

TOWN OF NEWTON
PLANNING BOARD
OCTOBER 17, 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. Wink, Mrs. Vrahnos, Ms. Hall, Mrs. Le Frois, Mr. Flynn, Chairman Le Frois

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

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

September 19, 2018

A motion was made by Mr. Flaherty and seconded by Mrs. Vrahnos to approve the September 19, 2018 meeting minutes.

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

The motion was carried.

HISTORIC RESOLUTIONS

None

RESOLUTIONS

None

OLD BUSINESS - Continued from September 19, 2018

M&M Casas, LLC. (#ZB-4-2018)

TOWN OF NEWTON
PLANNING BOARD
OCTOBER 17, 2018
MINUTES

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.

Sworn in: Kathy and Juan Munoz, 81 Plotts Road, Newton, NJ; the applicants and owners of the property, 68 Woodside Avenue.

Mr. Haggerty submitted three separate colored photographs and marked them as Exhibit A-1 and questioned Mrs. Munoz: When were these taken and what is shown in them?

Mrs. Munoz stated: They were taken three weeks ago and they show my car, which is a Nissan Armada. It is a large SUV parked in front of the house. It shows that even though the other houses around me have driveways, the homeowners still park in the same area as I was.

Mr. Haggerty continued: The Board spent a lot of time discussing the easement in the back of the property. We've submitted the application showing a 6' gap between the easement and the property line. As discussed at the last meeting, it doesn't meet up. If we could use it we would certainly consider it. There are photographs in the package that show the driveway behind the property going up to the neighbor's fence. Is that correct?

Mrs. Munoz stated: Yes.

Mr. Flynn stated: We are still looking at Exhibit A-1 and would like you to explain where the photograph locations correspond to the map.

Mr. Haggerty stated: It shows a blue garage on the left hand side.

Mr. Flynn questioned: What lot is that on?

Mr. Haggerty stated: Lot 24. That's the garage that's shown on lot 24 on the plat that was submitted at the last meeting. That's the blue garage in Exhibit A-1. Another photograph shows a picket fence.

Mrs. Munoz described the photo and stated: This is the garage, this is our property, and this is the picket fence which you see is here on the map.

Mr. Haggerty questioned: Does that driveway continue past that line behind your property?

Mrs. Munoz stated: No.

Mr. Haggerty stated: The plans submitted to the Board show vegetation. Is there any indication that a driveway ever ran back behind the property?

Mrs. Munoz stated: No. As a matter of fact, when we submitted photos originally, the person who used to live in that house was parking in the front.

TOWN OF NEWTON
PLANNING BOARD
OCTOBER 17, 2018
MINUTES

Mr. Haggerty stated: The survey shows there is a 6' separation between the easement and the property line that would have to be met. If it met, it would be cheaper, but we don't have that option.

Mr. Flynn questioned: For purposes of the record, is Nelson Street a public right-of-way? Is it a paper street?

Mr. Le Frois stated: The easement itself on the map is called Nelson Street.

Mr. Haggerty stated: It's pointing towards Nelson Street. There is an easement back there but it was not correctly drafted because there is a 6' gap between the easement and our property. That is as far as we can go with that.

Mr. Haggerty continued: We have provided the Board with a revision of Mr. Poole's depiction of the removal of the porch but not much difference. In the photo, the way it is currently, the cars have sufficient ability to park there. From what you can see our property line is on the inside of the sidewalk, no question about that. From this photograph, the cars that park in front of the property are not on the sidewalk.

Mr. Haggerty continued: One of the questions the Board had was in regards to the depth of the water line.

Mrs. Munoz stated: I spoke with Dustin. He spoke with Mr. Simmons, the Engineer. Dustin measured everything out. He could tell the water pipe was down, where it came into the house. As far as the rest he doesn't know. We would have to hire another company for a mark out and that would be another \$2,000. The depth is 4' as per code. A lot of the water lines are under driveways in the Town of Newton.

Mr. Flynn stated: You have to call for a mark out before construction. Everybody has to do that before they dig. Is that the mark out we are talking about here?

Mr. Simmons stated: The mark out we are talking about is to get the location of the water line and to verify the water line depth. I don't believe from my conversation with Dustin that he checked the depth other than what it was in the foundation. The concern is that when the driveway is constructed it will take away some snow area and that basically acts as insulation in the wintertime. You'll have a bare driveway and the frost will go deeper. The bottom line is if there is ever a problem with the frozen service line it would be up to the property owner to dig the property up.

Mrs. Munoz stated: Dustin told me on the phone that the code for water lines is 3 or 4 feet down; for well lines and everything like that. It has also been existing before us. If the gentleman before us parked his car there and shoveled he would have the same problems we are talking about now. Also understand, that if we don't get parking this house is not sellable. There is no parking. We will have to let it go and become dilapidated which is ridiculous. We've spent \$110,000 renovating this house. We do nice work. But this is the last one we will do in Newton. We have spent thousands of dollars, \$7,500, on this. That's not counting what we'd have to pay to fix the driveway.

Mr. Haggerty stated: Our surveyor can testify if necessary.

TOWN OF NEWTON
PLANNING BOARD
OCTOBER 17, 2018
MINUTES

Mr. Le Frois questioned: Does the Board want to hear from the surveyor? It seems pretty clear.

The Board stated: No.

Mr. Soloway questioned Mr. Simmons: Did you look into the issue of whether or not there is a gap on the easement?

Mr. Simmons stated: I reviewed the deeds that were involved and I did see that there appears to be a gap.

Mr. Le Frois questioned: What is the implication of having a gap?

Mr. Simmons stated: It means that the metes and bounds description of the property does not join up geometrically to the easement. So technically if a vehicle drove in from Nelson Street along the easement and wanted to get to the back of the applicant's property, they would be crossing across property that wasn't their property or covered by the easement.

Mr. Flynn stated: There are thousands of properties in this County that are like that. There is access you have to go through somebody else's property to get to. Almost all lake communities in this area have that problem.

Mr. Le Frois stated: I don't think that's the case here. I think it is either mathematically or physically wrong?

Mr. Simmons stated: If you look at the survey that the applicant's surveyor did, you can see that he's basically got the background course that has a bearing of north 5600 east 21.00 feet. Then a half inch above that you'll see another line drawn which is basically where that line should be. But the deed, the courses and bearings in the deed, don't get you there.

Mr. Le Frois stated: So it is basically an unknown.

Mr. Soloway questioned Mr. Simmons: Based on your review of the descriptions, you can't get from Nelson Street to the rear of this property except to deviate from the described easement and theoretically going on someone else's property. Is that correct?

Mr. Simmons stated: Yes.

Mr. Flaherty questioned: Who owns that property?

Mrs. Munoz stated: The lady behind us on the corner and she yelled at us when we walked across it.

Mr. Flynn stated: If there was historic access, which there is not, but if you were trying to firm this up so that there was a driveway that went from the easement to the subject property and crossed over a parcel of land, a small piece, you would not be able to deny the resident access to their property just because they have to drive across somebody else's property to get there.

Mr. Soloway stated: I think that would be a correct statement of the law if the lot was landlocked. Otherwise you have to have a way to get to your property from the public street.

TOWN OF NEWTON
PLANNING BOARD
OCTOBER 17, 2018
MINUTES

This lot isn't landlocked, it just has no parking. I think it is a different problem than what you are talking about.

Mr. Haggerty stated: We are talking about easement by necessity where it is. Mr. Soloway indicates you would have to have a right to use it. We have an access on Woodside but not this side. We can't go over property we don't own.

Mrs. Le Frois questioned: In the pictures you submitted tonight, show that you parked with the porch still on the home and the large SUV still provides clearance for people to access the sidewalk unencumbered. Is it still in your plan that you want to remove the porch or is that not necessary?

Mr. Haggerty stated: We would prefer not to. I didn't realize a large vehicle could park without interference but obviously it can.

Mr. Soloway stated: In the picture it looks like the vehicle is touching the porch.

Mr. Le Frois stated: In the winter you will have snow.

Mrs. Le Frois questioned: My second question is about the apron and depressed curb cut out. The picture shows the curb cut outs are not immediately in front of the property but to the right and the left. Mr. Simmons, is that how it appears to you as well?

Mr. Simmons stated: Yes.

Mrs. Le Frois stated: Then I would assume there would be a permit to amend the cutouts.

Mr. Simmons stated: One of the conditions of approval would be a permit from the County because Woodside Avenue is a County Road. The applicant would have to submit a permit application with details of how they will excavate the curb cuts and depressed curb.

Mrs. Le Frois stated: There is also a pending application to the County based on what the decision of this Board is.

Mr. Haggerty stated: In correspondence dated May 24, 2018 from Antoinette Wasiewicz received information regarding the curb cutting project it is exempt from review of the Sussex County Planning Board as this is a residential property. However, review of our records indicates there was never an access permit issued to this property. Should permission be granted by the Planning Board and prior to any construction, M&M Casas should apply for a road permit and an access permit to memorialize the location.

Mr. Flaherty questioned: What do you plan to do with the snow? It can't be on the sidewalk or the driveway.

Mr. Le Frois stated: It looks like the neighbors driveways are right up to your property on either side.

Mrs. Munoz stated: Yes.

TOWN OF NEWTON
PLANNING BOARD
OCTOBER 17, 2018
MINUTES

Mr. Le Frois stated: That would be a good reason to remove the porch and have the extra two feet.

Mrs. Munoz stated: Which is understandable on one parking spot but you are not going to get on both because you need a 3'x3' spot when you come out the door with the steps coming down. Either way, if you come out forward it is the same as it is now. If you come out sideways you are going to take one and a half spots away. Taking the porch off is an issue. It is however you want to do it. We didn't make this problem, it was there. We bought into it.

Mr. Munoz stated: When we bought the house, the tax map said that we have 30' of frontage. We measured the house and it was 20. So we bought the house thinking that part of the neighbor's driveway was our driveway. When we found out it was not really our driveway, it was too late. We had already bought the house.

Mr. Flaherty questioned: Is it viable to do just one spot?

Mrs. Munoz stated: It might be, but most people have two cars.

Mr. Munoz stated: We are trying to make everything legal. If you drive up and down that road people are parking on the grass sideways and on the sidewalks. We want to make everything legal so whoever buys the house won't have a problem with the Town and get a ticket from anybody.

Mr. Soloway questioned: Are you planning on living there or selling the house?

Mrs. Munoz stated: We flip houses. This is our fifth house in Newton.

Mr. Flynn questioned: Are we going to have a discussion on what material the driveway will be?

Mr. Le Frois stated: We can.

Mr. Simmons reviewed his report dated September 11, 2018 for the benefit of the homeowners as they were not present at the September 19, 2018 Planning Board Meeting.

Mr. Simmons stated: On page one, we basically talked about the two new spaces in the front yard area, constructing new steps in the porch area. Regarding the variances we talked about Section 320-7.C about which parking spaces are allowed in the second and third layer in the zoning ordinance. The applicant is proposing it in the first layer. Section 320-9.B the front yard setback is required to be a 35' minimum. The existing dwelling not including the front porch is 23.8' from the existing right-of-way line. From the edge of the porch after the steps are removed it is 18.1'. This is an existing condition they are dealing with right now. Section 320-23.C calls for the surface parking to be located to the side or rear of uses. This section also calls for screening from the adjacent residential lots. The proposed parking spaces in the front would require screening as well. These are variances.

Mr. Simmons continued: In terms of the site plan itself, under 3a, the proposed 9' x 18' parking spaces extends slightly into the right-of-way line on Woodside Avenue. I recommend that the front porch be adjusted so the entire parked vehicle is on the applicant's property. In addition if the spaces are in the right-of-way it may make it difficult for vehicles leaving the property. I understand the photo the applicant brought in and that it was taken in the dry time of the year.

TOWN OF NEWTON
PLANNING BOARD
OCTOBER 17, 2018
MINUTES

I am concerned that if the snow is plowed towards the front of the house and not removed from the site, then the vehicles will extend into the right-of-way and block the view of the neighbors backing out onto the street.

Mr. Soloway questioned: For clarification, Woodside Avenue is a County Road?

Mr. Simmons stated: Yes it is.

Mr. Soloway questioned: So the right-of-way of Woodside Avenue is not the same as the paved traveled way which actually extends toward the house, is that correct?

Mr. Simmons stated: Yes.

Mr. Soloway questioned: So the sidewalk is within the right-of-way?

Mr. Simmons stated: Yes.

Mr. Soloway questioned: So when you say your concern is that the vehicle will extend into the right-of-way you aren't talking about the street you're talking about the legal right-of-way?

Mr. Simmons stated: Correct.

Mr. Simmons continued with his report and stated: Item b the driveway paver section should have a minimum pavement box of 4" aggregate and 2" bituminous concrete surface course. The applicant has proposed pavers open with grass to help with the drainage. My concern is that in order to avoid the situation where the plow is tearing up these blocks, that they put standard pavement blocks in. It might be better to use standard pavement blocks.

Mr. Haggerty questioned the applicant: Would you have any objection to using standard pavement blocks?

Mr. Simmons stated: This is a decision the Board should make. It would be better to use them because they are low maintenance.

Mr. Simmons continued: Item c, a construction detail of the 6" thick reinforced concrete apron be provided and the depressed curb in the concrete apron to the County standards. They will want that detail. Item d, in the wintertime I note that the applicant will likely have to move the driveway snow all the way up to the dwelling in order to prevent the rear of a vehicle parked on the subject property from hanging over the sidewalk along Woodside Avenue and blocking pedestrians. We talked about that. Item 3.e., regarding the water lines, the depth of the water service to be verified by the applicant. The applicant should also realize that it is their responsibility for the water and sanitary sewer lines, including any frozen lines. Item f, the applicant should explain why they cannot access the rear of Lot 20 by constructing a driveway across Lot 21 and parking in the rear of the subject property. Also approvals from Newton Water & Sewer Department for water and sewer cover; the Newton Construction Official for dwelling modifications; and the Sussex County Engineering for access permits.

Mr. Le Frois questioned Mr. Simmons: Based on the additional, Exhibit A-1 and the photographs submitted earlier, does that confirm your recommendations or observations or do you have anything to add?

TOWN OF NEWTON
PLANNING BOARD
OCTOBER 17, 2018
MINUTES

Mr. Simmons stated: I realize looking at Exhibit A-1 submitted tonight that the vehicle did not block the driveway. My concern is that when there is snow you will lose a few feet. I don't want the applicant too far back or for them to block the sight distance of someone else pulling out of their driveway.

Mr. Le Frois questioned Ms. Caldwell: Is there anything you would like to add from your report or that you have noticed here tonight?

Ms. Caldwell stated: I noticed that one thing we were discussing and struggling with at the last meeting was the type of variance. I went through the variance criteria and there's the c(1) that has to do with a hardship variance with existing conditions. What we are really looking for is the information on that easement that there are no other options for the applicant and that the existing conditions, the size and shape of the lot, the location of the existing dwelling. That prompts the need for that variance. That meets the positive criteria. What you are looking at as a Board is if there is substantial detriment to the public good and the neighborhood, if there are impacts that can't be mitigated through conditions and whether or not there is impairment of the Zone Plan or Master Plan. I think that's not so much an issue because of the singular nature of the application that they've put forward. So I think you're really looking at whether or not the driveway can be constructed without substantial detriment to their neighborhood.

Mr. Le Frois stated: Right. And based on the photographs, other people that have driveways are also parking in the front of their house.

Mr. Soloway stated: Technically, this is not a driveway they are proposing because a driveway leads to something else. This is more of a parking area. It's a common problem in Newton with the smaller lots and the prohibition of overnight parking, it is not a unique case for nowhere to park.

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

Mr. Flynn stated: I understand what Mr. Simmons is saying about being maintenance free and obviously pavement is the easiest most maintenance free material to put down. But a paved front yard is not a standard that we really want to establish. Anything would be better than that. Maybe pavers, grass pavers, an earth tone block. It's going to be fully impervious from the curb to the house. The grass pavers sometimes get plowed up because there is more traction for the plow to grab. I think regular pavers would be fine.

Mr. Flaherty stated: With only 18' or 21' is a plow really going to be used? It will likely be shoveled.

Mrs. Munoz stated: It will be shoveled. If the water line freezes under the driveway, the pavers are much easier and cheaper to dig up and put down.

Mr. Soloway stated: I sense a consensus on granting relief in a general sense, but not on what it would be made of or what it would look like.

Discussion ensued about the material for the driveway and the potential removal of the porch.

Mr. Flaherty stated: If you remove a portion of the porch it would form an area for the snow.

TOWN OF NEWTON
PLANNING BOARD
OCTOBER 17, 2018
MINUTES

Mrs. Munoz stated: It is on the plan to show you what it would look like without the porch because it is my understanding that this was requested in the last meeting. I do agree with the snow. The porch is 5'. If you cut it back to code to 3' that would give it an additional 2'. To cut the porch half way it would give one parking width to put the snow.

The Board agrees to grass pavers as proposed by the applicant.

The Board discussed the porch.

Mr. Le Frois stated: I say the porch should be removed because of the concern for snow and for the additional space to park the vehicle.

Mrs. Munoz questioned: Just half the porch?

Mr. Soloway questioned: For clarity, what do you mean by half of the porch?

Mrs. Munoz stated: It would be moved back from 5' to 3'. We would like to keep a portion of the porch to give some character to the house, given the age of the house and the houses around it.

Mr. Simmons questioned: So you are looking to decrease the depth of the porch by 2'?

Mrs. Munoz stated: It's 5'. We would decrease it to code, 36" and we would remove that piece and that piece so there is a place to put the snow.

Mr. Soloway stated: So you are doing both. You are going from a 5' deep porch to 3' and then you are cutting the porch in half.

Mrs. Le Frois questioned: Based on the plans it is currently 18' so it will be a 9' porch?

Mrs. Munoz stated: Yes.

Mr. Wink questioned: Will there be a buffer between the driveway and the porch?

Mrs. Munoz stated: That would get in the way of snow.

Mr. Soloway crafted a motion to approve the variance and grant the application subject to the usual conditions; with a requirement that the application be made to the County for Road Opening and Access permits; the applicant can install any kind of paver it chooses; the porch be reduced in size in two ways. First the depth of the porch be reduced from 5' to 3' and second, if you look at the house, the left half of the porch will be removed; subject to recitation and resolution the applicants and their successors will assume any risk as to pipes in the driveway freezing; subject to submission of a construction detail of the reinforced concrete apron to the County.

Mrs. Le Frois stated: Per Ms. Caldwell's testimony it would be a c(1) variance based on a hardship.

TOWN OF NEWTON
PLANNING BOARD
OCTOBER 17, 2018
MINUTES

Mr. Soloway stated: Yes. That's how I would write it up. As a practical matter, it's either this or no parking the vehicles at all on the property because under the ordinance they are not allowed to put anything there. So I agree that it's a hardship. And I don't see any detrimental impact on other properties.

Mr. Soloway continued: One thing that could require a little bit of follow up. If they sell the property it will require them to get the deed of conveyance approved by the Board Attorney to make sure it includes the language for the chain of title.

Mrs. Munoz stated: That is for the next owner.

Mrs. Le Frois stated: The deed has different metes and bounds than when they had the survey done. When you talk about the chain of title, does that need to be referenced?

Mr. Soloway stated: No. The chain of title is the recorded deed of easement. It is kind of understood that whereas Mr. Munoz bought the property without doing a survey first and he thought one of those driveways belonged to him. He found out later that it didn't.

Mrs. Munoz stated: There was no survey.

Mr. Munoz stated: We have a tax map that we got from the Town. It says we have 30' in the front of the property.

Mr. Soloway stated: There clearly is an easement in the chain of title. In the testimony of Mr. Simmons it is an imperfect easement because it essentially isn't doing what it's supposed to do in terms of providing access to the property.

Mr. Flynn stated: There will now be an application in the Zoning Office for open public access. It's an asset to the Town.

Mr. Flaherty made a motion to approve the application. Mrs. Le Frois seconded the motion.

Aye: Mr. Flaherty, Mr. Wink, Mrs. Vrahnos, Ms. Hall, Mrs. Le Frois, Mr. Flynn, Mr. Le Frois

Motion carried.

Applicant requested to waive the resolution waiting period.

The Board agreed that the applicant may proceed at their own risk without the resolution. They can take down the porch but they shouldn't be doing anything in the County right-of-way until they receive County approval. The Board stresses the need for County approval.

NEW BUSINESS

Samaritan Inn (MSPV-6-2018)
Block: 22.03, Lot: 9
7-9 Sussex Street

The applicant is requesting minor site plan approval to permit the installation of an emergency generator and a variance for not meeting the side yard setback requirement.

TOWN OF NEWTON
PLANNING BOARD
OCTOBER 17, 2018
MINUTES

Michael Hanusek, Esq. of Fein Such Law Group represented the applicant.

Mr. Le Frois called a recess to allow for Mrs. Citterbart to review notices.

Meeting resumed at 8:10PM after notices were reviewed.

Mr. Hanusek stated: First I want to thank Mrs. Citterbart for reviewing the notices.

Mr. Hanusek gave an overview of the application for the emergency generator. We are looking to install an emergency gas generator at the property 7-9 Sussex Street. Because of the use at the property as apartments we are required to have 15' on the side yard to the generator and we have 8'. If it was a single family residence we would only have a 5' minimum required. We do submit this for emergency use only. It will not be running all the time. We submit the premises will have a beneficial use. It's a homeless shelter. It makes the lives of the residents safer and the community. There are emergency generators in other locations in the area including the Town of Newton and the State of NJ Department of Health and Human Resources.

Sworn in: Dawn Metzger of Samaritan Inn, 901 Swartswood Road, Newton, NJ

Mrs. Metzger stated: I've been the Executive Director at Samaritan Inn for 10 years.

Mr. Hanusek questioned Mrs. Metzger on the generator. Mrs. Metzger confirmed that it will be used only for emergencies, will require regular exercise for maintenance, and this maintenance can only be performed at certain days/times of the week per the Town's ordinance. It can be run no more than once a week on weekdays between the hours of 10 AM and 5 PM and may not exceed 30 minutes at a time. She confirmed that she sees no issue in meeting that standard.

Mr. Hanusek questioned: Is it propane or natural gas?

Mrs. Metzger stated: Mr. Simmons's report stated propane-powered. It is not propane, it is natural gas.

Mr. Simmons stated: I stand corrected.

Mr. Hanusek questioned: Where specifically on the property will the generator be located?

Mrs. Metzger stated: In the back of the property, facing the house, and to the right.

Mr. Hanusek questioned: What is the reason for selecting that location?

Mrs. Metzger stated: For the safety of our residents. It is the safest place to put it and was encouraged by Joe Butto, the Construction Official, to put it there.

Mr. Hanusek questioned: Did he review with you the location of the proposed generator?

Mrs. Metzger stated: Yes.

Mr. Hanusek questioned: Is it visible from the adjoining properties?

Mrs. Metzger stated: No.

TOWN OF NEWTON
PLANNING BOARD
OCTOBER 17, 2018
MINUTES

Mr. Hanusek questioned: How is it that it's not visible?

Mrs. Metzger stated: It is not visible because it is located in the back corner of our property.

Mr. Hanusek questioned: Is it under a porch?

Mrs. Metzger stated: No. It is behind the porch.

Mr. Hanusek questioned: Does that provide screening?

Mrs. Metzger stated: I'm not sure if it is three sides. But it is not visible from the driveway.

Mr. Hanusek questioned: Are you familiar with the noise regulations with respect to a generator?

Mrs. Metzger stated: Yes. It is the same generator that we have at the 21 Union Place house that we received a variance for and we've had no issues with that.

Mr. Hanusek questioned: Did you ever confirm with Generac regarding the noise levels of the units and what are they?

Mrs. Metzger stated: Correct. At the previous property it was 65 vs. 66 decibels. Generac had already, which is on file with the previous property, that one decibel is not going to make a difference and you are never going to hear that.

Mr. Hanusek questioned: When you say 65 vs 66, is that when it is operating at a normal load?

Mrs. Metzger stated: Correct. It would be in an emergency.

Mr. Hanusek questioned: In exercise mode would it be much lower?

Mrs. Metzger stated: Correct. I believe it's 58.

Mr. Hanusek questioned: This is only for emergency use?

Mrs. Metzger stated: Correct.

Discussion ensued over photos of house.

Mr. Le Frois questioned: Does the house on lot 8 have a view of the generator?

Mrs. Metzger stated: No. There is a fence and a lot of shrubbery.

Mr. Soloway stated: You said that there is shrubbery along the property line on the side of the property, correct?

Mrs. Metzger stated: Correct.

Mr. Flynn questioned: What is the setback requirement for a generator on a residential property?

TOWN OF NEWTON
PLANNING BOARD
OCTOBER 17, 2018
MINUTES

Mr. Le Frois stated: If it is a commercial use in a residential area it is 15'.

Mrs. Metzger stated: It is a multi-family dwelling.

Mr. Soloway stated: Which is classified as a commercial use under the generator ordinance

Ms. Caldwell stated: The thought process behind that is that the generator would need to be larger for a larger building.

Mr. Simmons reviewed his report dated October 1, 2018 and stated: Item number 1 is the list of documents the applicant provided for this application. Number 2, talks about the propane generator, but this should be corrected to reflect a natural gas generator. The dimensions are nominally 2' x 4' x 3 ½' high. Item number three, the setback requirements are 15' but they are proposing 8'. A variance is required. Number four, we talked about the sound level. When the generator is operating in an emergency situation the sound restriction doesn't apply. Item number 5 indicates that the generator will be exercised during week days in the hours specified in the ordinance. In item number 6, the electrical loads, controls and wiring will be subject to the approval of the Town Construction Official and Subcode Officials. Number seven, on the site plan it shows the property lines are approximate and the applicant will have the southwesterly property line staked by a licensed NJ land surveyor prior to constructing the generator to make sure the setback meets whatever distance the Board approves it for. I point that out just as in the other application, the applicant wanted to make sure they received approval, and subject to getting approved for this they have the lines staked out. So if you grant the variance down to the 8' they requested it will in fact be 8' off the property line. Number eight, the site plan does not show screening. There is a sound shroud around the generator. We've had applications with fencing around it. It may need a variance for no fencing. It may be an item to discuss with the applicant. And finally, number nine, approval from Newton Construction and Fire Officials.

Ms. Caldwell reviewed her report dated October 11, 2018 and stated: In going through the criteria from the generator ordinance item (a) being 8' and there is 15' required. So a variance is required (b) the distance from the structure to the building. It is 5' from the building which complies with the ordinance. (c) it meets the noise level requirements for operational purposes, which is really the key. During an emergency, the DEP standards don't apply. (d) During TRC it was indicated there would be no problem exercising the generator between the hours of 10 AM and 5 PM during the week not to exceed 30 minutes. (e) we confirmed it is natural gas running the generator. (f) regarding the screening, the applicant confirmed that there are existing shrubs that are not shown on the plan so the surrounding houses would not be able to see into the property. The location of it under the porch also screens it. In terms of variance criteria, c(1) hardship is that the benefits outweigh the detriments. In this case, the property is 50' wide so they could technically place the generator in the middle of the lot somewhere. But from what I've heard from the testimony is that for the safety of residents, tucking it under the side is a better alternative and it would not have substantial detriment to the neighbors. I think that variance could be granted. I think the purpose of the ordinance they discuss for residential properties can be within 5'. But multi-family properties, depending on the size, can have a really large generator, which I don't think we have here. This is more of a residential size generator.

Mr. Le Frois stated: Based on those two reports, the only testimony we haven't heard has to do with screening of the generator. Again, it sounds like the fencing between lots 9 and 8 has a lot of growth and provides the screening that may need to be provided. Please talk to the level of vines that are on that fence.

TOWN OF NEWTON
PLANNING BOARD
OCTOBER 17, 2018
MINUTES

Mrs. Metzger stated: It is a neighbor's fence. We maintain it because there is constant growth along that fence line. It is not a walk way. There is nobody over there. There is nothing over there. It's just a vacant part of the property.

Mr. Flaherty questioned: In regards to screening of the generator, what is to stop residents or kids from accessing it, damaging it, or playing with it? Should it be screened off for security purposes?

Mrs. Metzger stated: There is no reason for anybody to be at that back corner at all. For the 10 years that I've been doing this, I see no reason to put anything around it. I would see it as more of an invitation to see what is back there.

Mr. Le Frois stated: Mr. Simmons mentioned it has a sound shroud on it anyway?

Mr. Simmons stated: I asked the applicant at the site. I saw the generator. It's not like it's an exposed generator unit. It's going to be on a concrete pad where it's going to have a shroud enclosed around it.

Mr. Le Frois stated: It's going to be like a big brown box.

Mr. Simmons stated: Yes. Almost like a transformer box you would see on a subdivision.

Mr. Wink asked: This is the back of the house, where is the generator going to be?

Mrs. Metzger stated: Walk down the steps and go out towards the driveway. So the generator would be behind that. Also, in terms of snow removal this location is the safest place.

Portion opened to public.

1st Public – Kris Hansen, 161 Mill Street – She stated that the Generac unit will also have a key to lock it. All Generacs do; so little kids won't be getting into it.

2nd Public – Danielle Parson, - 5 Sussex Street – they share our driveway. How will it be screened from my property? I am on the left side of their property when you face it from the street. I'm concerned with the location and the exhaust.

Mr. Le Frois stated: Natural gas doesn't smoke. There is some exhaust but that will just go into the air.

Mrs. Metzger stated: The exhaust will go toward where the fence is, where the shrubs are.

Mr. Flynn stated: Natural gas is odorless.

Mrs. Le Frois stated: Just for clarification, Danielle's property is on the opposite side of the generator.

Mr. Flaherty stated: It is exhausting away from your property.

No more public. Portion closed.

TOWN OF NEWTON
PLANNING BOARD
OCTOBER 17, 2018
MINUTES

Mr. Soloway crafted a motion to approve the application for minor site plan and variance to allow generator 8' from one adjoining property line and subject to usual conditions, and required to be exercised once a week for 30 minutes between 10am and 5pm weekdays and compliance with noise requirements from the Town or DEP; electric controls be approved with the Construction Official; staked by a land surveyor to comply with the 8' variance and any other required approvals; variance for no additional screening based on that it is not really needed and won't be visible from the street or the neighbor's property because the porch is between her property and the generator based on a combination of fencing and shrubbery. The inner machinery will be enclosed in a sound shroud. I would write it up as a c(2) not a c(1).

Mr. Flynn made a motion to approve the application. Mr. Flaherty seconded the motion.

Aye: Mr. Flaherty, Mr. Wink, Mrs. Vrahnos, Ms. Hall, Mrs. Le Frois, Mr. Flynn, Mr. Le Frois

Motion was carried.

The applicant requested waiving of the reading of the resolution. The Board advises that the applicant may proceed at own risk in advance of the agreement of the resolution.

Draft Ordinance – to permit single-family detached and duplex residential as a permitted use in the SD-3 Zone.

Mr. Le Frois stated: Included in your packet is a memo from the Town Manager, Tom Russo, dated October 11, 2018 and a copy of the draft ordinance. Ms. Caldwell, would you please review the ordinance in more detail.

Ms. Caldwell stated: This is a draft ordinance that has been referred to the Planning Board by the Town Council for review with consistency with the Master Plan prior to introduction, and asking for any comments that the Planning Board might have. Essentially this ordinance came from some requests from property owners in the SD-3 Retail Manufacturing zone. This includes the area along Water Street which includes Kohls and Walgreens. It also wraps around to the side of Mill Street across from the County College. There is a row of residential homes there that predate the adoption of the SD-3 zone. Under the prior ordinance they were in the R-2. The SD-3 zone does not permit single family residential uses. One of the property owners was looking to refinance and ran into issues because of a pre-existing non-conforming status of residential uses. So the Town Council essentially asked for a way to try to address it. I've put together an ordinance that essentially allows existing single-family residential and duplex residential uses with the re-zone to remain. It doesn't permit new residential uses. While it is unlikely it is not something we would want to promote. It is really more of a highway, commercial zone. If someone came in with a residential subdivision it wouldn't be desirable. It seemed to be such a detriment to some of the existing families that residential uses were permitted to stay and be reconstructed if destroyed. Part of that the ordinance basically states that if the residence was destroyed, since there are no single-family residential standards in the SD-3 they would utilize the prior R-2 zone as their bulk standards. This seems fair. It may not meet those standards currently but it was the zone they were in prior and that would have been the same case if the structure burns down and they have pre-existing non-conformities with respect to setbacks, then they have to meet the bulk standards when they rebuild or come in for a variance. So they would be in the same situation prior to the adoption of this ordinance. That essentially summarizes the proposal from the Town Council. So it is referred to the Planning Board for consistency with the

TOWN OF NEWTON
PLANNING BOARD
OCTOBER 17, 2018
MINUTES

Master Plan. It is not inconsistent because there is really no specific discussion about residential uses in the zone.

Mrs. Le Frois stated: At the Town Council meeting we had a number of property owners in the SD-3 zone specifically those right across the street from Sussex County Community College. They were in favor of the ordinance, but also showing other frustrations they've had recently in trying to obtain financing because of the current zoning plans. They couldn't rebuild if their house was destroyed.

Mr. Soloway stated: Mortgage company overkill. But apparently all this happened because it is not seen previously as residential. It comes up as commercial. The lender apparently required a letter from the Zoning Officer confirming that the house could be rebuilt in the event it came down. We talked about it and I told Mrs. Citterbart she can't write that letter.

Mr. Le Frois questioned Ms. Caldwell: In your work in crafting a new ordinance, I know sometimes when you have a document in place and make a slight change it sometimes sends reverberations throughout. Are there any potentially unintended consequences as a result of adding this?

Ms. Caldwell stated: That is what I was trying to avoid. My initial thought was just to allow a single-family as a permitted use. The concern, although it may be unlikely because there is usually more financial incentive to utilize commercial, but if for some reason things shifted and single-family was really hot again we are trying to avoid the unintended consequence. And it gives it time to switch over to commercial.

Mr. Soloway stated: The zone will only kick in with a bad fire. The odds are they never have to do it.

Mr. Le Frois questioned: Could someone willfully tear their house down to rebuild it?

Ms. Caldwell stated: That's a good question. It states partially or completely destroyed.

Mr. Le Frois stated: Yes. But it doesn't say by whom.

Mrs. Le Frois questioned: Could it be remodeled?

Ms. Caldwell stated: It could definitely be remodeled.

Mr. Soloway stated: It could be remodeled but not expanded beyond the existing footprint.

Ms. Caldwell stated: I would say it will remain subject to the bulk standards in effect prior to this ordinance. I think it could be expanded. It might be better terminology to say it could be rebuilt subject to the standards of the zone if someone wanted to tear it down and rebuild it. Or you could allow them to continue as they are and rebuild if destroyed.

Mr. Soloway stated: It's a good question. The immediate problem you are addressing here is will the homeowners be able to get a letter from the Town to the mortgage lenders stating they will be able to rebuild their house.

Ms. Caldwell questioned: What if someone wants to tear down and rebuild?

TOWN OF NEWTON
PLANNING BOARD
OCTOBER 17, 2018
MINUTES

Mrs. Vrahnos stated: It happens in other towns where they will tear down an old house and build a monstrosity on that foundation.

Mrs. Le Frois stated: This is saying it will refer back to the R-2 of the previous zone. Ms. Caldwell, do you recall what it says? Are they able to raze a property?

Ms. Caldwell stated: They would be able to. They just need to meet the setbacks and the height. Obviously, if for some reason someone had the incentive to rebuild a larger home they could subject to setbacks. I would have to check the setbacks on that.

Mrs. Le Frois stated: Does SD-3 wrap around to the properties between G&H and Jersey Dog; the single and two family homes in that area? I would be concerned if someone wanted to build additional housing there that wasn't commercial.

Ms. Caldwell stated: Yes. We wanted to not just cover the existing residential that came in we wanted to look at the entire zone. They originally had come in and said maybe switch all the houses to T-4, or there is a residential component permitted. But then there are other residences within a zone so it might be better to address it in a blanket rather than single out those. In case anyone else comes in and has the same issue. We are trying to avoid any consequences as much as possible. I'm not sure how to address the determination as to how it's destroyed.

Mr. Soloway stated: Limit tear downs so even if you are going to comply with the old ordinance standards. Just require that it be built in the prior footprints.

Ms. Caldwell stated: That's another option, saying they have to be in the prior footprint. This goes into a concept where they can't expand.

Mr. Flaherty questioned: What would be the detriment if someone razed their house and built a new one? Is it going to be valued more?

Mr. Soloway stated: No. The intent was to get rid of single-family homes. You can just permit residential, but you don't want to do that.

Ms. Caldwell stated: I think the issue of some unintended consequences, someone doing something we hadn't thought of are good questions.

Mr. Le Frois stated: What's the process from here? We would find this not inconsistent with the Master Plan but with recommendations?

Ms. Caldwell stated: Mrs. Citterbart would transmit a letter back to the Council and they would incorporate into the ordinance if they wish.

Mr. Soloway stated: It depends on what the Council wants but you could say that if it burns down you can rebuild your house.

Mr. Le Frois stated: I think that is something we should add. We don't want self-inflected tear downs. That clarifies it. It covers it for people who own the house.

TOWN OF NEWTON
PLANNING BOARD
OCTOBER 17, 2018
MINUTES

Mr. Soloway stated: Under case law, if a single-family residential should not be a permitted use in the zone that the objective of the law goes into variance applications. In turn, you want to bring everything into conformity in the zone. If you want a single-family residential prohibition in the zone presumably it is going to take a long time.

Mrs. Le Frois stated: The Council wanted to make sure that we are accommodating to the existing residents that are there, should anything emergent happen, they are able to rebuild their homes as they have them now.

Mrs. Le Frois stated: This is the ten year anniversary of the Master Plan and one of the things the Council and Planning Board have done over the years, is make amendments and changes as things come up. We installed the transect zoning and moved away from the former zoning. We've made changes to allow for tattoo shops. We've made changes for redevelopment properties. In this case we are updating the SD-3 zone. So at the time we didn't foresee these issues but sometimes the changes come as a result of things that happen outside of what we can see. As Mr. Soloway said, the mortgage company is requiring this information, so this is an unintended consequence of designating the SD-3 zone. It is a retail/manufacturing zone. It just so happens that there are some residences there. It makes good sense to protect the residents.

Portion opened to the public.

1st Public: Kris Hansen, 161 Mill Street. The deal is, my father has dementia. He has alzheimers. I had to leave Morris County to find a ranch house that was affordable. Nowhere was it ever advertised that this house was in a commercial zone. When we bought the house, we knew it needed a lot of work which wasn't an issue. When I applied for the mortgage after cashing out my house I found out we didn't qualify for it because I couldn't get this letter. At the time we didn't know it was commercial, even during the early conversations. I stood and looked at the map while we were waiting for the construction guy to come in and then realized we were in a different zone. All I'm looking for is to rebuild on a property that I own as a residence that has been a residence since the 1930's.

2nd Public: Michael Malone, 59 Trinity Street. You are talking about if it burns down, but there are other forces of nature that could affect it.

Mr. Soloway stated: That is the most common.

Ms. Caldwell stated: It says partially or completely destroyed which kind of goes along with the pre-existing non-conforming language. You have to determine what partially or completely means.

No more public stepping forward. Portion closed.

Mr. Le Frois stated: My thought is that the ordinance is not inconsistent with the Master Plan. But I think we should perhaps have the Council consider some modification to the wording or additional wording that still puts forth the intent that we would ultimately not want residential use within the SD-3 zone. We would not want the property owner to knock it down to rebuild, but if they own property and have it destroyed by mother nature, they can absolutely rebuild the property and not have an issue in that regard.

TOWN OF NEWTON
PLANNING BOARD
OCTOBER 17, 2018
MINUTES

Mrs. Le Frois questioned: You're speaking about the Council considering language not for residential use. Isn't that implied by it being an SD-3 residential manufacturing zone anyway?

Mr. Le Frois stated: Yes.

Ms. Caldwell stated: You are basically saying to clarify that if someone tears down a house it doesn't qualify as being destroyed. You could say, yes I destroyed my own home and now I would like to rebuild it. It needs to be some force of nature. What about expansions and remodeling? Is that ok?

Mr. Le Frois stated: I would assume that what could be done in accordance with the R-2 standards that were in effect before would apply.

Ms. Caldwell stated: Remodel is ok. Expansion is subject to the prior zone standards.

Mr. Wink stated: If a fire did totally destroy a home, the homeowner may want to expand.

Ms. Caldwell stated: Sure.

Mr. Soloway stated: There is one quirky idea that occurred to me based on the testimony and also from the way it was presented to the Zoning Officer. The mortgage lender's frame this in terms of needing a letter confirming that the home can be rebuilt on its existing footprint in the event of total destruction. The ordinance that's drafted doesn't exactly assure that. It is saying that you can rebuild that house subject to R-2 zoning standards. It may be that they probably can but there are homes there that their footprints don't comply. From a planning perspective, I'm sure it's better to do it the way it's framed. But from the perspective of dealing with the immediate problem, I don't know that it is going to achieve the goal.

Mr. Le Frois questioned: Can they come in for a variance?

Mr. Flaherty stated: But that doesn't help with the letter.

Mr. Soloway stated: The minute you say variance you can't say that you're entitle to rebuild it.

Re-opened to public.

1st Public: Kris Hansen, 161 Mill Street. I actually copied this ordinance tonight and forward it to the underwriters as it is written. I told them it hasn't had the final reading yet. They did not ask for that additional letter. They did ask originally if it could be built on the same footprint?

Ms. Caldwell stated: It sounds like the fact that something can be rebuilt of similar value is the issue. I think it addresses the issue.

Ms. Hansen stated: I just want to know that I can rebuild the house.

Ms. Caldwell stated: Within the existing footprint alternative to R-2 standards.

Mrs. Le Frois stated: So single-family, duplex residential may be rebuilt in the existing footprint subject to the standard of the zone in effect prior to May 22, 2012, R-2 zone, if partially or

TOWN OF NEWTON
PLANNING BOARD
OCTOBER 17, 2018
MINUTES

completely destroyed by natural forces, or by accident, that by adding those two or three conditions it answers that discussion.

Mr. Soloway stated: The way it is written now is that if you can build on the existing footprint if it complies with the bulk standards.

Mr. Le Frois stated: I think we want to take that restriction out.

Mr. Soloway stated: My suggestion is that you do it as a practical matter, if there is a fire and somebody wants to come in, just encourage them to comply with the old setback standards. I'd hate to see the Council go through all the time and trouble of enacting this ordinance to deal with this problem and then find out that it doesn't address the problem.

Mr. Soloway crafted a motion to authorize Mrs. Citterbart to send a letter to the Council stating that the Planning Board reviewed the proposed ordinance and finds that it is not inconsistent with the Master Plan as framed but makes the following suggestions in terms of possible revisions. Number one is to include language to ensure that the right to rebuild is limited to natural as opposed to voluntary destruction of the house. Secondly, to qualify that the remodeling and expansion of the pre-existing non-conforming will be permitted provided that the expansion complies with the ordinance standards. Thirdly, the language be modified to permit rebuilding either in compliance with those standards or within the existing footprint.

Aye: Mr. Flaherty, Mr. Wink, Mrs. Vrahnos, Ms. Hall, Mrs. Le Frois, Mr. Flynn, Mr. Le Frois

CORRESPONDENCE:

The New Jersey Planner July/August 2018

EXECUTIVE SESSION - None

PUBLIC PORTION –

1st Public: Kris Hansen, 161 Mill Street. Thanked all.

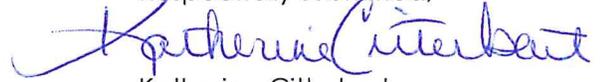
Mrs. Le Frois stated: I wanted to make sure that everyone saw the front of the NJ Herald today with Spring Street being designated as one of NJ great places for 2018. The award was given to one of four places selected by the NJ Chapter of the American Planning Association. The Town will be formally presented with an award at a dinner in South Orange on October 29th. Why I bring it up at the Planning Board meeting is that our Town Planner, Jessica Caldwell together with the Town Administration put forth the application and a lot of the criteria of how the street is designated has very much to do with the work that's done here at the Planning Board and has been done here over the years. So far, changing some of the allowances such as businesses on the first floor and not just retail; the Newton Town Centre building that was able to come to fruition because of decisions that were made here. So I just wanted to make special note to the Planning Board because sometimes you go through these applications and it's sometimes years before it comes to fruition and you see it in different ways.

ADJOURNMENT

TOWN OF NEWTON
PLANNING BOARD
OCTOBER 17, 2018
MINUTES

Mr. Flaherty made a motion to adjourn the meeting. Motion seconded by Mr. Flynn. The meeting was adjourned at 9:22 PM with a unanimous "aye" vote. The next meeting will be held on December 19, 2018 in the Council Chambers of the Municipal Building.

Respectfully submitted,



Katherine Citterbart
Planning Board Secretary

