

TOWN OF NEWTON
PLANNING BOARD
September 18, 2019
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.

OATH OF OFFICE:

None

2019 PROFESSIONAL APPOINTMENTS

Appointment of Conflict Planner, Phil Abramson of Topology NJ, LLC for Redevelopment of Block 10.01, Lot 4.

Mr. Flaherty made a motion to approve the appointment as presented in the packet. Mr. Marion seconded the motion.

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

SALUTE TO THE FLAG: Was recited.

ROLL CALL: Was taken

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

Excused: Mr. Ragsdale, Mr. Couce, Mr. Flynn

Professionals present: David H. Soloway, Esq. of Vogel, Chait, Collins & Schneider
Jessica Caldwell, J. Caldwell & Associates
David Simmons, Harold E. Pellow and Associates
Matthew Morris, Harold E. Pellow and Associates
Rich Quamme, Ferriero Engineering

THE SUNSHINE STATEMENT: Was read.

CONSIDERATION OF MINUTES

July 17, 2019

A motion was made by Mr. Flaherty and seconded by Mrs. Vrahnos to approve the July 17, 2019 meeting minutes.

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

The motion was carried.

HISTORIC RESOLUTIONS

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First Presbyterian Church (#HPC-3-2019)
Block 8.01, Lot 1
54 High Street
T-6 Zone

The recommendation is to install three (3) Mitsubishi ductless air conditioning condenser units to the flat roof of the Fellowship Hall.

Mr. Marion made a motion to accept the recommendation. Mr. Russo seconded the motion.

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

The recommendation was approved.

Sussex County Sheriff's Office (#HPC-5-2019)
Block 5.01, Lot 19
39 High Street

The recommendation is to conduct renovations and improvements to the exterior. This includes window and door replacement, parapet repair, façade and site improvements.

Mr. Marion made a motion to accept the recommendation. Mr. Flaherty seconded the motion.

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

The recommendation was approved.

RESOLUTIONS

None

NEW BUSINESS:

**Martorana Enterprises, LLC (#PB-8-2019)
Block 22.05, Lots 13.01 & 13.02
104 Sparta Avenue**

The Applicant is seeking an appeal of Paul Ferriero, the Conflict Board Engineer's denial of authorization to proceed to Phase 3 of this 3 phase development or in the alternative for the Board to grant permission for the Developer to proceed to Phase 3 prior to the completion of the construction of the 6 low/middle income apartments in Building 10. The Applicant is also seeking an extension of time to complete construction of Building 10.

Mr. Simmons recused himself and Rich Quamme from Ferriero Engineering stepped up. Mrs. Le Frois recused herself as it is a "c" variance application.

Sworn in: Greg Martorana, 207 Eileen Drive, Cedar Grove, NJ; C. Richard Quamme of Ferriero Engineering.

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Mr. Fiorello stated: I filed an application with the Board on July 19, 2019. I included a history of the resolutions as to what was granted in connection with this application starting as far back as June 2012 when there was a use variance granted. In December 2012 there were preliminary site plan and subdivision approvals. Then again on May 2013 when we re-addressed those approvals because of an apparent conflict. There were final site plan and subdivision approvals in September 2013. In October 2014 there was a Developer's Agreement that incorporated those approvals.

Mr. Fiorello introduced Exhibit A1, a colorized version of what was submitted with the packet and stated: The project was to be developed in phases. In Phase I there were 20 townhouses. All of them sold. They are off the market and people are living in them. Phase II consisted of 12 units. The ones in yellow have been sold. The purple units are presently under construction. The four in pink, are under contract as of July when I submitted them. Currently there is only one unit left not under contract and that contract is being negotiated. There is only one unit left in this whole development. After we sell this we have nothing left because we cannot yet proceed to Phase III. The reason we can't proceed is because Mr. Ferriero indicated that we need consent from the Board. If you will note on page 2 it says that the majority of units must be sold (i.e. under contract) before any construction will begin on the next phase. We have taken the position that Phase II has only one unit unsold. Pursuant to your resolution we are now entitled to go to Phase III. After your resolution of approval we entered into a Developer's Agreement, which was submitted with the application. Two things have to be addressed with respect to that. One is low income housing. The six apartments are in green.

Mr. Soloway stated: The six affordable housing units are contained in the brick building that has siding coming out of the top. It used to be used for office purposes is that correct?

Mr. Fiorello stated: Yes. Mr. Martorana testified that the stage of development is that it has siding, partitions, roofing, and plumbing. The only thing we don't have yet is the elevator. It is going to come in sometime in the middle of October. That is holding up completion of the building. We are 90% done on the building. However, under the Developer's Agreement there is a provision that the project on the low income housing units must be complete within five years of the commencement of construction. This November will be five years and we are 90% completed. The Developer's Agreement has a provision which says that the Board can grant an extension of time to complete this. We need about 6 months so the project can go forward. We don't need this to move to Phase III. We need it to comply with the Developer's Agreement within the five years. Why hasn't it been done in that time? Because there are tenants in that building. One of the tenants was obstinate in getting out. We went three months without anything being done so that put us back three months. The elevator will come in October. Mr. Martorana thinks it will be done within 6 months.

Mr. Soloway stated: So you are requesting relief on two items. One is that you are looking for a ruling from the Board that you have completed enough units so that you should begin construction on Phase III. And secondly you are looking for a 6 month extension of the five year time period provided for in the Developer's Agreement to complete the affordable units.

Mr. Fiorello stated: Yes.

Ms. Caldwell stated: Another issue that hasn't been raised is that part of Phase II has been required to include affordable units. The way affordable housing regulations are, you have to complete a certain number of the affordable units as you complete the market rate units. The

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applicant had requested that that be put off and not complete any units as part of Phase I, which the Board agreed to. So the units were rolled into Phase II. In my opinion part of the reason Mr. Ferriero is not allowing them to go to Phase III is because it's a Phase II requirement for them to complete the affordable housing. Part of the issue is that once they complete all the units there is not a lot of incentive to complete the affordable housing. The reason the five year time frame was put on there was because if they decided to give up on the other units they are still required to complete the six units regardless. It's a bit different than what was explained. I think there are some ways it can be done. One of the issues with the apartments versus the townhouse units is that they really have to complete them all at once. With the townhouse you can have one unit done in Phase I, two units done in Phase II, and four units done in Phase III. You wouldn't have to do the entire building all at once. That's why we tied it to Phase II. You could hold off on giving a CO for Phase III or require some kind of bonding as part of this.

Mr. Soloway stated: A condition can be that no CO will be issued for Phase III until the affordable housing units have been complete.

Mr. Fiorello stated: There is nothing in the resolution that says the affordable housing units have to be done before we proceed to Phase III. We have a phasing issue as opposed to a Developer's Agreement issues. The Developer's Agreement issue says that we can extend the time if there's a reason for it. Also, there are a host of projects that have failed throughout the country. We don't have any property to sell. So the people who are living there will now have to wait until the spring. So those people are going to be living with construction equipment, piles of dirt, and gauging. They might think the project is abandoned. We have people clamoring for other units. We have someone wanting to buy two for the next phase. So we lose all our subcontractors and artisans. We need to move dirt from Phase III to Phase II. We would like to put in foundations in Phase III. We won't be able to complete Phase III for about a year. In addition, we should understand that the developer has put in the entire infrastructure and all of the drainage system in. The entire electrical system is in. The entire stormwater system is in. The entire roadway is in. All the curbs are in. All of the electrical and plumbing is in. So everything is there. It just needs to have the excavation done. We would like to be able to put up foundations so when the spring time comes we will have something to put up. Mr. Martorana will testify to the status of the low and middle income housing. We are not going to walk away from it. We have significant investment in this property and significant recoupment on Phase III. We determined that in order to give the Board some muscle, we will not get a CO on any of these units until the low and middle income housing units are in and approved.

Mr. Soloway questioned: What do you mean by approved?

Mr. Fiorello stated: We need a CO for the low and middle income housing units before we can get a CO of any of the four units in Phase III.

Mr. Flaherty questioned: On page 14 of the Developer's Agreement under Exhibit E, under 20 it says time for completion, "in the event all work to be performed is not completed prior to the date set forth in the resolution of the Planning Board adopted by the Board, the Developer may seek from the Town Council, an extension for coming for completion under this agreement". Is this something that is rightfully before us or is it something that really belongs under the purview of the Town Council?

Mr. Soloway stated: If you go back to paragraphs two and three on page three of that same exhibit there is an issue similar to what you've raised. They seem to specifically deal with the

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subject. There is the Developer's Agreement paragraph two which gives the Developer five years from commencement of construction to complete the affordable units. Paragraph three addresses the phasing and incorporates the phasing plan. It says that the Board may, upon the request of the Developer, good cause being shown, grant reasonable time extensions to the Developer's final approval in order to allow construction in the phases. The question I have for Mr. Fiorello is I'm not sure that paragraph three governs paragraph two. There is no timeframe for completion of the phases that was imposed by this Board as part of its approval. And there is no timeframe imposed by the Board related to completion of the COAH units, that was done by the Council. While I think the Board can certainly approve the application so to speak. I'm not guaranteeing that the Board has the authority to bind the Town Council and I would certainly recommend to the applicant that it get Council approval to amend the Developer's Agreement on that. I'm sure that Mr. Fiorello's argument is that paragraph three shows that the Board with good cause shown can grant reasonable extensions to the phases. So if the Board is going to grant relief in terms of the COAH units, it should also be contingent on the Council agreeing to it. The applicant is also asking for a ruling that, the COAH unit problem aside, is the language of the Board approval to move to Phase III of construction as they've done a sufficient number of units in Phase II.

Mr. Fiorello stated: I want to point out two things. The paragraph you've referred to states that the work will be completed prior to the date set forth in the resolutions. I pointed out in the many resolutions attached that they have no timeframe. So that really doesn't apply. In paragraphs two and three, the Council is imposing confidence in the Board to say if there is good reason you can extend the time limitation that we set for the COAH units. So there are two things going on here. One is to go to Phase III. The second one is to complete the COAH units. The agreement also has with respect to the area that deals with major and minor modifications that the engineer can make in the field. If it's a minor modification he is able to do so. If it's a major modification, where does he go? He comes to this Board. So within this, due to a lack of detail, left open the question, can you tell the Council what to do? No. But you can recommend, using your authority to see if there is good cause and if it makes sense for you to continue this development for another six months. So we would like permission to proceed with Phase III having satisfied the criteria under the phasing and we would like your recommendation that we have an extension of time for six months to complete the low income housing portion of it subject to the condition that no CO be issued for the Phase III units until that is done.

Mr. Le Frois questioned: You mentioned not pursuing a CO until those units are finished. You mentioned that they would be completed and approved and have a CO for rental. Will they also be rented?

Mr. Florello stated: That's a market condition, not a planning condition. We are going to be putting a substantial amount of capital on the four buildings. We are not going to lose out on that investment because we haven't rented six apartments. My experience with housing units is that towns have waiting lists and once they are out there I am confident they will fill quickly. We can't rent them until we have the final approval and CO subject to all inspections. The low income housing units will be finished well before we are ready to get CO's for Phase III.

Mr. Florello questioned Mr. Martorana regarding the number of units sold in Phase II and what is still available.

Mr. Martorana explained that all units are sold except for one which is under contract.

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Mr. Fiorello questioned: Have people approached you with interest in buying in Phase III?

Mr. Martorana stated: Two sisters are interested in purchasing two units right next to each other.

Mr. Fiorello prompted Mr. Martorana to explain the infrastructure.

Mr. Martorana stated: All the utilities are in. The water, sewer, are to each unit. The electric is to each building. The parking lots have been paved in its entirety. Looking forward to the front building the pole has been moved by JCP&L. Building ten has been sided. Plumbing is set up for inspection next week. The sprinkler system is just about complete. The electrical contractor is currently working. Hopefully we will have the inspection next Friday. We are just waiting for the elevator to be installed.

Mr. Fiorello questioned: Has there been a delay?

Mr. Martorana stated: Yes because one of the tenants refused to move but we worked it out.

Mr. Fiorello questioned: Has the elevator been ordered?

Mr. Martorana stated: Yes. We expect it to be delivered in the middle of October.

Mr. Fiorella questioned: What is your best estimate in terms of when you can complete the low and middle income housing portion?

Mr. Martorana stated: If it weren't for the elevator I would have been done on time.

Mr. Fiorella questioned: Does six months give you enough time?

Mr. Martorana stated: Yes.

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

Mr. Marion questioned: Is there anything else in the low income housing building other than the six units?

Mr. Martorana stated: Yes. There is a clubhouse.

Mr. Marion questioned: So there will be 7 separate CO's?

Mr. Martorana stated: Yes.

Mr. Flaherty made a motion for resolution to make a determination that a sufficient number of units have been completed in Phase II to allow the applicant to move on to construction of Phase III and a motion to request six month extension of time frame as set forth in the Developer's Agreement for completion of the COAH units which runs out sometime in November with a recommendation to the Council that if it feels that the agreement has to be amended to allow that the grant be amended with the condition that no CO be obtained for any Phase III unit until they have the CO for each of the six COAH rental units and the clubhouse. Mr. Marion seconded the motion.

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

Motion carried.

Newton Town Centre Urban Renewal Associates, L.P. (#PB-10-2019)
Block 8.05, Lots 4, 7, 8, and 9
50 Trinity Street

The applicant is requesting Amended Site Plan approval to reconfigure the location of the parking spaces allocated by the Resolution decided December 17, 2014 and memorialized January 21, 2015 to the Town of Newton Parking Authority and the residents of Newton Town Centre Apartments, respectively.

Mrs. Le Frois and Mr. Simmons returned at 7:59 PM.

Frank Casciano, Esq. represented the applicant and stated: I am in-house counsel for RPM Development the developer of Newton Town Centre Apartments which is the applicant in this matter along with Newton Parking Authority. This is an application for an amendment to the Board's memorialized resolution from January 21, 2015 and the final site plan approval memorialized December 17, 2014 with respect to application #FSP-07-2014. That approval resulted in the construction and completion of Newton Town Centre Apartments which is located at the corner of Spring Street, Union Place, and Trinity Street. The development runs from Spring Street all the way to Trinity Street. That portion of the development is lots 7, 8, and 9 in block 8.05. There is an auxiliary site at 50 Trinity Street which is lot #4 in block 8.05. The purpose of this request is outlined in some length in my letter to Ms. Citterbart which was dated August 14, 2019. The letter indicated that as part of this approval, this Board granted a parking variance reducing the number of spaces required for the residents of the apartment building which is an existing 65 units, from 65 spaces to 52 spaces. That portion of the development that is located at the building site on lots 7, 8, and 9 has underground parking totaling 61 spaces. We are also required that 27 spaces be reserved for the Town of Newton Parking Authority. There are 18 spaces on lot 4. There are 61 available spaces on lots 7, 8, and 9 and 18 spaces available on lot 4. We were requested and agreed to reserve 27 spaces on the building site for the Town of Newton Parking Authority to have 34 tenant spaces there with the remaining 18 tenant spaces to be on lot 4. That has proved to be a problem because tenants who live in the building like to park underneath it instead of walking to 50 Trinity Street. Especially in bad weather. In the meantime, the Town of Newton Parking Authority has determined that the 27 spaces under the building have proved unnecessary. We are proposing that the Board amend its approval of the original application to allow us to reallocate the spaces as follows. All 52 of the tenant spaces are located under the building in the 61 spaces available there. That would leave 9 spaces for the use of the Town of Newton Parking Authority. The remaining 18 spaces would be on lot 4. Both the 9 spaces under the building and the 18 spaces on lot 4 may be provided to the Town of Newton Parking Authority for public use with no expense for the Authority.

Mr. Soloway questioned: Is there a reduction in the number of spaces available for the tenants and as a practical matter, will the result of this approval actually make it more convenient for the tenants?

Mr. Casciano stated: There will be no reduction and it will be more convenient.

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Mr. Soloway questioned: Is this Parking Authority on board?

Mr. Casciano stated: Yes.

Mr. Soloway questioned: Has the Parking Authority directed you to come to this Board and get an amendment of site plan approval as a condition to executing the agreement to implement this?

Mr. Casciano stated: The Town Attorney did.

Mr. Marion questioned: Will the Town then own lot 4?

Mr. Casciano stated: No. RPM will own it and maintain it.

Mr. Wink questioned: Why did the Town Parking Authority find it unnecessary to retain the 27 spaces?

Mr. Russo stated: I wouldn't say unnecessary. Because of the way the project was financed the Authority doesn't have the ability to charge for those spaces so we had made them available to merchants in the downtown shopping district. We have found that there is a tremendous underutilization of those spaces. I was there today and only 6 or 7 of the 27 are being utilized. Permits have been issued for the spaces, but a lot of the merchants are just not utilizing it. Some other merchants on Trinity may be able to take advantage of the lot. When we first made arrangements with RPM the Authority wanted to keep some spaces in that lot because they were used to parking there. But over time we have seen that it is not necessary. It would be better for the residents to have those spots.

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

Mr. Marion made a motion to approve the application for an amendment to the prior site plan approval to reallocate the parking spaces in the manner described if required by the Town Engineer, the applicant will also be required to submit a revised sheet to the plan that was approved to the extent that the old allocation was shown on that plan to make sure everything is clarified. Newton Town Centre to be responsible for signage underneath the building but the Parking Authority will handle the signage in lot four. The additional 9 spaces for the building residents on lot 4 are closest to the fence and walkway to their building. Except to the extent specifically amended by this resolution, all other terms and conditions and prior approvals remain in effect. Mrs. Vrahnos seconded the motion.

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

Motion carried.

Thorlabs (#PB-1A-2019)
Block 18.02, Lots 2, 3, 19-23, 31 and 32
Lower Spring Street, Diller Avenue and Sparta Avenue

The Applicant is requesting Amended Site Plan approval to amend Condition #32 of the Memorializing Resolution decided April 17, 2019 and memorialized on May 15, 2019 for the Preliminary & Final Site Plan Approval application #PB-1-2019.

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Peter Donnelly, Esq. from Donnelly, Minter, and Kelly represented the applicant.

Mr. Donnelly stated: We are talking about amending one sentence in the resolution. We have a condition in the resolution which talks about not being able to start construction until all agency approvals are received. We are asking that the Board modify that condition to let us proceed with certain work before all agency approvals have been received. You will hear tonight testimony that we are moving through the stages to get permits. But following the resolution we would have to hold off all construction until all permits are received. You should have the application which is just a letter from me and a copy of the resolution. I have one witness who can shed some light on what the plan is and what we would like to do before the cold sets in.

Sworn in: David Simms, 1991 Sunrise Lane, Bethlehem, PA 18105.

Mr. Simms gave his credentials and the Board accepted him.

Mr. Donnelly questioned: Are you familiar with this application?

Mr. Simms stated: Yes.

Mr. Donnelly questioned: Can you tell the Board what you would like to do and why you think our plan makes sense?

Mr. Simms stated: We are not looking to do anything without permits. The word we are having a hardship with is the word "all" in the condition of the approved resolution. Our initial plan was to get a certain amount of work done this fall and into winter then we can be better set for spring. We are at pace for that. We are about 30 to 45 days out. We've been working with the engineers to get approvals to do that. With the exception to one, which is the force main. After additional investigation it is located under the proposed building. We are in the process of getting that but it is about 90 to 120 days out. We have secured all the other permits to do the work except for that one. The plan is to get the buildings demo'd this fall. Get as much infrastructure work as we can do. The storm systems, the utility lines, improving the intersection, the curbing, the site lighting, minimum stone base and maybe even a base course of pavement. So when we get to vertical construction in the spring we will have control of the site and have over 200 spots to put 100 contractors coming to the site and we can control it inside. We have Quantum Leap Road to stage material. We now have two different points, on Spring Street and Sparta to control traffic in and out whenever we want. That plan is a little flux with this one force main issue. That could delay us until spring which will delay the whole process. The other thing that will help with the logistics of doing it this way, when we get into spring we are working with hard surfaces. In the spring there is more debris and dust. So we are not asking to do anything outside of the sequencing or permitting. It is just that the one additional investigation we found has the water main underneath the building.

Mr. Soloway questioned: Are you all set with County approval?

Mr. Simms stated: We've been working towards that but we are about 30 to 45 days away. We've been addressing the comments and by this week should have the revised drawings back. There weren't major issues. We tried to stay out of Sparta to ease the flow of traffic. We had a couple of water extensions and taps that we've been doing. We've revised that to

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improve it. Additionally, one of the comments was to tighten the intersection. We did that. That is what is taking some of the time.

Mr. Donnelly stated: I think Mr. Soloways point is that if any of the work you are describing to do this fall needs County approval, then you will get County approval before the work starts.

Mr. Simms stated: That is correct. We are not going to do anything that needs County approval until we get this Board's approval. I want to reiterate for this Board, there are other approvals that need to be obtained. We intend to work with Mr. Simmons office. We intend to do it in the same sequencing.

Mr. Donnelly stated: I don't know if any of you were at the main hearings, but we just didn't know, and we don't think the engineering department knew that the force main ran right under the building. It was a surprise to everybody when we stepped out in the field. Luckily we did some additional investigation about 30 days ago or else we would have realized this much later.

Mr. Simmons stated: I would add that since about two months ago we have had several joint meetings with the Town professionals and staff, the County, the applicant's professionals and their staff. We've gone over some of the concerns that the applicant has with expediting the process as much as possible and the problems the County has with the intersection and pedestrian flow. We had those meetings on both projects; Punctuated Equilibrium at the Corner of Diller and Sparta Avenues and the Natural Selection site which is Quantum Leap road. I'm sure everybody has seen that the County is part of that cooperation on the intersection of Diller and Sparta Avenue on the Punctuated Equilibrium site gave permission for the applicant to proceed to construction for all parts of the infrastructure that did not involve infrastructure that did not involve improvements in the County right of way. Curbing has been installed. The next thing that will happen is the lighting foundations and the conduits that will energize those fixtures and then you are going on to stabilized base, striping and the parking lots there. So that is moving along and bringing it more up to date. I spoke with Tom Graham from Dykstra Walker, the consulting engineer on the project for the applicant. He has submitted revised plans for the Punctuated Equilibrium site to the County and that process is underway. Every Wednesday morning at 10:30 we have a conference call between Thorlabs and the Town of Newton staff and anyone else who should be included to make sure we are all on the same page. Then I prepare the minutes and send them out to everybody. Jumping back over to the Natural Selection site the applicant has been working on revising the plans in accordance with the County comments and the County Engineer's office. We had a joint meeting with the County and my understanding is that the County is ok with the applicant starting construction of infrastructure that did not impact Sparta Avenue. In fact, if you recall there were several areas of underground storm drainage to mitigate the increase in impervious surface on that property that would drain toward Trinity Street away from Sparta Avenue. So it would not impact County drainage at this time. As Mr. Simms indicated years ago in the L shaped parking lot to the left of the Nova Phase building the applicant had to put in a new 6" water main. They are investigating with some tests at this time whether that particular section of water main can be used to continue and loop throughout Quantum Leap Drive to avoid having to go into the Woodside, Sparta Avenue, Quantum Leap Drive intersection where it is already congested with other utilities. That remains to be seen subject to a perc test. They are trying to expedite the process that way. My understanding from talking to Mr. Graham earlier today before the conference call he is finishing up the plans and getting ready to submit them to the County for their final review and action which would be roughly 45 days. That was roughly the time frame everyone was given at the joint meeting with the County. So with regards to doing certain parts

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of the project without the permits within the term "all", with the force main and the sanitary sewer from an engineering and logistics standpoint I don't have a problem with that. The applicant has agreed that before each sub phase starts we will have a pre-construction meeting 48 hours before that so everyone is aware what is going to happen next so they can get a jumpstart. As they said, hopefully by spring of 2020 they will be ready to start the vertical construction of the proposed building.

Mr. Soloway questioned: Would you be comfortable with granting the application subject to you or your office approving the commencement of any construction in advance of the required permits?

Mr. Simmons stated: Yes.

Ms. Caldwell stated: I wanted to mention that we've had ongoing discussion about various items. The applicant has requested and we wanted to make the Board aware and make sure there are no objections, to switch out the light fixture in the interior of the development. They are requesting a similar light fixture which we received the specifications for today. The issue is that because our light is very specific it has gotten very expensive. So the applicant is willing to obtain that on the main roads, on Sparta Avenue and Diller. But in the interior roads they would like to do a similar looking fixture which Mr. Simmons and I will review and make sure it looks as similar as possible. But they would like to vary it due to cost saving purposes. I just wanted to make the Board aware.

Mr. Soloway stated: So you are suggesting that if the Board approves this there is an additional amendment to use similar but different light fixtures in the interior of the complex subject to yours and Mr. Simmons's approval?

Ms. Caldwell stated: Yes.

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

Mr. Flaherty made a motion to modify the sentence in the resolution on page 12, number 32 to allow the applicant, with the approval of the Board Engineer, to commence construction on certain aspects of the project in advance of having obtained all required permits to complete the entire project. The objective is to allow the applicant to commence construction on some items that are not tied in to other permits to get infrastructure in before the winter comes which will allow for vertical construction in the spring. There will also be an additional amendment to allow the change to similar but different lighting fixtures on the interior of the project subject to the approval of the Board Engineer and Planner. There will also be a notation in the resolution that this Board doesn't speak for the County and the applicant is on its own with the County Planning Board. Motion seconded by Mr. Marion.

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

Motion carried.

Mr. Donnelly stated: The applicant would like to waive the reading of the resolution.

Mr. Soloway stated: We have done that with other applicants who want to get started working before the resolution is fully adopted. I don't see any problem with that.

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The Board concurred with the waiving of the reading of the resolution.

Brookside Urban Renewal, LLC (#PB-7-2019)
Block 5.05, Lot 23
3 Mill Street

The Applicant is requesting Minor Site Plan approval for an emergency generator to be installed on the property.

Bill Katz, Esq. represented the applicant.

Mr. Katz stated: We are here because the Town has a noise ordinance that requires site plan approval be granted to install a generator. Essentially the project seeks to install a 300 kw generator to replace a very old generator in the basement of the building. Nowadays generators are installed outside of the building. We performed calculations and determined that the generator which is tested once a week during daytime hours when no one is sleeping that we are well below the requirements of the noise ordinance based upon calculations of the manufacturer's criteria taken at the distance we are from the property line which is quite far. I have John Shine, the Electrical Engineer and Harry Tuvel, the Planner who signed the application. The property owner is also here if his testimony is needed.

Sworn in: John Shine, 6 Renshaw Drive, Montville, NJ.
Harry Tuvel, 629 Ridge Court, Ridgefield, NJ.

Mr. Shine stated his qualifications as a Licensed Engineer. His license is current. The Board accepted his credentials.

Mr. Tuvel stated his qualifications as Licensed Planner and Engineer. His license is current. The Board accepted his credentials.

Mr. Katz prompted Mr. Shine: Please describe the project.

Mr. Shine stated: The existing generator which is located in the basement is out dated and it is getting hard to locate parts and maintain the existing generator. The way it was constructed it's impossible to get a new generator back in that same location. We are proposing to install a new generator outside of that area where electrical service comes into the building. It is 300 kw. There will be a diesel tank of 1,080 gallons located underneath the generator. It will have a level 2 enclosure for sound proofing. We are increasing the size of the generator, but that is because we are going to pick up some site lighting and putting in the community room. We are putting in some additional outlets. The offices will be on the generator. The heating system will be on the generator. Just various things to improve the comfort of the tenants. It's going to be on a concrete pad. For security, it's all locked up and secure. Animals and children can't get at it.

Mr. Katz questioned: What level of noise will it produce?

Mr. Shine stated: It produces 78 db at the location of the generator. We have done calculations for the sound reduction by the time the sound hits the neighboring property that it is reduced down below the levels.

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Mr. Katz prompted Mr. Tuvel to describe the plan.

Mr. Tuvel described the plan: We meet all the setback requirements. We are down to about 63 db. This was calculated using an accepted formula for determining decibel levels. It was also accepted by the Board Engineer.

Mr. Marion questioned: Where will the generator be on the blue print?

Mr. Tuvel pointed it out on the plan and stated: It is on the northern side of the building adjacent to the building. It is on a 17 ½ by 8 ½ concrete pad. The pad is located outside the utility room where the existing generator to be replaced is located. It is right near the electrical utilities.

Mr. Marion questioned: Is the existing generator diesel?

Mr. Shine stated: Yes.

Mr. Marion stated: So you will be able to get a truck in there to fill it.

Mr. Shine stated: Yes.

Mr. Wink questioned: Will you be using the same tank?

Mr. Shine stated: No. That tank is located in an area right outside of the building. It is going to be removed. It's above ground. It will be mounted on the concrete pad underneath the generator.

Mr. Marion questioned: How high will the fence surrounding it be?

Mr. Shine stated: There is no fence. The generator itself is a sealed enclosure. It has a sound reduction enclosure around it.

Mr. Flaherty questioned: Is there a curb that would prevent a car from hitting it?

Mr. Shine stated: There is a curb, grass, sidewalk, and more grass.

Mr. Marion questioned: How does it exhaust; through the top of it? So under prolonged usage if there is no power for a day or two would it be exhausting gas right there?

Mr. Shine stated: It's essentially a diesel truck engine. It would be exhausting out at that spot.

Mr. Katz stated: The problem is that the current generator is in the basement of the buildings which presents its own issues. The current standard is to put it outside.

Mr. Marion questioned: Does it exhaust where the current generator is?

Mr. Tuvel stated: Yes. I show on the plans that there is a utility room where that existing generator is. We are locating the new generator right outside. The vents for the existing generator are right along the building wall.

Mrs. Vhranos asked for clarification on where the new generator will go.

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Mr. Tuvel indicated on the plans where the generator will be located to the right of the front entrance.

Mrs. Vrahnos stated: So there is space here if the car were to jump it.

Mr. Shine stated: It would jump the curb, then a grass knoll, sidewalk, and then grass.

Mr. Wink stated: You really should put bollards.

Mrs. Vrahnos questioned: Is it about 4 or 5'?

Mr. Shine stated: It's 4 to 6' to the edge of the sidewalk.

Mr. Katz stated: I would note that the only reason this application is before the Board is because of the noise ordinance. If there were no noise ordinance we wouldn't have to be here. All the other requirements are building permit requirements which have already been met.

Mr. Soloway stated: I don't think that's correct, but it doesn't matter. You are here anyway.

Mr. Tuvel stated: It's actually about 8' from the curb. If you notice on the site plan there is no parking space directly in front of it. It is striped.

Mr. Marion questioned: Is the diesel tank in cement?

Mr. Shine stated: It is a double-wall sealed tank.

Mr. Le Frois questioned: And the tank itself is not underground?

Mr. Shine stated: Correct. It's part of the structure for the generator. It comes separately but it is part of the foundation that holds the generator up. It is a typical installation.

Mr. Le Frois questioned: Have you selected a color for the exterior housing?

Mr. Shine stated: The manufacturer offers two colors. They are standard colors. But I don't believe the owners have made the decision yet. Either a yellowish or grayish.

Mr. Marion stated: With 1,000 gallons of diesel sitting there I think 2 or 3 bollards should be placed around the generator. Other than that, I'm fine with it.

Mr. Le Frois stated: You mentioned it would be tested once a week.

Mr. Katz stated: Yes. That is the manufacturer's recommendation and is a standard protocol for a generator of this type. That is the only time the noise will be generated other than an emergency. It is on for approximately 30 minutes between 10 AM and 5 PM. It is set to go off once a week. That way we know its working.

Mr. Le Frois questioned: Is there any lighting needed?

Mr. Shine stated: No.

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

Mr. Simmons referenced his report dated September 9, 2019 and stated: The applicant addressed all the comments I had. I also support the Board's suggestion to put bollards around it. The only other thing I would like to add based on the discussions we had at the TRC meeting, the applicant advised at that time that it will be fueled by diesel fuel and not natural gas from the street. I want to make them aware, comment number 9b on my report, I note that years ago when the Town constructed a 12" water main at Mill Street to provide additional water flow at that time from the Brookside front entrance to the front of the building a new water main was constructed to the subject property. I don't see that on the applicant's plans. They don't appear to be crossing it, but they should call the number to check before you dig.

Ms. Caldwell referenced her report dated September 12, 2019 and stated: There is one section I want to mention about screening. Typically we require landscaping screening around the structure.

Mr. Katz stated: We will do landscaping and bollards.

Mr. Tuvel stated: At the TRC they requested screening. There is a considerable increase in grade going up to Mill Street. There is a little area that may be a bit bare. We agreed to put in some additional evergreens along the Mill Street frontage which is about 140' from the generator.

Ms. Caldwell stated: I'm referring to right around the generator. In looking at the plan there appears to be 17' between the generator and the curb which should give enough room.

Mr. Le Frois stated: You may not even need the screening on Mill Street.

Ms. Caldwell stated: I agree.

Mr. Marion made a motion to approve the application with the usual conditions. In addition to that, specify that the tank is above ground, testing during normal business hours as required by ordinance, compliance with DEP noise regulations, bollards to protect the installation from out of control motor vehicles to the satisfaction of the Town Engineer, compliance with the recommendations in Mr. Simmons's report in lines A and B that there be landscaping and screening surrounding the unit to the satisfaction of the Town Planner and Engineer. Mrs. Vrahnos seconded the motion.

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

Motion approved.

OLD BUSINESS:

Kwest Properties, LLC (#PB-3-2019)
Block 8.08, Lots 10 & 23
134 Spring Street

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The Applicant is requesting subdivision and preliminary site plan approval to demolish a one-story building and construct a four-story building with commercial on the 1st floor and 9 apartments on the 2nd, 3rd, and 4th floors.

Ms. Caldwell recused herself. Matt Morris stepped in.

Glenn Gavan, Esq. represented the applicant.

Mr. Gavan stated: For business reasons, the applicant has decided to withdraw the entire application except for the minor subdivision.

Mr. Soloway stated: The Board members should have two attorney letters in their reading packets. One from Mr. Gavan withdrawing the application except for the minor subdivision. The other letter is a rather lengthy letter from the attorney of the objectors. Which I think is now moot. But the first issue was a conflict with Chairman Le Frois's recusal. Mr. Le Frois has the same employer as the architect. Mr. Le Frois is not the employer. Neither one of them has any authority over the other. The architect was here on a side job and not as a representative of Mr. Le Frois's company. Mr. Le Frois opted to recuse just to be safe. I don't actually think it was a conflict. The objector's attorney raised an issue regarding Mrs. Le Frois. If Mr. Le Frois recused then she also should have. But I believe this is moot since they have withdrawn the site plan aspect of the application and the architect is not involved in the application that will be heard tonight. So not only do we not have to address the argument that Mrs. Le Frois might have a conflict, but clearly Mr. Le Frois does not have a conflict either. The remainder of that letter made various arguments relating to the site plan, the constructability of the project. Various issues since they wrote the site plan for the building that was proposed. There was no proposal to construct anything before the Board. For those members of the public the only thing before the Board is the minor subdivision application. If and when the applicant decides to revive the site plan, it will have to be approved by the Board with adequate notice of hearing. It is my understanding from Mr. Gavan that since the July hearing was so complicated and contentious we are just going to ignore what was done at the Board that night. We are just going to start over with the minor subdivision. In that case, any Board members who were not at that meeting like Mr. Marion, can be eligible tonight to hear the application.

Mr. Gavan stated: The reason we are moving forward with the subdivision application is because we have a letter of intent agreement with the current owners, the McGuire's. That may not be in existence if and when the College purchases it and it goes through. The College is aware of this and we want to get it cleaned up while it is still under that ownership and there aren't any other issues or complications that might arise. Just to refresh before we put Mr. McCabe on the record, in referring back to Mr. Simmons's original report, we talked about the site plan. We are trying to annex about 1,155 square feet right along the driveway to our lot. In that lot the little wing of the building is not on our property even though it is part of our building. So that 10' strip is what we want to add to our property.

Sworn in: Wayne McCabe, 125 High Street, Newton. Has been accepted by Board in July as a Professional Planner in the State of NJ with a current license.

Mr. Gavan questioned: Are there any new lots created by this subdivision?

Mr. McCabe stated: No. This is essentially a lot line adjustment.

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Mr. Gavan questioned: How much land is going to be annexed to our clients' current property?

Mr. McCabe stated: The existing lot is 50' wide by 115' long. The piece that will be annexed onto it is 10' in width and the same length, 115'. So we are creating a 60' wide lot.

Mr. Gavan questioned: From a planning perspective does it make sense to square off the property in this manner?

Mr. McCabe stated: Incredibly so because of the issue of the front little section of the building that went with the property when our client acquired it.

Mr. Soloway questioned: Any variances required?

Mr. McCabe stated: No.

Mr. Simmons referenced his report dated July 11, 2019 and stated: The portion of my report that dealt strictly with the subdivision, the applicant has covered it. There are no new lots created.

Mr. Gavan stated: Mr. Simmons also noted a title search and we will make sure that will get done.

Mr. Morris stated: My report did not address the minor subdivision.

Application opened to the public.

1st Public: Jimmy Sakalopolous, 9 Andre Drive, Roxbury Twp. Are the adjoined properties in two separate zones?

Mr. Gavan stated: The 10' strip is part of the Redevelopment Plan for McGuire Redevelopment. We understand that we will have to address that when the time comes.

Mr. Soloway stated: No development is proposed. If and when something is proposed then you address it.

No more public stepping forward. Portion closed.

Mr. Flaherty made a motion to approve the application reciting the background, noting the withdrawal, dismissing the site plan application without prejudice which means the applicant can submit an identical application if it wants. Grant minor subdivision approval, with the usual conditions including a title search as requested by Mr. Simmons. They will have to prepare a subdivision deed or deeds to the satisfaction of the Town Engineer and Board Attorney and in accordance with Municipal Land Use Law, invariably be recorded in 190 days of the date of adoption of resolution or approval and any other required approvals. Mrs. Vrahnos seconded the motion.

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

Motion carried.

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CORRESPONDENCE: -

The New Jersey Planner May/June 2019 Issue,
Brach Eichler, LLC – Letter dated September 10, 2019

EXECUTIVE SESSION -

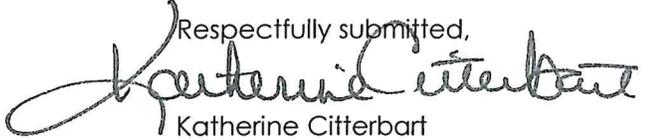
None

PUBLIC PORTION -

None

ADJOURNMENT

Mr. Flaherty made a motion to adjourn the meeting. Mr. Marion seconded the motion. The meeting was adjourned at 9:12 PM with a unanimous "aye" vote. The next meeting will be held on October 23, 2019 in the Council Chambers of the Municipal Building.

Respectfully submitted,

Katherine Citterbart
Planning Board Secretary