate the rye grass because the roots are very deep. He said they just spray Round-Up on there and the USDA says it is ok. Since then I have also had health issues with Lyme disease from two different tick bites and bacteria. So that is why it is very important. Any naturopathy emphasize that so many illnesses are caused by our food supply. I've come to learn from my training and taking farm courses that commercial farmers are all about production. They pump a lot into the ground; fertilizers, pesticides and such. Organic is minimal input. You try to work with the soil and you don't incorporate a lot. If you have a bug problem you don't spray. So that is my goal to make an organic production with an emphasis on education.

Mr. Haggerty questioned: Do you have a cover crop on any of the property now?

Ms. Casciano stated: I did put radish on half of the fenced area which has a deep root and I put down rye grass. It is an annual rye. So you plant it in the fall and then it dies off. So you nourish the soil without tilling.

Mr. Haggerty questioned: Do you till the soil to plant?

Ms. Casciano stated: No. I just plant using my shovel. I won't be using a tractor to disturb the soil.

Mr. Haggerty questioned: With this property, did you ever consider subdividing and constructing houses?

Ms. Casciano stated: Yes. The zoning changed to a T-2. The most homes we could put back there is four.

Mr. Haggerty questioned: How much traffic does your farm work generate?

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Ms. Casciano stated: My goal is to put in perennial crops and to do this part time. The blueberries and raspberries are to be harvested in the summer months, June through August. I'm also planting asparagus. I'm not doing annuals. They take a lot of work.

Mr. Soloway questioned: Is it your intent during non-frost conditions to have a crop for sale?

Ms. Casciano stated: Yes. This is for retirement. I don't want a greenhouse where I would have to spend the full year there. It would just be a summer time venture for me.

Mr. Haggerty questioned: Regarding deliveries, will you have any deliveries there?

Ms. Casciano stated: I did have a delivery of compost.

Mr. Haggerty questioned: Do you anticipate deliveries more than once a week?

Ms. Casciano stated: No deliveries. I just had a one-time 30 yard dumpster delivered.

Mr. Haggerty questioned: What kind of fencing will you have for deer control?

Ms. Casciano stated: I have an 8' deer fence.

Mr. Haggerty questioned: Any garbage disposal required? Generator for electricity? Any heating or cooling equipment?

Ms. Casciano stated: No.

Mr. Haggerty questioned: What will your hours of operation be?

Ms. Casciano: You can't pick the berries every day. During harvest time I might have to hire someone to help me pick and then there's a consortium selling organic berries in NJ. I would either join that or join the Co-op in Newton.

Mr. Soloway questioned: Is it your intention to grow the blueberries and raspberries, package them and sell them to the public? Or will you have a pick-your-own operation or both?

Ms. Casciano stated: It depends on production. Blueberries take a long time to come in. If I don't have the production I can't do pick your own. It would be ideal to have people walk over and I could be open twice a week for four hours for people to pick their own organic produce.

Mr. Flaherty questioned: How would you control parking?

Ms. Casciano stated: I would hope they would walk or bike. But I do have a 130' lane between the fields that is open space.

Ms. Casciano referred to drawing and stated: You see that is an ash tree. From my car to the wood line where the cemetery is it is 130'.

Mr. Soloway questioned: Is it paved or gravel?

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Ms. Casciano stated: It's gravel. Asphalt is not permitted in T-2.

Mr. Haggerty questioned: Any drainage problems?

Ms. Casciano stated: No.

Mr. Haggerty questioned: Would you be open at night?

Ms. Casciano stated: No.

Mr. Haggerty questioned: What noise would you produce?

Ms. Casciano stated: Weed wacker and lawn mower.

Mr. Haggerty questioned: How many employees?

Ms. Casciano stated: Just me and I have a tenant that helps me out.

Mr. Haggerty questioned: How about recycling on the site. Would there be composting going on?

Ms. Casciano stated: The waste would be leaves from the trees and I put them in a pile. I will try to chip any tree limbs. The goal of organic farming is to keep everything onsite.

Mr. Haggerty questioned: Are you proposing sidewalks?

Ms. Casciano stated: No.

Mr. Haggerty questioned: How about security?

Ms. Casciano stated: I have locks on the buildings and combination locks on the 8' deer fence.

Mr. Haggerty stated: We didn't ask for signage but we show a proposed sign on the bottom right illustration on Exhibit A2. That sign would have a dimension of 18" x 12".

Mr. Haggerty introduced Exhibit A3, and stated: Attached to this is a copy of the sign ordinance.

Mr. Soloway stated: Just so the Board members are aware, signs are not permitted in the T-3 zone. But the agricultural use she is proposing is permitted to some extent as a conditional use. She would need a conditional use variance because there is a condition that she doesn't satisfy.

Mr. Haggerty stated: On your ordinance on the second page of this exhibit we have an entry for directional signs. One for ingress, egress is needed internally to the site and that is allowed in all the zone districts. You also have decorative or open flags permitted in all districts. You have real estate and home professional occupation signs in all districts. Those signs are all larger than the one we're talking about. The directional sign would be permitted to 4 square feet, menu board 4 square feet, and a banner 6 square feet. We are talking about a much smaller sign.

Mr. Soloway questioned: Would it be illuminated?

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Ms. Casciano stated: No.

Mr. Soloway questioned: You indicated that the sign will be at the top of the driveway and can be viewed from Madison Street. Please clarify what you mean by "top of the driveway".

Mr. Haggerty stated: If you look at the subdivision plot at the top that could be a good reference.

Ms. Casciano stated: To the left of the manhole cover in that first picture somewhere in the grassy area is where the sign would be.

Mr. Soloway questioned: Is that the driveway?

Ms. Casciano stated: Yes. It is the entrance to the driveway, lot 27.

Mr. Haggerty stated: It also provides access to lot 29. That's why if we shift the lot line we will remove the encroachment from the garage and give it a bit of a setback.

Mr. Soloway questioned: To clarify, the sign location would be roughly in the grassy area between the driveway and the residence?

Ms. Casciano stated: It would be on 77 Madison's property. There is about 4' of grass.

Mr. Haggerty questioned: Will there be any fumes from your agriculture?

Ms. Casciano stated: No chemical fertilizers. No strong farm smells. No spreading cow manure. I hope to have chickens and would like to use chicken manure for the crop.

Mr. Haggerty questioned: How will you address irrigation?

Ms. Casciano stated: My goal is to have rain water harvesting off the buildings and have a storage tank and then pump the water for drip irrigation. It is a half-gallon per foot. It is a very efficient use of water. I already have a drip irrigation system. It is currently hooked up to the Town water. I used it twice last year. It uses half a gallon of water per foot. I have about 1000' down now. When I have all the irrigation down in the south field and I had to water it twice a week that would be 1,068 gallons per hour. So if I watered twice a week for one hour I would use 2,136 gallons per week.

Mr. Haggerty questioned: How does that compare to a single family home with four bedrooms?

Ms. Casciano stated: I looked up on the internet that a family of four uses 2,800 gallons per week. If we developed the property and had four homes on there we would use Town water at a rate of 1/2 a million gallons a year. With my proposed use I would use 21,000 gallons of water a year. But my goal is to use rain water harvesting. I would much prefer this to using the Town water because of chemicals.

Mr. Haggerty stated: We have a conditional use ordinance that would allow this use if you can satisfy the conditions of the conditional use ordinance. A lot of the conditions require a segregation of the building from lot lines of 200'. Actually you are increasing the setback for this subdivision that now exists going from 49' to 106'. Looking toward Madison there is 92.5' for that

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lot line for lot 32. So those houses are actually much closer to Madison Street than they are to the rear lot line than Madison Street. The houses themselves are more than 200' from the building but the lot lines are not. Is that correct?

Ms. Casciano stated: Correct. And there is a drop off embankment that leaves and sticks and garbage gets pushed over onto my lot.

Mr. Haggerty stated: You said you would like to restore the historic use of the chicken house and have chickens there. Is that right?

Ms. Casciano stated: Yes.

Mr. Haggerty questioned: Any other animals?

Ms. Casciano stated: I have not evaluated that. There is a tenant living there who has expressed interest in having a small flock of chickens.

Mr. Haggerty questioned: Would you commit to not having pigs?

Ms. Casciano stated: Yes. I will not have pigs.

Mr. Haggerty questioned: In terms of number of chickens, how many are you looking at?

Ms. Casciano stated: My grandfather had 1,000 chickens and there is no way I could have 1,000 chickens. Organic feed is very costly. I would want to provide organic eggs. I would like to have a couple dozen chickens

Mr. Soloway questioned: Would you agree to a rooster condition?

Ms. Casciano stated: Yes. I would definitely agree to a rooster condition.

Mr. Haggerty questioned: Would the chickens be fenced around the coop?

Ms. Casciano stated: Yes. I would have to set that all up. Keeping in mind that chickens like to forage in the woodland, I would build a fence into the woodland area.

Mr. Soloway questioned: Would they be free-range chickens?

Ms. Casciano stated: Yes. Within fencing.

Mr. Haggerty questioned: Where would the traffic generation be for this type of use?

Ms. Casciano stated: It depends on production. I would like to set up a farm stand, maybe a delivery service. I want to see what the public wants. I don't see it as a high traffic thing because I don't have the production for it. I'm happy to work with the local schools to educate and to have interns.

Mr. Haggerty questioned: Assuming four houses were built back there, with two cars per house, trip generation throughout the year would seem to be much higher than what your operation might produce.

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Ms. Casciano stated: Yes. And I believe people who live there are used to having the open area. If houses go back there it would really change the dynamics. I'm trying to embrace what the Town changed my zone to, agricultural, and keep it as green space.

Mr. Haggerty stated: It is an appropriate, reasonable, and historic use for the property and it is a lower impact than with houses. It is very seasonal and small scale, restricted to produce grown on site. Nothing will be brought in from any other farms.

Mr. Soloway questioned Ms. Casciano: If you had any goods you would sell at a farm stand, would they be at least 100' from any property line?

Ms. Casciano stated: Yes. I don't have a building now but there is a spot that says "potential farm stand".

Mr. Soloway questioned: Do you have an estimate as to how many cars you can fit in the 130' parking area?

Ms. Casciano stated: It is about 9' wide so at least ten to twelve cars. I would hope that people would walk through.

Discussion ensued about the rain water harvesting.

Mr. Le Frois questioned: Will you be selling chicken meat?

Ms. Casciano stated: No. I can't do that.

Mr. Le Frois questioned: Do you need a permit from the Health Department to sell eggs, or produce?

Ms. Casciano stated: I don't think I do because I'm not processing food. I know I need a business license. I will double check with the County Health Department. It would probably have to be inspected too.

Mr. Haggerty questioned Bill Stoehr: What is the topography like?

Mr. Stoer stated: The topography is very mild, perhaps 3 or 4% at most. The garage in question is almost level. There's no run off channels. It is just in the grass. The center of the property is basically lower than the perimeter so it is home to all the run off that flows on to the property. Behind the property is the cemetery and it has a considerable ledge drop off so there is no real access from the cemetery to the property. There is a fair amount of graded land on the northern side of the property. It's an old property. There is not a lot of undergrowth. It is a very nice, isolated property. To the south of the property there is a barrier, a ledge that runs along that property. You have a natural barrier around the entire property.

Mr. Ragsdale questioned: Would there be any tax impact to the Town if this is considered farm assessed?

Ms. Casciano stated: That is the goal to be farm assessed.

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Mr. Haggerty stated: I don't think that is an appropriate question due to the revenue that could be generated. Certain developers have special assessments. It's not a disqualification and it should not be a factor in the Board's decision making.

Mr. Ragsdale questioned: Madison is a busy street now. I would be very concerned with the traffic.

Ms. Casciano stated: It won't be daily. If I have a full crop of blueberry that is doing well I would do Tuesday's from 8 to 12 and Saturdays from 8 to 12. They will get picked very quickly.

Mr. Ragsdale questioned: Can you translate that into traffic? How many cars a day?

Ms. Casciano stated: If I had every bush putting out maximum production that would be 120 customers for the whole season. Ten weeks of growing. That would be 12 customers a week.

Discussion ensued over what is permitted in the zone.

Mr. Soloway stated: It is permitted as a conditional use in the zone. So the Town Council enacting the zoning ordinance has already determined that if you meet the conditional use requirements, then agricultural use is a permitted use on this property. If you don't meet the specific requirements on the property, such as for livestock, then the Board is considering an additional use variance to determine whether the property is still appropriate for the agricultural use notwithstanding the fact that the chicken house is less than 200' from the property line. So the focus is really on the deviation. It is not the property. We are asking about the amount of traffic but it is really not a basis to assess the application because the use is permitted.

Ms. Casciano stated: If I don't have enough for pick-your-own then I don't think I would do a farm stand. I would take it off site to a farmer's market or do a delivery.

Mr. Le Frois questioned: If that was the case you wouldn't have any traffic.

Ms. Casciano stated: Correct.

Mr. Soloway explained the application conditions/requests: You are deciding whether to allow the use of the shed even though it doesn't meet the ordinance requirement in terms of required distance from the property line. There is also a separate bulk variance for a shed which is a required setback.

Ms. Caldwell stated: That is part of the lot line adjustment that you can have a variance for.

Mr. Soloway continued: Part of the application is for a conditional use variance to allow the agricultural use notwithstanding the deviation and the separate bulk variance for the shed, and a separate request for the sign going in to allow the sign. There is also a request for a minor subdivision with that.

Discussion ensued.

Mr. Haggerty stated: We are removing the encroachment. We would get more area but for the fact we destroyed the driveway and lose access to lot 29. We hope the subdivision is pretty

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easy because we are making the situation better. With the chicken enclosure we are increasing the setback from 41' to 106'.

Ms. Casciano stated: The property is a rectangle, 600' long by 300' wide. There is no way a livestock enclosure can meet that 200' requirement. I'm doing this now because I don't want to have to revisit it and I would really like the compost for the soil.

Mr. Marion questioned Mr. Soloway: Is the chicken coop a pre-existing use?

Mr. Soloway stated: It is a pre-existing structure, not a pre-existing use because it has been so long since they had chickens there.

Mr. Simmons referenced his report dated April 4, 2018 and stated: Starting on page 2, Zoning. Lots 29 and 35 are in the T-3 zone and the other parts in lot 27 are in the T-2 zone. Shifting the lot lines is not going to adjust the zones. Part of the reconfigured lot 27 will still be in the T-2 and T-3 Zones. With regards to lot 27, we've got the lot with variance. It is 35.11' width from Madison and that is an existing condition. We talked about the 4.1' variance for the shed once the lot lines are readjusted and that's an improvement from what's there. We talked about item 3a.ii. The applicant is proposing to reconfigure lot 27 for farming purposes and they end up having 5.35 acres and the requirement is 5 acres. A portion of the existing paved driveway off Madison Street serves as a shared driveway for adjacent lots 28 and 29 which both have residents on them. The subdivision plan shows access to the utility easement to address the existing configuration and note that a maintenance agreement should also be part of the easement. Just so the Board knows, when the applicant was in for the TRC meeting that is one of the things we brought up and suggested that they have the easement agreement in place in case those properties end up owned by different buyers. I would like to point out the existing water line running from Madison Street to lot 27. Approximately midway the water line tees off the existing line and on lot 29 the ownership and responsibility for the two sections of water service lines should be clarified. In particular, if lots 27 and 29 are in separate ownership in the future, the ability to shut down one water service without affecting the other to be properly set up. There are various aerial utility lines that appear to originate from the existing dwelling on lot 29 to serve the various garages and other structures on lot 27. I would advise the utilities be separated for the lot 27 structures. So anything on lot 27 would be electrified by a separate service. There is no sanitary sewer serving lot 27. If the applicant ever did want to serve lot 27 with sanitary sewer it would have to be constructed at the owner's expense to the pump station tied into Madison.

Ms. Casciano stated: It is currently septic. There is a bathroom in the back of one of the buildings. There used to be a cottage back here and it was never used.

Mr. Simmons stated: We will need that clarified on the map. Lot 29 is the one house and lot with a variance that doesn't meet the T-3 requirements; the 2.8' to the frame shed. The location of the existing sanitary sewer lateral for this dwelling to be shown to confirm it is entirely on lot 29. The various access and utility items on lot 27 to be addressed with 29 as well. Lot 35 is the other lot they are subdividing for purposes of lot 27. Under proposed farm use, I believe we talked about these items; parking for visitors, the potential farm stand location, and the historic chicken barn.

Mr. Soloway questioned: How far off is the historic chicken barn from the property site?

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Mr. Simmons stated: From the lots that have frontage on Madison Street it shows a property line of 92.5' and for the proposed property lines for the northeast it increases from 49.4' to 106'. I would note #6 under "Purpose of Plan" to show proposed conditional use variance for possible poultry raising and a farm stand. And 5 acres is needed, while 5.35 acres is proved on the proposed combined lot 27. Map changes will be needed to clarify.

Mr. Le Frois questioned Ms. Casciano: Do you have any problems addressing his comments?

Ms. Casciano stated: No.

Ms. Caldwell reference her report dated April 12, 2018 and stated: Much of what I put in my report is in regards to the variances that were discussed. For the minor subdivision and the bulk variances for minimum lot width and accessory building side yards on lots 27 and 29, pursuant to NJS40:55D-70c where two provisions exist for the granting of bulk variances. The first is provision for granting a "c" variance where the Board must find whether there has been a showing peculiar exceptional practical difficulties or exceptional undue hardship arising out of the exceptional narrowness, shallowness, or shape of a piece of property or existing structures. And the "c(2)" if the applicant can show there is a better plan and alternative then that can grant the variance. And both of those variances can be granted without substantial detriment to the public good or Master Plan or zoning ordinance. The ambiance as Mr. Soloway described, the focus is really on the condition that's not met. So the chicken coop, the distance to the property line, and the use of the chickens can still be accommodated without substantial impact to the neighborhood. It's a focus on that lot condition because it seems that the Master Plan has already been determined appropriate for that site. There is also the sign variance that was testified about tonight but wasn't in the original application for a sign 18" x 12".

Application opened to the public.

1st Public sworn: Kacie Member, 65 Madison Street. I live behind the property in question. The applicant talked about her plans and this is going to be a part-time operation. She was talking about doing the livestock. The concern for me is that she is not a NJ resident. How long is she going to be here? How will the 12 people a week come in? Will they make appointments or what? She talks about this as a retirement plan but how much will she make with only 12 customers a week. She mentioned lower taxes were her goal by being farm assessed. Who is going to be eating the taxes now? The traffic is a problem. People will go through to Halsted, through Merriam, people coming in and picking locks on cars. She's not going to be there. Who's going to be managing the property when she's not around? She also mentioned that there is a septic that is covered by a big slate piece. Someone could pick it up and fall down there. There is plumbing in the cottage and a kitchen with a sink and a stove. So the big things are the taxes, the traffic, and the property value. If you have livestock who will be there to take care of the chickens? I can see the whole property. I don't know what the smell will be but what will it do to my property value? The history was accurate. People go down there to hang out. I've seen needles down there. She mentioned she will harvest hardwood. I think she has already harvested about a dozen nice old trees down there. I don't know what the Shade Tree Commission rules are on wood in the area. In the south end where she is putting the blueberries there is a pipe sticking out of the ground. We used to have it marked with a cone. I don't know if it's there anymore. A farm is better than homes. But she could only do homes if she has the access from 9 Cassidy Place. She would have to buy it. In regards to run off water there is a huge pond. It can get really bad. I don't know what her liability is for that. Thank you.

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2nd Public sworn: Dian Koster, 48 Madison Street. My biggest concern is the taxes. They are astronomical already. Who's to say that other people won't do the same thing in Town and get the tax breaks. Then our taxes will go up as well. I'm concerned about the chickens. I don't want to hear or smell chickens. I wouldn't have bought a house in Town if I wanted to live by a farm. As far as the traffic, I know there are plans to do a lot of other things and sell everything. In that case the traffic will be more.

3rd Public sworn: John Mills, 57 Madison Street. I grew up as a farm boy and I'm accustomed to the smell of chickens and it stinks. I'm also concerned about the taxes. You start with a few chickens, and you are not going to be here and someone else will be handling the chickens for you.

4th Public sworn: Ryan Burg, 11 Maple Avenue. I'm concerned with traffic. It has increased on Halsted, Elm Street, and Maple Avenue since the Town made Spring Street a one-way. So now you have a farm on a one-way street. So it is going to increase it even more having a farm there. I'm concerned for kids on street. My property many years ago was a sheep farm. Does that mean I can get sheep now? No. It's a residential property. That's my concern.

No more public stepping forward. Portion closed.

Mr. Haggerty summarized the application by stating: I think the subdivision component is very straightforward. That is that we will be augmenting a lot without causing any negative impact on the lots that would be reduced. We are not increasing any non-conforming use. We are eliminating an encroachment of a building across a lot line which is significant and we would be providing a greater setback for the barn building from 49.4' to 106'. That is all very positive. In terms of the conditional use aspect, we had testimony from the surveyor as well that the homes on Madison are at the higher level. This is kind of a bowl so it is self-contained, private without a run off problem. There is no current run off problem. Because of the segregation of the building from the homes there would be little if any impact. The historic use of the property is a permitted use in the zone. We think it is an appropriate use. Again, if we had four houses there we would certainly have more traffic. The anticipated usage of the houses is two cars per house, in and out, with friends and visitors. They may even have school kids and they are not cheap. Will there be a loss of ratables? Yes. But we wouldn't be putting any school kids there either.

Mr. Le Frois questioned: Is the property fenced as a whole?

Ms. Casciano stated: No. As far as school kids cutting through, they always have from Halsted or cut through the cemetery.

Mr. Le Frois questioned: Is there a concern on your part that if kids continue to cut through with your crops and chickens is that going to become more of a concern on your part?

Ms. Casciano stated: The 8' deer fencing is there and it has locks on it. I don't know what I'm going to do with the other field yet. I might hay it or have chickens on there. I'm more concerned about the foxes than people. This is my home town. I'm not an outsider.

Ms. Casciano continued: As far as the water pooling, it does that if there is heavy rain and the ground is frozen. But I will collect all the water runoff. It doesn't run from my property to others, it runs from others on to me.

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Mr. Le Frois questioned: Should the septic cover be inspected and subject to the engineer's approval?

Ms. Casciano stated: It is a stone seepage pit. It is something I would like to upgrade.

Mr. Marion questioned: If this is approved, what would you do with the chickens in the winter?

Ms. Casciano stated: They stay in, they go out. They are there all year round.

Mr. Le Frois questioned: So the tenant will take care of the chickens. What happens when he moves out, then what do you do? Get rid of the chickens?

Ms. Casciano stated: If he decides to move forward with chickens then I would have the approval and then it's his responsibility. If he moved out I can't manage them. I have to hire a sitter for mine at home.

Mr. Ragsdale stated: I would request a limit on the number of chickens.

Mr. Le Frois stated: I guess we could say no to the chickens.

Mr. Soloway stated: The application meets all the requirements for conditional use approval except for the proximity of the chicken house from the property line. In assessing whether they established a case for the conditional use variance requires them to focus on the deviation of it and determine whether the property is still suitable for this otherwise permitted use. Notwithstanding the fact that the chicken house does not meet the 200' requirements you can look at the impact that the chickens can have on the neighborhood as well because its within 200'. So yes, I think you can limit the number of chickens.

Mr. Ragsdale stated: That helps squelch some concerns.

Mr. Soloway crafted a motion for minor subdivision approval with a bulk variance for the shed, being 4.1' from the side property line requires a variance. A conditional use variance to allow the farm/agricultural use and with the standards we discussed. The third component is they are asking for permission to install an 18" x 12" sign with Rockywood Farm on it at the top of the driveway. Conditions would be no pigs, limit the chickens, chickens required to be kept in a fenced in area, no butchering on site, sign variance limit the size substantially similar to this. It would be located at the top of the driveway. It could not be illuminated. An appropriate lid provided over the seepage pit subject to Sussex County Health Department. The application indicates proposed access to utility easement subject to Mr. Simmons and the Board Attorney, the access easement would have a maintenance agreement component. Water service lines on lot 27 would be subject to Mr. Simmons. If two separate lines can be done through a map change. Utilities for lot 27 will be by a separate service line. If septic tank is on lot 27, clarify on map to Mr. Simmons. If sanitary sewer is wanted at a later date she would have to get it herself. Confirm on lot 29 Mr. Simmons's satisfactions, similar and other standard approvals. The minor subdivision be deeded in 190 days of approval of resolution.

Mr. Le Frois questioned: Do we limit it to a certain number of chickens?

Mr. Marion questioned: Is the livestock limited to just chickens only?

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Mr. Soloway stated: The problem with that is it's permitted as a conditional use in the zone. The only thing that arguably runs afoul, pun intended, of the conditional use requirements is the chickens. For example, under the ordinance it specifically allows a horse. It is permitted if it is not housed in a structure that is less than 200' from a property line. I'm not sure if there would be animals other than chickens. What other animals are you going to have? Are you going to have a goat or a cow?

Ms. Casciano stated: I don't know what I'm doing.

Mr. Marion stated: You could have a goat, a cow, a rooster.

Mr. Le Frois stated: So there is nothing to prohibit that from happening?

Mr. Soloway stated: As long as they are not housed in a structure that is within 200' from the property line, that is essentially correct. That is what the ordinance allows.

Mr. Marion questioned: Say there is sheep; does it matter where they are housed on the property or does it have to be 200' like the chicken coop?

Ms. Caldwell stated: It is not just specific to chickens.

Mr. Marion stated: So they would have to come back for any other structures they want to add in the future.

Mr. Le Frois: Based on the testimony the shape of the lot wouldn't allow for it.

Mr. Soloway stated: You can put a condition that they have to come back for any other structure for livestock purposes.

Mr. Marion stated: So this is potentially more than just berries and it is potentially turning into something else. It could be more livestock. So there is a possibility for other things?

Ms. Casciano stated: There could be. Chickens are ideal because that's what the tenant wants and it used to be a chicken farm. But it is a good point that you are bringing up. I'm not saying I'm planning on tending horses. I don't know how to take care of horses and I don't want to do that.

Mr. Soloway stated: But it is relevant to the conditional use of your request. It is a proximity issue in terms of the structure. It's appropriate to think of the impact that the deviation would have. During the course of the hearing we've only heard the impact in the context of chickens being in there. It's been indicated there could be other animals in there.

Mr. Le Frois questioned: If it is approved with the understanding that chickens are there can that structure then be used for any kind of animal?

Mr. Soloway stated: Not if you specify in the resolution.

Mr. Le Frois questioned: Can we approve it even though it is less than 200' from the property line and specify to limit it to chickens.

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Mr. Soloway stated: You can specify that the only animals to be housed in the structure are chickens and not to exceed a specific number of them.

Mr. Marion questioned: Would we also include that if there any other structures built for livestock they will have to come back?

Mr. Soloway stated: We can make it a condition. But frankly, if they came back for a structure that would house an animal they are already within 200' from the property line.

Mr. Flaherty made a motion to approve the application limiting the livestock to two dozen chickens. The motion was seconded by Mr. Butterfield.

Aye: Mr. Flaherty, Mr. Butterfield, Mr. Wink, Mr. Le Frois

Nay: Mr. Marion, Mrs. Larsen, Mr. Ragsdale

The application failed.

Mr. Flaherty made a motion to approve a revised resolution that would delete the use of the livestock shed (no livestock/chickens). The approval would include the subdivision and the sign variance. Mr. Butterfield seconded the revised motion.

Mr. Ragsdale stated: Could you please clarify what we are voting on?

Mr. Le Frois stated: It would be the same resolution but with no livestock.

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

Application approved.

CORRESPONDENCE:

Resolution #2018-2 – An Ordinance Amending Sections 320-2.C and 320-33 of the Code of the Town of Newton, Zoning: Form Based Code, to Allow Tattoo Parlors in Certain Districts.

Resolution #69-2018 – "Resolution of the Town of Newton, in the County of Sussex, New Jersey Designating 121 Water Street (Block 10.01, Lot 4) as a Non-Condemnation Area in Need of Redevelopment."

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EXECUTIVE SESSION - None

PUBLIC PORTION –

1st Public sworn: John Paul Couce, Captain of the Newton First Aid Squad. We recently had the opportunity to tour the Newton Town Centre building. The stretchers do not fit in the elevators. Also, our ambulance does not fit in the parking garage. The recommendation from the superintendent is to park on the Spring Street side, but it is currently a handicap parking spaces.

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We have a deep concern that if there is an emergency it won't accommodate the vehicle or stretchers. We believe that the First Aid Squad should be included in new construction proposals.

Mr. Le Frois questioned Mr. Simmons: Can we just add a requirement for consultation with the First Aid Squad to our procedures for approval?

Mr. Simmons stated: Each municipality can have their own requirements. You can require input from whoever you want.

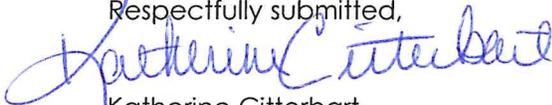
Discussion ensued.

2nd Public Sworn: Diane Koster. Concerned about property taxes going up with addition of the farm assessed property. She is disappointed in the decision to approve it.

ADJOURNMENT

Mr. Marion made a motion to adjourn the meeting. Motion seconded by Mr. Flaherty. The meeting was adjourned at 11:14 PM with a unanimous "aye" vote. The next meeting will be held on May 16, 2018 in the Council Chambers of the Municipal Building.

Respectfully submitted,



Katherine Citterbart
Planning Board Secretary