

TOWN OF NEWTON  
PLANNING BOARD  
SEPTEMBER 19, 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.

**THE SUNSHINE STATEMENT:** Was read.

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

**OATH OF OFFICE:** None.

**PLEDGE OF ALLEGIANCE:**

**ROLL CALL:** Was taken

Attendance: Mr. Flaherty, Mr. Marion, Mr. Wink, Mrs. Vrahnos, Ms. Hall, Mrs. Le Frois, Mr. Flynn,  
Chairman Le Frois

Excused: Mr. Butterfield, Mr. Ragsdale, Mr. Russo

Absent: Mrs. Larsen

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

**CONSIDERATION OF MINUTES**

August 15, 2018

**A motion was made by Mr. Flaherty and seconded by Mr. Wink to approve the August 15, 2018 meeting minutes.**

**AYE: Mr. Flaherty, Mr. Wink, Ms. Hall, Mrs. Le Frois, Mr. Le Frois**

**The motion was carried.**

**HISTORIC RESOLUTIONS**

SAK Associates, LLC (#HPC-01-2018)  
Block 7.05, Lot 9  
18 Church Street  
T-6 Zone

The recommendation is to replace exterior glass window panels with double hung windows and infill existing openings with brick to match adjacent wall construction.

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

TOWN OF NEWTON  
PLANNING BOARD  
SEPTEMBER 19, 2018  
MINUTES

**AYE: Mr. Flaherty, Mr. Marion, Mr. Wink, Mrs. Vrahnos, Ms. Hall, Mrs. Le Frois, Mr. Flynn, Mr. Le Frois**

**The motion was carried. Resolution approved.**

**RESOLUTIONS**

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

The resolution approving the application for a site plan amendment and related design waivers relating to groundwater recharge requirements.

**A motion was made by Mrs. Le Frois and seconded by Mr. Wink to approve the resolution.**

**AYE: Mr. Flaherty, Mr. Wink, Ms. Hall, Mrs. Le Frois, Mrs. Le Frois**

**The motion was carried. Resolution approved.**

**OLD BUSINESS**

None

**NEW BUSINESS**

M&M Casas, LLC. (#ZB-4-2018)  
Block 13.05, Lot 20  
68 Woodside Avenue

The applicant is requesting "c" variance to permit two parking spaces in the front yard.

William Haggerty, Esq. of Dolan & Dolan represented the applicant.

Mr. Haggerty gave overview of application and stated: The principals of M&M Casas are out of the country and my surveyor was to meet me but I don't know what happened to him. I don't think it's appropriate that I testify although I think it's more a paper work thing. The application before the Board is to add two parking spaces on Woodside Avenue in front of the applicant's home. It is a very narrow lot at only 21' with no width on either side of the lot or setback where they can drive around the house to get to the back. The question came in regard to a 10' easement behind the property. In regard to that 10' easement there is a gap of 6' somehow historically and that's shown on the survey map that Robert Dade prepared. The easement actually does not intersect with the back of my client's property. It's never been used to my knowledge and after talking to Mr. Dade about it and my clients, if they could do it they certainly would because it would make things a lot easier. Not only the lack of intersection but also there are topographic issues, vegetation issues and improvements that effect that easement if it would be available to us. We're asking for two parking spaces. We know that we would need County approval for an access permit. We did approach the County and they generated a letter stating that if the Board approves it they will attempt to issue it then. So if the Board acts favorably on this application we would anticipate the condition of County approval for the access. Historically, there's parking in front of the property because there is no other

TOWN OF NEWTON  
PLANNING BOARD  
SEPTEMBER 19, 2018  
MINUTES

place to park, there are no municipal lots near the property so it is a hardship. There's a problem with the setback to the porch in terms of the vehicles coming out to Woodside Avenue. Some accommodation had been made to try to remove the steps for vehicles parking there. There may be some desire to narrow that even more.

Mr. Le Frois questioned: So in regards to access from behind, is taking that any further being abandoned?

Mr. Haggerty stated: There could be an argument but there was a crafting error when this easement was done because it doesn't come down to our property. There is a gap of 6' that has never been used. If you could convince someone that it is on the site plan you are still going to fight with the neighbors about opening this thing up which has never been opened up. There is no driveway there. It is all overgrown.

Mr. Le Frois questioned: Do the neighbors on either side each have a driveway that abuts the subject property?

Mr. Haggerty stated: Yes.

The Board questioned: Do they park in front now?

Mr. Haggerty stated: Yes. There is no parking allowed on Woodside. So we are trying to formalize this and get two cars to park there.

Mr. Simmons summarized his report dated September 11, 2018 and addressed the following concerns: Item 2.a, variances are required for parking, setbacks, and lack of screening.

Mr. Le Frois questioned: Would you recommend some screening? I would be nervous as it would affect line of sight for the adjacent properties.

Mr. Simmons stated: My preference is to get the parking spaces a little further into the property by removing additional porch to reduce sight impediments as noted in my report item 3.a.

Mr. Simmons continued his report confirming Mr. Le Frois's statement.

Mr. Soloway questioned Mr. Simmons: Do you refer to the right-of-way as the County right-of-way?

Mr. Simmons stated: Correct.

Mr. Simmons referring to item 3.b of his report stated: That's a standard driveway pavement blocks. The applicant was talking about some turf blocks. I have concern about that from a maintenance standpoint long-term. We are not talking about a large area and the additional impervious is not that much to affect the stormwater runoff.

Mr. Le Frois stated: You could even do solid pavers that would have a little bit of drainage to it.

Mr. Simmons stated: My concern is that it is visible in the front yard and I was concerned with the snow plowing, etc. Let's not have a bad situation.

TOWN OF NEWTON  
PLANNING BOARD  
SEPTEMBER 19, 2018  
MINUTES

Mr. Simmons questioned Mr. Haggerty: Is it your understanding that this was going to be a duplex?

Mr. Haggerty stated: Yes. It will likely be a rental unit.

Mrs. Le Frois questioned: Is it a duplex now and is it in our system as a duplex?

Mr. Haggerty stated: It is currently a duplex.

Ms. Caldwell stated: I thought it was a single family.

Discussion ensued over whether the property is currently zoned as a single or 2-family dwelling.

Mr. Haggerty stated: I failed to mention that there was a curb cut that historically has been there and that's why people park there..

Mr. Marion questioned: Is it wide enough?

Mr. Haggerty stated: We will have to get the County approval to widen the driveway.

Mrs. Le Frois stated: Mr. Wink has a map from the Google maps image of 2016 and there is a curb cut for the two properties on each side but not for this property.

Mr. Haggerty stated: The client indicated that there was a curb cut there.

Mrs. Le Frois stated: I just want to verify. Mr. Simmons, do you recall the curb cut?

Mr. Simmons stated: Based on the map I had, there is an apron there. That is what prompted my comment c. that a construction detail of the 6 inch thick reinforced concrete apron be provided. Based on parking the two vehicles they are going to have to widen it no matter what.

Mr. Flynn questioned: Will sidewalk have an overhanging vehicle in it?

Mr. Simmons stated: The big thing is probably to take off part, not the entire, front porch.

Mr. Marion questioned: Will the proposed parking spaces be in the sidewalk?

Mr. Simmons stated: Based on the plan it comes right to the stretch of the sidewalk but it still hangs over into the right-of-way of the County Road. My concern is that the vehicles backing out from the driveway next door technically there is a portion of a vehicle blocking the sight distance.

Ms. Caldwell stated: How much additional space because we should set the variance as a front yard variance at a certain distance.

Mr. Simmons stated: It should go at least two feet into the porch.

Ms. Caldwell questioned: Should it be 16" instead of 18"?

TOWN OF NEWTON  
PLANNING BOARD  
SEPTEMBER 19, 2018  
MINUTES

Mr. Haggerty stated: The porch is pretty narrow, about 5'. If they take any portion of the porch out they might take the entire porch.

Mr. Marion questioned: I don't know that we should be discussing this. We don't have a design of what's going to be done, etc. Should the application get that and come back next month?

Mrs. Le Frois agreed.

Mr. Soloway stated: If a witness doesn't show up, my advice is that you cannot vote on this tonight. It's okay for Mr. Haggerty to do an introduction. It's okay for him to address any conditions. And the Chairman is trying to be helpful having the professionals read their reports first instead of last, but nobody shows up by the time they're done you can't finish tonight. The application will need to be carried to the next meeting.

Mr. Haggerty stated: When my clients return from their trip, I will indicate that the Board is inclined to recommend removal of the porch and that they should show the modification of their house design to reflect that.

Mr. Le Frois stated: The biggest concern is having the vehicles too close to the sidewalk or on the County right-of-way.

Mrs. Le Frois stated: We should probably go through the reports because it may generate more questions.

Mr. Simmons continued his report: We discussed item 3.c, a construction detail of the 6 inch thick reinforced concrete apron to be provided which is something the County would want for their access anyway.

Item 3.d, again, aside from the fact that it's in the right-of-way, an 18' vehicle would be on the edge of the sidewalk. The reality of it is that's on September 19 on a nice sunny day. In a blizzard with snow it's only going to get worse.

Item 3.e, I spoke with the Newton Water Operator in regards to the location of the water lines. It does come in the front wall of the dwelling. The concern I have is that today it is grass and in the wintertime the snow acts as insulation. If you take that off you are going to remove that insulation barrier and the frost gets down deeper. I suggested to the applicant that they verify the depth to the water service line and if it is not at least 4' that they consider while they are doing construction in the front if it's approved, that they lower it to avoid the possibility of a frozen water service in the future.

Item 3.f, Mr. Haggerty mentioned that there is a note that there's an easement in favor of lot 20, which is the subject property, for that easement. I looked further back in the chain of title that Mr. Haggerty provided for lot 21. The title says it's subject to that easement, but it's only 10' wide. The description is a little vague in some parts. As he said, it hasn't been used and it would be about a 200' long driveway to get to the back of the house. Finally, approvals from Newton Water and Sewer Department for water and sewer service cover, Construction Official for dwelling modifications, and the Sussex County Engineering Department for an Access Permit.

TOWN OF NEWTON  
PLANNING BOARD  
SEPTEMBER 19, 2018  
MINUTES

Ms. Caldwell referenced her report dated September 11, 2018 and stated: The first item is the Bulk Variances required which includes off-street parking, uncovered parking spaces, and front yard setback. I discussed the potential to mitigate some kind of buffer. It sounds like it's not possible because of space. I wanted the applicant to look at that but since Mr. Simmons did, I think that's adequate. Based on the discussions we had tonight it makes sense to have some landscaping in front of the house and make the balance between taking the porch off and having something that differentiates between the driveway and the house so it's not just all pavement in front of the house. One of the reasons we have this requirement is to keep nicer front yards.

The second page under item 3, is granting "c" variances. Two provisions exist for granting of bulk variances. C1 is showing peculiar, exceptional practical difficulties or undue hardship arising out of something to do with the property specifically. In this case, I think there was a mistake with the easement, it's a small map, it's very restricted and there is really no other place to put parking and there is no on-street parking. So it is also a unique situation on a specific piece of property. The Board needs to find that it is not inconsistent with the Master Plan.

Mr. Le Frois stated: The description needs to be corrected to reflect "insufficient" not "sufficient". As far as the hardship, I can see it; particularly with no on-street parking, or municipal lot.

Mr. Soloway stated: We need testimony to establish that. The hardship would be the inability to access the property via the easement in the rear. It's obvious from looking at the plan that there is no room on the side of the house.

Mr. Haggerty stated: I anticipate the surveyor to provide that testimony.

Mr. Le Frois stated: Then we should hold off. I also think the owners should be here in case it is cost prohibitive or extremely difficult to get back through there.

Mr. Le Frois stated: Are there any other questions from the Board?

Mr. Marion questioned: Do you know if it is oil heat or natural gas? There could be a natural gas line involved.

Mr. Simmons stated: I don't know. Good point.

Mr. Flaherty questioned: Removing the porch to create greater depth for the parking, is there room for landscaping between the house and the driveway?

Ms. Caldwell stated: That's what I was asking for; at least a little bit.

Mr. Flaherty stated: I think that would be a good idea to create curb appeal.

Mr. Marion requested they come back with different options for the type of driveway.

Mr. Flaherty questioned: The applicant says it is a single-family home but there was talk that it might have been converted to a 2-family. Does that change the parking requirement?

Ms. Caldwell stated: It is one space per unit, but I will have the applicant double check on it because it requires a parking variance.

TOWN OF NEWTON  
PLANNING BOARD  
SEPTEMBER 19, 2018  
MINUTES

Mr. Flynn stated: I would like to see pictures of the rear of the house to demonstrate the actual hardship in being unable to access the rear easement.

Mr. Soloway stated: I think the testimony of the surveyor is going to be based on a combination of it being unsettled and whatever is out there being inadequate. They really can't do it on a practical level.

Mr. Haggerty stated: There is a 6' discrepancy with the easement. It doesn't link to our property. That's my problem.

Mr. Soloway stated: My point of view is, that is a valid argument to make. However, I don't think it would be valid for you to argue that the neighbors are not going to like it and nobody's used it. If you have the legal right you have the legal right to use it.

Mr. Le Frois requested: I would like the surveyor to draw a larger picture of that specific area so it is easier to explain to us rather than looking at this very small version of the survey map.

Mr. Marion stated: Maybe you can talk to your clients about one car instead of two. That would save a lot of work.

Mr. Haggerty stated: I would like to request the application be moved to the next regular meeting without further notice.

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

Mr. Le Frois stated: We will carry this meeting to the next meeting on October 17 at 7PM with no further notice.

**CORRESPONDENCE:**

Resolution #184-2017 – "Resolution of the Town of Newton, in the County of Sussex, New Jersey Authorizing the Planning Board to Investigate Whether Certain Properties on Spring Street, Diller Avenue and Sparta Avenue Should be designated as a Non-Condemnation Area in Need of Redevelopment".

Ms. Caldwell stated: This is a heads up to the Board from the Council. Our office is conducting an Area in Need of Redevelopment Study for the area. We will review at the October meeting unless something delays it.

Mr. Soloway stated: When it comes back to the Board there will be a formal hearing. First on the study and any evidence that may be produced. The Board will be required to find whether the area in question meets the statutory criteria for an area in need of redevelopment. Then it goes to the Council and the Council will work on a redevelopment plan. If it goes forward it is going to ping pong back and forth a couple of times. If the Board finds it meets the criteria, it goes back to the Council and then the Council can adopt a redevelopment plan for the area. Then it will come back to the Board the same way a zoning ordinance does on whether it conforms to the Master Plan. Then it goes back to the Council for further adoption. Then at some point the applicant comes before the Board with the site plan.

TOWN OF NEWTON  
PLANNING BOARD  
SEPTEMBER 19, 2018  
MINUTES

The New Jersey Planner May/June 2018

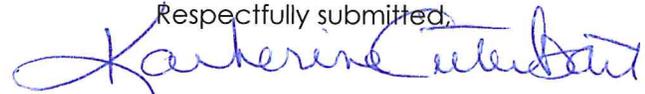
**EXECUTIVE SESSION** - None

**PUBLIC PORTION** - None

**ADJOURNMENT**

**Mr. Flaherty made a motion to adjourn the meeting. Motion seconded by Mr. Marion. The meeting was adjourned at 7:35 PM with a unanimous "aye" vote.** The next meeting will be held on October 17, 2018 in the Council Chambers of the Municipal Building.

Respectfully submitted,



Katherine Citterbart  
Planning Board Secretary