

TOWN OF NEWTON
PLANNING BOARD
DECEMBER 3, 2018
MINUTES

The special 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. Marion, Mr. Flaherty, Mr. Wink, Mrs. Vrahnos, Ms. Hall, Mr. Ragsdale (arrived at 7:19PM), Mrs. Le Frois, Mr. Russo, Chairman Le Frois

Excused: Mr. Flynn

Absent: Mr. Butterfield, Mrs. Larsen

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

CONSIDERATION OF MINUTES

October 17, 2018

A motion was made by Mr. Flaherty and seconded by Mrs. Vrahnos to approve the October 17, 2018 meeting minutes.

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

The motion was carried.

HISTORIC RESOLUTIONS

None

RESOLUTIONS

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

The resolution is granting parking in the front yard of the property.

A motion was made by Mr. Flaherty and seconded by Mrs. Vrahnos to approve the resolution.

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

The resolution was approved.

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

The resolution is granting approval to install an emergency generator on the property.

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

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

The resolution was approved.

OLD BUSINESS

None

NEW BUSINESS

Non-Condemnation Area in Need of Redevelopment Study
Proposed Diller Avenue Redevelopment Area
Block 18.02, Lots 2, 3, 19, 20, 21, 22, 23, 30, 31 & 32

Mr. Soloway stated: At the October meeting you were asked by the Town Council to undertake a study as to whether this area met the statutory criteria to be deemed an Area in Need of Redevelopment. You agreed to undertake that effort. Ms. Caldwell has done an investigation and prepared her report which summarizes in some detail. Once she is finished with the summary of her report you will be asked to determine whether to make the recommendation to the Town Council that these properties be deemed an Area in Need of Redevelopment. In order for you to make that recommendation you will have to make the finding that the properties meet one or more of the statutory criteria which are a prerequisite for being deemed an Area in Need of Redevelopment. This is a Non-Condemnation Area of Redevelopment which is proposed. Which means that as the process goes forward if it is in fact declared by the Town Council to be an Area in Need of Redevelopment, the Town will not have the authority to use the power of eminent domain to acquire any of the properties that are in the Redevelopment Area. If you as a Board do make that finding and that recommendation it will be transmitted to the Town Council and then the Town Council will decide whether to accept that recommendation. If it does, presumably, it will prepare a Redevelopment Plan which is essentially a substitute for a zoning ordinance for the affected properties. It supersedes the zoning ordinance. If the Council does that, from the Board's point of view, this will proceed much like an ordinance amending the zoning ordinance. It will then come back to the Board for review for consistency with the Master Plan and then it will go back to the Town Council and ultimately if everything works out the way it's hoped there will be a development application that will come before the Board under the Redevelopment Plan.

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Mr. Le Frois stated: So we will have Ms. Caldwell review her work and then we will allow the public the opportunity to question and comment on her testimony.

Ms. Caldwell introduced the Redevelopment Study dated December 3, 2018 and stated: On September 12, 2018, the Governing Body of the Town of Newton authorized the Planning Board to conduct a Non-Condensation Area in Need of Redevelopment Study for an area identified as Block 18.02, Lots 2, 3, 19, 20, 21, 22, 23, 30, 31, and 32 on the official tax maps of the Town (the "Study Area"). The Study Area covers a portion of an elongated block formed between Diller Avenue, Spring Street, and Sparta Avenue, with frontage on all three streets. The Study Area includes ten (10) parcels covering approximately 6 acres just southeast of Newton's central business district. Due to the non-condemnation designation, the municipality will not have authority under the Local Redevelopment and Housing Law (LRHL) to exercise the power of eminent domain to acquire property in the designated area.

Ms. Caldwell gave an overview of the Study Area which includes Block 18.02, Lot 2, 278 Spring Street; Block 18.02, Lot 3, 4 Diller Avenue; Block 18.02, Lot 19, 47 Sparta Avenue; Block 18.02, Lot 20, 43 Sparta Avenue; Block 18.02, Lot 21, 41 Sparta Avenue; Block 18.02, Lot 22, 37 Sparta Avenue; Block 18.02, Lot 23, 33 Sparta Avenue; Block 18.02, Lot 30, 19 Sparta Avenue; Block 18.02, Lot 31, 280 Spring Street and Block 18.02, Lot 32, 39 Sparta Avenue.

Ms. Caldwell introduced the Tax Map showing the Diller Avenue Redevelopment Study Area.

Mr. Le Frois questioned: You have the whole area shaded from Spring Street, Diller Avenue and over to Sparta Avenue. There is this group of lots that were studied that makes a really irregular shape. There are other lots in the shaded area that are not included in the study. Is there an implication of the odd shaped group of lots? Does that create a unique situation?

Ms. Caldwell stated: There are a couple of different reasons for the study area. The entire area that is surrounded by Spring Street, Diller Avenue and Sparta Avenue has been a concern for the Town for quite some time. Several years ago there was a larger study in this area that met quite a lot of resistance from residential property owners within the block. So at this point we've been looking at it in pieces and focusing primarily on the commercial portions of the study area. We did a southern portion in the Merriam Gateway Redevelopment Plan. This covers the northern portion. It is non-residential within that block. We may be looking at other portions of the block in the future. So the somewhat odd shape is leaving out the residential lots along Sparta Avenue.

Mr. Le Frois questioned: So in your opinion it is appropriate to group these lots and look at them as a group and leave the residential lots adjacent to it alone?

Ms. Caldwell stated: Yes.

Mr. Soloway questioned: I would assume it is lots 24 – 29 that front along Sparta Avenue?

Ms. Caldwell stated: Yes. That's correct.

Ms. Caldwell continued reviewing the Study and stated: The land uses in the Study Area fall into the following categories: 1. Approximately 5% of the Study Area is comprised of semi-maintained landscaped areas. 2. Around 40% of the Study Area is unmaintained vacant land. 3. About 45% of the Study Area contains a commercial or office use. 4. The final 10% of the Study Area is

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public surface parking. The improvement value to land value was analyzed. An improvement to land value ration of less the 2:1 can also identify parcels which are underbuilt for the area, particularly in a commercial district. All but two of the parcels as you can see on the table are less than 2:1. Many are zero because they are vacant. Even some with some improvements on them are less than 2:1. Only lots 20 and 31 have an improvement to land value ratio of more than 2:1. We did a zoning analysis of the existing zoning in the area. It is primarily T-4 and T-5 which is the Neighborhood Services Transect Zone and the Town Core Support Area. Which are intended for a variety of mixed us, commercial, and jobs producing type uses which obviously aren't filled out in the area at this time. We review the relationship with the Master Plan. We reviewed the general goals and objectives as well as the economic goals and objectives. We looked at police reports over the last five years. We found there were quite a few reports in the area that reflected a vacant and unpopulated environment; such as illegal dumping, suspicious activity, and small fires during the winter months. The Study analyzed zoning violations over the last five years. There were only two violations for zoning permits for temporary uses that were conducted on some of the commercial sites. On page 28 we review the criterion for redevelopment. Criterion "a" is deterioration. The generality of buildings are substandard, unsafe, unsanitary, dilapidated, or obsolescent, or possess any of such characteristics, or are lacking in light, air, or space, as to be conducive to unwholesome living or working conditions. Lots 19, 30 and 31 are vacant buildings that are obsolescent and no longer conducive to wholesome living or working conditions. Criterion "b" is abandonment. The discontinuance of the use of buildings previously used for commercial, manufacturing, or industrial purposes; the abandonment of such buildings or the same being allowed to fall into so great a state of disrepair as to untenable. Lots 19, 30 and 31 contain commercial buildings that are currently vacant and in various states of disrepair. Criterion "c" is public and vacant land. Land that is owned by the municipality, the county, a local housing authority, redevelopment agency or redevelopment entity, or unimproved vacant land that has remained so for a period of ten years prior to the adoption of the resolution, and that by reason of its location, remoteness, lack of means of access to developed sections of the municipality, or topography, or nature of the soil, is not likely to be developed through the instrumentality of private capital. Lot 2, a former railroad right-of-way, has been unimproved vacant land for many years, and forms a long stretch of land in between parcels that has little utility without being combined with other surrounding lots.

Mr. Le Frois questioned: Is that land owned by the Town of Newton?

Ms. Caldwell stated: I believe that is owned by a private entity.

Mr. Le Frois questioned: So it is considered vacant land, not public land?

Ms. Caldwell stated: Yes. It has been vacant for more than 10 years.

Criterion "d" is Obsolete, Layout and Design. Areas with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors that are detrimental to the safety, health, morals, or welfare of the community. The entrances to the commercial properties on Lots 19, 30 and 31 are not conducive to safe pedestrian flow and attractive commercial storefronts. Criterion "e" is Property Ownership and Title Issues. A growing lack or total lack of proper utilization of areas caused by the condition of the title, diverse ownership of the real properties therein or other similar conditions which impede land assemblage or discourage the

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undertaking of improvements, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to and serving the public health, safety, and welfare, which condition is presumed to be having a negative social or economic impact or otherwise being detrimental to the safety, health, morals, or welfare of the surrounding area of the community in general. The following parcels have a building to land value ratio 2:1 or less: Lots 2, 3, 19, 21, 22, 23, 30 and 32. These properties are located in the Town Core Support Area and in the Neighborhood Services Area (see *Zoning Analysis*), which are considered economically viable areas. This points to underutilization of the properties. Criterion "h" is Smart Growth Consistency. The designation of the delineated area is consistent with smart growth planning principles adopted pursuant to law or regulation. This can be applied to the entire Study Area. Smart growth is defined as a planning principle that directs new growth to locations where infrastructure and services are available, limits sprawl development, protects the environment, and enhances and rebuilds existing communities. The New Jersey Office for Planning Advocacy identified the following as smart growth principles: mixed land uses; compact, clustered community design; walkable neighborhoods; distinctive, attractive communities offering a sense of place; open space, farmland, and scenic resource preservation; future development strengthened and directed to existing communities using existing infrastructure; variety of transportation options; community and stakeholder collaboration in development decision-making; predictable, fair, and cost-effective development decisions; and variety of housing choices. The Study Area is located in the T-4 and T-5 Transect Zones, which were implemented to further Smart Growth principles including mixed land uses, walkable neighborhoods, and compact community design. Designating the Study Area as an Area in Need of Redevelopment would direct future development towards Newton's existing infrastructure, thus limiting sprawl and preserving the surrounding environment. Furthermore, Newton is a designated regional center in the State Development and Redevelopment Plan. Section 40A:12A-3, the Redevelopment Law definitions are in Section 3 of the Redevelopment Law, which states following the definition of a Redevelopment Area that "a redevelopment area may include lands, buildings, or improvements which of themselves are not detrimental to public health, safety, or welfare, but the inclusion of which is found necessary with or without change in their condition, for the effective redevelopment of the area of which they are a part." In conclusion, this investigation and study find that each lot within the Study Area identified meets at least one of the statutory criteria to qualify as an Area in Need of Redevelopment and recommends that the Study Area be designated by the Town of Newton as a Non-Condensation Area in Need of Redevelopment pursuant to N.J.S.A. 40A:12A-1 et seq.

Mr. Soloway pointed out that contrary to what he had previously suggested to Ms. Caldwell, lot 20 only meets one of the criteria and not both.

Mr. Le Frois questioned: So Section 3 is not one of the criterions that need to be met?

Mr. Soloway stated: Correct. Section 3 is, "do you qualify under one of the others".

Mr. Le Frois stated: Section 3 addresses one of my comments. The fact that these lots form a continuous section is a good thing. But the fact that it doesn't include all the properties is not a negative thing in your opinion?

Ms. Caldwell stated: Not necessarily. Other parcels can be looked at separately and included in a Redevelopment Area. The Redevelopment Areas can be developed contiguously or non-contiguously. They can be done in different steps. We've found that it is a bit easier to undertake smaller study areas that are more focused in terms of the process.

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Mr. Le Frois questioned: So the Redevelopment Area for the Merriam Gateway section remains intact and is unchanged?

Ms. Caldwell stated: Correct. There are several photos of the area attached.

Mr. Wink questioned: Of the ten parcels, nine are owned by the same entity? And this entity has been developing in the Town of Newton over the past six or seven years?

Ms. Caldwell stated: Yes.

Mr. Wink stated: I don't understand the need for the study since the parcels are owned by the same individual who intends to develop them whether there is a study or not. By doing the study it's going to end up giving that person the ability to supersede zoning laws. These are in place for a reason and I'm not comfortable with it.

Mr. Soloway stated: It does technically supersede the zoning laws but it doesn't obliterate zoning standards. It overlays them, in a sense. You will have what is equivalent to a zoning ordinance in those parcels. Without knowing anything about what the ultimate plan is you will have the different entities under common control and direction. It might work better as a Redevelopment Zone with a Redevelopment Plan to develop them coherently in terms of a unified plan; particularly since they are not all in the same zoning district. They are all very intelligent questions. You are obviously thinking hard. Tonight's charge is to make a finding whether they meet the criteria. If you make that finding, presumably, the Town Council will then work up the actual Redevelopment Plan which will come back to you for review.

Mr. Ragsdale questioned: Will the zoning regulations change for side, front setbacks and impervious coverage?

Mr. Soloway stated: I can't answer that yet. You will have to read it when it comes.

Mr. Ragsdale stated: So it will come back to us.

Mr. Soloway stated: Yes. There is no Redevelopment Plan yet. It will come back to the Board the same way a zoning ordinance amendment comes back to the Board. The Plan is presented to the Board for review in terms of consistency with the Master Plan and for any other recommendations and comments you may have. If it's ultimately adopted then the development that is actually proposed has to come back to the Board to be approved.

Mr. Ragsdale questioned: So it is a two-step process?

Mr. Soloway stated: It is actually more like a three-step process. This is the third step. I don't think it's necessarily accurate to look at this as tossing the zoning ordinance away.

Ms. Caldwell stated: I think the Town Council identified this area and directed the Planning Board to review it against the criteria. There are a variety of reasons. There are a variety of things the Redevelopment Statute offers in order to assist the development and it's not necessarily a foregone conclusion that whatever development may be contemplated it can be concluded without designation as an Area in Need of Redevelopment. Clearly it's been dilapidated and in trouble and not living up to it's potential for many years. Just to ensure that

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there is some common ownership and that it can just be done is not part of the study or part of our review. What we are looking at is the criteria against the Redevelopment Law. Sometimes it does make sense to take a look at parcels through the Redevelopment Statute in regards to the plan. The plan can reflect pieces of the zoning and may not. The plan is introduced almost like an ordinance and is reviewed for consistency with the Master Plan by the Planning Board and it goes back to the Town Council for adoption. There is also still a site plan process that occurs. Many of the site plan design standards continue to apply for redevelopment process. I think the Town has been quite successful with redevelopment. I think it's a positive tool that we have as part of our zoning and land use within the Town.

Mr. Le Frois questioned: So the individual lots based on your report meet at least one of the criteria. Is it required that the redevelopment include all the lots or can only a portion of this area be redeveloped? Or does it all depend on the plan?

Ms. Caldwell stated: This designates the study area and the plan will determine whether or not all parcels have to be included in the redevelopment.

Mr. Le Frois questioned: So they don't all have to be included?

Ms. Caldwell stated: They don't have to be. Especially in a Non-Condemnation Area most likely they won't be because the idea is that property owners voluntarily decide to become part of a Redevelopment Area. So if someone decides not to, the Town doesn't decide to initiate condemnation in order to create the entire area or require a developer to acquire all the parcels in order to undertake the redevelopment.

Mr. Soloway stated: To be included in the area there would have to be a determination that the particular lot meets at least one of the criteria.

Mr. Le Frois questioned: So if one of the residential owners along Sparta Avenue finds out about this Redevelopment Study and says they are willing to sell their property can you include it in the Redevelopment Area as an amendment at a later date?

Ms. Caldwell stated: Yes. It could be. If there was a group of parcels it could be undertaken as a different study or created into one plan as well.

Mr. Le Frois questioned: So we are just looking at the 10 lots and if they meet at least one criterion.

Ms. Caldwell stated: Correct.

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

Mr. Soloway read the Resolution of the Planning Board recommending that certain properties located on Diller Avenue, Sparta Avenue and Spring Street be designated as a Non-Condemnation Area in Need of Redevelopment. To make determinations if the lots constitute an Area of Redevelopment. The Board was directed to examine whether these 10 properties should be determined to be a Non-Condemnation Area in Need of Redevelopment. Pursuant to this statute it references the starting sales report which was distributed to the Board members and summarized states that the study concluded that the study area does qualify as a Non-Condemnation Area in Need of Redevelopment. Pursuant to the redevelopment reasons set

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forth in this study states whereas pursuant to the requirements of this statute there is a noticed public hearing held this evening that gave the persons interested in or would be affected by a determination of the study area is a Non-Condensation Area in Need of Redevelopment the opportunity to be heard. It states that the Board considered the study and after the comments from Ms. Caldwell and the opportunity for public comment and deliberating, and after careful consideration of the evidence presented and testimony offered, the Board resolves as follows:

Section 1, the study and the findings of fact and conclusions contained therein is hereby incorporated with the reading of the resolution in its entirety. The Planning Board Secretary is hereby directed to transmit back the study and resolution to the Town Council. Second, after consideration of all evidence presented and all testimony offered the Planning Board accepts and adopts the recommendations contained in the study and hereby recommends that the study area be declared a Non-Condensation Area in Need of Redevelopment in accordance with the Redevelopment Law in the reasons set forth in the study. The resolution if adopted shall take effect immediately upon adoption.

Mr. Marion questioned: The study doesn't address traffic flow does it?

Ms. Caldwell stated: Correct.

Mr. Soloway stated: This is strictly to address the causes and the contacts of the statutory criteria for making the determination that it is an area in need of redevelopment.

Mr. Le Frois stated: So it outlines the fact that they do need it and kicks off the development of the Redevelopment Plan which would address all the things that Gary mentioned.

Mr. Soloway stated: This is a recommendation that goes back to the Town Council. The next step would be a Redevelopment Plan. But that's not before you yet.

Mr. Russo made a motion to accept the resolution as presented. Ms. Hall seconded it. Motion carried.

Aye: Mr. Flaherty, Mr. Marion, Mr. Wink, Mrs. Vrahnos, Ms. Hall, Mr. Ragsdale, Mrs. Le Frois, Mr. Russo, Mr. Le Frois

Motion carried.

CORRESPONDENCE

None

PUBLIC PORTION

None

ADJOURNMENT

Mrs. Le Frois made a motion to adjourn the meeting. Motion seconded by Mr. Russo. The meeting was adjourned at 7:55 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,

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Katherine Citterbart
Planning Board Secretary