

**NEWTON PLANNING BOARD
NEWTON MUNICIPAL BUILDING
39 Trinity Street, Newton, NJ 07860
AGENDA
July 15, 2020**

Please take notice that the Town of Newton, Planning Board (the “Board”) will hold a public hearing remotely, thru **ZOOM, on July 15, 2020 at 7:00 p.m.** to review and take formal action upon Development applications, and various items as follows:

SUNSHINE STATEMENT

“Adequate notice of this meeting of the Newton Planning Board has been provided in accordance with the Open Public Meetings Act (Chapter 231.P.L. 1975).”

RULES

No new testimony after 10:30 p.m. Comments from each member of the public are limited to 5 minutes during the public portion of the meeting.

OATH OF OFFICE

None

SALUTE TO THE FLAG & ROLL CALL

Mr. Flaherty
Mr. Marion
Mr. Wink
Mrs. Vrahnos
Mrs. Hall-Romer
Mrs. Diglio
Mr. Flynn
Mr. Russo, Jr.
Mr. Ragsdale
Mr. Couce
Mr. Schick
Mr. Le Frois

CONSIDERATION OF MINUTES

June 17, 2020

HISTORIC RESOLUTIONS

None

RESOLUTIONS:

Weis Markets, Inc. (#P-3-2020)
119 Water Street
Block: 9.03, Lot: 16

The Resolution grants approval for a use variance and preliminary and final site plan approval with related bulk variances, to construct a gas station.

OLD BUSINESS

None

NEW BUSINESS:

Newton Commons Condo Association, Inc. (#P-1-2020)
Portion of Common Area between 63 Plainfield Avenue & 68 Plainfield Avenue
Block: 12.01, Lot: 1 & Block: 12.09, Lot 1
T-3 Zone

The Applicant is requesting a minor subdivision and D-2 variance. (Applicant has requested an extension from the May 20, 2020, June 17, 2020 and the July 15, 2020 meetings and to be carried until the August 19, 2020 meeting with no further public notice.)

Merriam Gateway Redevelopment Plan Amendment
Block: 18.03, Lot: 10 (former Block 1104, Lot 22)
Block: 22.02, Lots: 8, 9, and 10 (former Block 1209, Lots 10, 11, 12.01)
Block: 18.02, Lots: 9, 10, 11, 12, 14, 15, 16, and 17 (former Block 1301, Lots, 1, 1.04, 10, 11, 12, 13, 14, 15, 16)
Block: 22.04, Lots: 1, 2, 3, 4, 5 (portion), 13, 14, And 15 (former Block 1308, Lots: 1 (portion), 1.01, 1.02, 10, 11, 12, 13, and 14)

The Applicants may seek any additional approvals, bulk variances, design waivers, interpretations, or other approvals as may be determined to be necessary by the Board during the review of these applications.

This hearing will take place remotely – by videoconference or telephone conference only, via ZOOM application.

Join from a PC, Mac, iPad, iPhone or Android device:

Please click this URL to join.

Description: Join from a PC, Mac, iPad, iPhone or Android device: Please click this URL to join.

<https://us02web.zoom.us/j/88327926703?pwd=c3lCbXVoa3lzYVdEdjNJeHhhdUhzUT09>

Password: 885018 Or join by phone: Dial(for higher quality, dial a number based on your current location): US: [+1 929 205 6099](tel:+19292056099) or [+1 301 715 8592](tel:+13017158592) or [+1 312 626 6799](tel:+13126266799) or [+1 669 900 6833](tel:+16699006833) or [+1 253 215 8782](tel:+12532158782) or [+1 346 248 7799](tel:+13462487799) Webinar ID: 883 2792 6703 Password: 885018

International numbers available: <https://us02web.zoom.us/j/kc2mDt0m4l>

CORRESPONDENCE

EXECUTIVE SESSION

PUBLIC PORTION

ADJOURNMENT

*The Board Engineer and Board Planner are sworn in at the beginning of each year and are deemed to be under oath on a continuing basis.

PUBLIC ACCESS TO ZOOM MEETING:

To access the virtual hearing, you must join the ZOOM meeting. To access the ZOOM meeting, you will need access to a computer with internet access and/or dial in through a mobile or land line phone to log into the meeting. To join the ZOOM meeting, click on the link below and type in the Meeting ID and Password. You will join the meeting and be able to listen and view the evidence shared on the screen at the meeting.

PUBLIC PARTICIPATING IN ZOOM MEETING:

You will be able to participate when the Board Chairman opens the meeting to the public for the public participation portion of the meeting at the end for you to ask questions and/or cross examine witnesses and make statements. The Board Chair will limit public comments to 10 minutes per person. We ask that if you have questions of the applicant prepared, that you e-mail them to the Board Secretary at kcitterbart@newtontownhall.com prior to the meeting. Your questions will be acknowledged and read into the record and answered. If you have information or exhibits you wish to have considered and entered into the record, you will have to e-mail them to the Board Secretary at kcitterbart@newtontownhall.com in advance of the meeting so that they may be marked into evidence.

Legal Notice – Town of Newton Planning Board meeting of Wednesday, July 15, 2020 at 7 pm Eastern Time (US and Canada)

The public may obtain access to the meeting by the following methods:

You are invited to a Zoom webinar;

When: July 15, 2020 07:00 PM Eastern Time (US and Canada)

Topic: Newton Planning Board

Members of the public will be able to participate in the meeting, including providing public comment at the appropriate time, and are politely asked to mute their microphones to limit background noise when not speaking. The Planning Board agenda and backup meeting materials can be viewed at www.newtontownhall.com.

Questions may be directed to the Planning Board Secretary at 973-383-3521, 227.

AGENDA – July 15, 2020 7 p.m. via ZOOM

The hearing may be continued without further notice on such additional or other dates as the Board may determine. The application and its supporting materials will be posted on the Town of Newton website at www.newtontownhall.com ten (10) days prior to the meeting. If you do not have access to a computer to review these materials on the website, you may inspect them, beginning ten (10) days prior to the public hearing, by calling the Board Secretary, Katherine Citterbart, Office of Planning Board & Zoning Board of Adjustment, Town of Newton, 39 Trinity Street, 2nd Floor, Newton, NJ 07860.

PLEASE NOTE: TOWN OF NEWTON PLANNING BOARD MEETINGS WILL BE HELD VIRTUALLY THROUGH ZOOM UNTIL THE GOVERNOR’S EXECUTIVE ORDERS ARE LIFTED AND TOWN HALL HAS BEEN REOPENED.

Katherine Citterbart
Administrator
Newton Planning Board

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PLANNING BOARD
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The regular meeting of the Newton Planning Board took place on the above date via ZOOM. Chairman Le Frois read the Open Public Meetings Act and requested Mrs. Citterbart to call the roll. Board Secretary Mrs. Citterbart stated there was a quorum.

SALUTE TO THE FLAG: Was recited.

OATH OF OFFICE: None

ROLL CALL: Was taken

Attendance: Mr. Flaherty, Mr. Marion, Mr. Wink, Mrs. Vrahnos, Mrs. Hall-Romer, Mrs. Diglio, Mr. Russo, Mr. Ragsdale, Mr. Couce, Mr. Le Frois

Excused: Mr. Flynn, Mr. Schick

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

THE SUNSHINE STATEMENT: Was read.

CONSIDERATION OF MINUTES

May 20, 2020

A motion was made by Mr. Marion and seconded by Mrs. Diglio to approve the May 20, 2020 meeting minutes.

AYE: Mr. Flaherty, Mr. Marion, Mr. Wink, Mrs. Vrahnos, Mrs. Diglio, Mr. Russo., Mr. Ragsdale, Mr. Le Frois

The motion was carried.

HISTORIC RESOLUTIONS

None

RESOLUTIONS

Samaritan Inn, Inc. (#P-2-2020)
23 Union Place
Block: 15.01, Lot: 46
T-5 Zone

The Resolution grants minor site plan approval and related bulk variance and design waiver relief.

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

AYE: Mr. Flaherty, Mr. Marion, Mr. Wink, Mrs. Vrahnos, Mrs. Diglio, Mr. Russo, Mr. Ragsdale, Mr. Couce, Mr. Le Frois

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The motion was carried. Resolution approved.

OLD BUSINESS:

None

COURTESY REVIEW:

Newton Board of Education
Merriam Avenue School – Modular Classroom Units
Block: 17.03, Lots: 12 & 13

Fred Savio and Joe VanKirk on behalf of Newton Public Schools.
Richard Scheick on behalf of EI Associates.

Mr. Soloway explained the purpose of a courtesy review and stated: Under the Municipal Land Use Law whenever a public agency is taking action on necessitating the expenditure of public funds relating to a development type project they are required to come to the Planning Board for what's called a courtesy review. This is not something the Board votes to approve or disapprove. You can make a finding as to whether the proposal is consistent or inconsistent with the Master Plan and if you would like to make other recommendations you are free to do so. But again this is not something that you approve or disapprove.

Mr. Scheick stated: I am an architect and work for EI associates. We are the architects and engineers for the Newton Board of Education. We are in front of the Planning Board for a courtesy review for a pre K classroom installation. It is to be at the Merriam Elementary School. The district currently rents space from a summer camp for their preschool program. They want to relocate that program to their own premises so that they have a little more control over it. Plus they can utilize the existing Merriam school facility for the prescribed pre K program. It will be basically only a modular structure. This will be done on a permanent foundation which means it'll last longer than a normal trailer type of classroom. Modulars are a little more permanent. It will be made up of eight classrooms. These are all pre K. Four of them will be general pre K. Three will be for special Ed pre K and there will be a fourth classroom for a therapy room for the full pre K. It will be strictly for pre K and not used for anything else. Each room will have an ADA bathroom associated with it. There will be a nurse's space, a break room space and corridors connecting the various classrooms. You have on the screen now is the site plan. This is the existing site plan and basically it shows the existing school and the field and where this is going to be located. It will be located at the bottom of the drawing there running along parallel with Merriam Ave next to the baseball diamond that's on the right side of the plan. Move to the next plan and it will show the actual location. The area shaded is the new modular classroom addition it is set back slightly and connected it with sidewalks to the existing schools so you can get into the school. These are all sidewalks, there are handicap ramps and stairs or access to that. It is set back slightly as the district may hope to have a drop-off area somewhere in the future as well as a playground but those are not on the plans yet and not indicated. It may be a future consideration they might plan to do. Basically it's a stick construction; nothing fancy. We've seen these type of facilities pretty much all over the State in different school locations and that's really about the extent of it. They will be tying into the existing school for utilities. So plumbing and electric and sewer will be tied into the existing facilities. The plumbing and electric will be running around the back right where that sidewalk that angled area is parallel to

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the back of the wall of the new modular. It'll be running along through there coming out there and then connecting into the modulars in that area trenching and then working their way up. We have the building set back from the existing building for a fire lane as well as code requirement for setback. There are windows on each side of those existing and new buildings. I can move to the next sheet unless there are any questions. This basically is the overall that shows how it will be connecting to the existing school. The gym is right there which is one of the reasons for this location. It will allow them to play in the gym on bad days that they can't go and play outside and things of that nature. Other facilities in the school will be connected but still work as a separate facility. The next drawing basically shows the layout of the classrooms. As I mentioned there are eight classrooms with bathrooms for each of the classrooms. There's a nurse, there's a staff bathroom, there's a break room and additional storage space for each of the classrooms. This is the general layout of how they think it will be set up for the students. That's pretty much the extent of it. Any questions?

Mr. Marion questioned: Is the color of the building to match the current school?

Mr. Scheick stated: I think that's being discussed with the modular construction company today. I don't know the exact color but I think it's going to be a neutral color like beige but we can verify that.

Mrs. Diglio questioned: Will the baseball field be eliminated?

Mr. Scheick stated: Yes the baseball field will be eliminated. We're still trying to figure it out. Eventually that's where a pre K playground will be located.

Mr. Flaherty questioned: The plan shows a nurse's office. Is this going to be staffed the entire time that children are in the building or is this a shared service with the main building?

Mr. Scheick stated: It's my understanding the district intends to have a separate nurse. Since you have special Ed students there the intention is to have a special nurse. In the same way they have it now at their facility they're renting at the camp. They have a nurse on site. So you would have a nurse on site for this as well. There will be two separate nurses.

Mr. Savio confirmed that the color, beige, is correct and the nurses will be full time with the preschool.

Mr. Marion questioned: Is this building to be used year round or just during school time?

Mr. Savio confirmed it will be likely just during the school year.

Mr. Marion questioned: Ok thank you. I do have one other question if this is preschool and special Ed are we going to remark the area in front of the building for handicap or designated parking or drop off.

Mr. Scheick stated: The building was set back with that intention but the district hasn't figured out how they want that function and to what extent. Whether it'll include parking or drop off but probably will include both. If both they will include ADA parking as well but that has not fully been designed and laid out just yet as they are still thinking through how they're utilizing them. Their intent right now is to get the building up and moving so they can eliminate the need for renting space from the camp for next year and have the students closer on site.

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Dr. Savio says there is a bus lane already for drop off so handicapped students will have the same access they have now to access the building.

Mr. Marion stated: My only fear is in the morning there's cars coming and going and kids running to school so I just didn't know if this is going to cause any interruption to that. Right now we have a police officer usually there in the morning. I'm just kind of looking out for the safety of the kids how that's going to be done.

Mr. Scheick stated: Any vehicle traffic at the moment will be coordinated through the existing drop off and run through the existing school.

Mr. Scheick stated: Mr. Walsh is the civil engineer for the project from EI Associates and he did the layout for the location. He sometimes has technical difficulties accessing the ZOOM calls so he may not be able to get on this call tonight.

Mr. Simmons stated: I had discussions at the Water/Sewer and DPW committee meeting the other day and just two things I want to point out. Number one, based on my review of the plan looking at the low point of Merriam Avenue there are existing inlets in the street drainage and the street drainage runs through the school property and generally directs it to the sump at the end of Sussex Court. I highlighted those drains on my set of plans and I believe the proposed classrooms are being constructed over those drains. So when I brought that up to the committee they suggest that if the school proceeds with constructing it in the location shown the school should be responsible for any maintenance repair or replacement of those drains should any difficulties develop. We did not have any conversations with the School Board on this. The other item we noted is in the classrooms there are restroom facilities. We recommend the Board of Education make an application before the Newton Utility Advisory Board so they can document the additional gallonage. I understand they are connecting to the interior piping supply from the school but just so we can keep track of and document the additional usage because we're always trying to document our unaccounted for water.

Mr. Scheick stated: That would be possible to handle.

Mr. Le Frois questioned Mr. Simmons: On the topic of those drainage pipes, were they in an easement through the school property?

Mr. Simmons stated: I did not see any easement noted on the drawing. Basically they're coming out, from what I could tell looking at the plans, from the inlets at the low point of the Merriam Avenue profile and again they go towards that sump where storm water is pumped out of this sump and into the rest of the storm drainage system that eventually goes toward Diller Avenue. The biggest thing was, I'm sure they'll come up with some construction methods to protect the pipe to help keep it from being crushed. The DPW wants to be sure that the school will assume responsibility if there is any problem and that they take care of those pipes.

Mr. Le Frois stated: Got it. How does that message get back to the school board? Via this meeting?

Mr. Simmons stated: I would assume so. That maybe something perhaps Mr. Soloway could add to this as two of the recommendations that the board sends back on this application.

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Mr. Soloway stated: Yes. I think you could put them in as recommendations. They don't necessarily have that much teeth coming from the Board from this type of proceeding but at least you'll go on record and assuming that appropriate Town officials will monitor both of these situations and make sure everything gets done the way it is supposed to be done.

Ms. Caldwell stated: I just wanted to say Mr. Soloway did note at the beginning this is a consistency review with the Master Plan is the primary finding that the Board's making tonight on this application. It is in the SD-6 zone which is a school zone so it's really tailored to the school. So I think there's no concern about consistency. It's definitely consistent with the Master Plan.

Mr. Couce questioned: I'm looking at the diagram of elevation B of the modular classroom and I'm wondering how deep the landing at the top of the staircase is?

Mr. Scheick questioned: I'm not sure I understand your question.

Mr. Couce stated: I'm looking at this from an emergency access perspective. The doors look to be outward swinging doors. If the landing at the top of the stairs at the end of the ramp in front of the doors is not wide enough it might be difficult to maneuver a stretcher or ambulance stretcher in the doors. Especially since their outward swinging it doesn't look like it's a very wide area.

Mr. Scheick stated: It probably is not as this is designed with the modular structure are you looking for a particular dimension that you would feel comfortable with. We can coordinate that with the district and the district can coordinate with their modular building facility?

Mr. Couce stated: Yes. A standard ambulance stretcher would be 84 inches by 24 inches so something that would accommodate that.

Mr. Scheick stated: It looks like that would be easy enough to expand slightly. We will coordinate that with the modular manufacturer.

Mr. Soloway crafted a motion with recommendations as follows: Based on the description of the project and the input of our professionals the Board finds this work is not inconsistent with the Master Plan. The Board makes these three recommendations; one that the Board of Education minimize any interference with responsibility for any drainage structures that might be disrupted by construction; the second one would be that the Board of Education applied to the Newton Utility Advisory Board to make sure everything is done correctly on water allocations; the third one is that the design be slightly modified so a standard ambulance stretcher can be accommodated when accessing any room in the structure. The motion would be to make sure it's not inconsistent with the Master Plan, those recommendations along with the finding of no inconsistency be communicated to the Board of Education on behalf of the Board by Mrs. Citterbart via letter. The letter should be sent to the Board of Education Superintendent, Dr. Kennedy Greene, with a copy to El Associates.

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

Mr. Flaherty made a motion to find this project not inconsistent with the Master Plan and subject to the three recommendations summarized by Mr. Soloway. Mrs. Diglio seconded the motion.

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Aye: Mr. Flaherty, Mr. Marion, Mr. Wink, Mrs. Vrahnos, Mrs. Hall-Romer, Mrs. Diglio, Mr. Russo, Mr. Ragsdale, Mr. Le Frois

Motion carried.

NEW BUSINESS

Newton Commons Condo Association, Inc. (#P-1-2020)
Portion of Common Are between 63 Plainfield Avenue and 68 Plainfield Avenue
Block 12.01, Lot 1; Block 12.09, Lot 1

The Applicant is requesting a minor subdivision and D-2 variance (Applicant has requested an extension from the May 20, 2020 and June 17, 2020 meetings and to be heard at the July 15, 2020 meeting with no further public notice.)

Weis Markets, Inc. (#P-3-2020)
119 Water Street
Block 9.03, Lot 16

The Applicant is requesting site plan approval and associated variances for a "Gas N Go" drive-through facility with kiosk, canopy, and six fueling positions.

Frank McGovern, Esq. of McGovern & Roseman, PA represented the applicant.

Sworn in:

Joseph Gurney, RLA, PLA, from First Capital Engineering
John Luciani, PE, PLS, from First Capital Engineering
Brigette Bogart, PP, AICP
Alexander Ororbias, Sr. Manager Land Development for Weis Markets

In full disclosure, Mr. Ragsdale stated to the Board that he had done work with Mr. McGovern two or three years ago. Should he recuse himself?

Mr. Soloway questioned: Are you currently doing anything with him and do you owe any fees for past services?

Mr. Ragsdale stated: No.

Mr. McGovern stated: I do not have an issue with it.

Mr. Soloway stated: Then I do not see a conflict.

Mr. McGovern stated: I represent Weis Markets Inc. I have with me several people who will be testifying. Joseph Gurney who is the Director of Land Development with First Capital Engineering. John Luciani, an Engineer, who is also with First Capital Engineering. Brigette Bogart is the Planner providing testimony. Alexander Ororbias is the Manager of Land Development for Weis. I'm sure that all of you are very familiar with the Weis Supermarket site in Newton and the general layout of the property and its location off of Route 206. As a minor descriptive narrative, it's a large supermarket store with over 60,000 square feet and it is located north of Newton right in the middle of the commercial corridor running from Newton through Hampton Township. It's got a very large parking lot in the front and the proposal is to install what's called a gas and go facility in the northwestern corner of this site. The proposed facility

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would have three fueling stations, a kiosk, and a few parking spots. We believe that the plan shows that this is a perfect fit on the site with little interference if any with traffic flow within the site itself. It makes use of an area of a parking lot that is underutilized. It is the furthest reach from the supermarket store but that's not going to be the place where customers will go to park to go to the store normally. In addition we're not making any changes to the access points in and out of the parking lot of our property. There will be minimal impact on Route 206. We also believe that the design will be a great fit with the supermarket store. I think we can all recognize that in the past 20 to 40 years there has been a change in the way a lot of these retail store developments have undertaken a mix of using a service station and a supermarket type arrangement. So this kind of fits within the model of that as well. I believe you will find out with the testimony that this is not only a perfect fit for this site but also for this Town and for the commercial corridor that runs through that zone. We are looking obviously for a site plan approval. We would also need 2 or 3 C variances with regard to the signage. We're also looking for an interpretation that this particular use for a gas service station is a permitted use within the zone. If you decide that it is not permitted then we are asking for a D variance to allow that use in the zone.

Mr. Soloway stated: For the record, if it is determined that you will require a D variance, Mayor Diglio will have to recuse herself. That would still leave you with eight people who are able to vote.

Mr. McGovern introduced his first witness, Joseph Gurney from First Capital Engineering.

Mr. Gurney summarized his background, experience, and qualifications. He is the Director of Land Development at First Capital Engineering in York, PA. He has a Bachelor of Science degree in Landscape Architecture from West Virginia University, 1987. He is a registered Professional Landscape Architect in Pennsylvania, West Virginia, and Maryland. He has 32 years of experience in the Civil Engineering Land Development profession. He has experience on projects in Pennsylvania, Maryland, New York, New Jersey, Delaware, Virginia, and West Virginia. Specifically with regards to Weis Markets and Gas N Go projects, he has done about 10 to 15 of those projects since he has been with First Capital Engineering. Most of which are Gas N Go facilities not unlike what we're doing here. A number of them included a brand new Supermarket facility as part of the plan.

Mr. Soloway stated: I notice that he's not registered as a landscape architect in New Jersey. I don't have an issue with that, because I don't know that there are any standards or requirements in the State of New Jersey. Certainly he can testify based upon his personal knowledge about what is proposed here, what he's worked on and what he's familiar with. But I don't think it's appropriate to qualify him as an expert Professional Engineer because he isn't one. That would be my recommendation to the Board.

Mr. McGovern stated: Mr. Gurney works under the direction of Mr. Luciani who is a New Jersey Professional Engineer. Mr. Luciani would be qualified as the Engineer and then he would be able to confirm the information that Mr. Gurney provides.

The Board does not have any issues with this.

Mr. McGovern questioned Mr. Gurney: You are very intimately involved in the design of these plans that were submitted with this application, correct?

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Mr. Gurney stated: Yes.

Mr. McGovern stated: Please give the Board a general description of the site as it exists today.

Mr. Gurney stated: I'm sure you're all very familiar with it. A little more detail here is that Weis Markets has been in operation at 119 Water Street for almost 30 years now. The property is 8.89 acres in size. It's zoned SD-3 retail manufacturing district. The existing structure is a 60,750 square foot Weis Supermarket. The site has 322 existing parking spaces and 3 loading and unloading bays. It is provided with public sewer and water. There are existing stormwater conveyance facilities on the property that drain sheetflow and rain from the parking facilities and the building into stormwater management basins at the corner of the site. Access to the property is provided by two driveways. Movement out is via a right-turn only access drive to Route 206 Water Street and an access drive that connects to South Park Drive. Circulation within the property is provided by a two-way access aisle from Water Street. From Water Street there is an access drive to the front of the Weis Markets store. There's a perimeter two-way that circles the property providing access between Water Street and South Park Drive's site access. There is access to customer parking areas and delivery access to 3 loading and unloading docks.

Mr. McGovern stated: I'm going to stop you right there. So this layout that you're describing appears in the plans that were submitted to the Board, correct?

Mr. Gurney stated: Correct. That would be on sheet C2.

Mr. McGovern questioned: So sheet C2 of the plans gives a detailed layout of the existing facility, correct?

Mr. Gurney stated: Correct.

Mr. McGovern stated: Please describe the surrounding area.

Mr. Gurney stated: To the west, across Water Street, there exists a Wells Fargo Bank, an AutoZone, a Walgreens, and a Dunkin' Donuts. These areas are in the SD-3 zone. To the south there is Chuck's Car Wash, Carpet Gallery, and a Nutrition Store. Those are SD-3 zoned as well. Also, to the south is the Newton Town Pool and Memory Park. That is zoned T-1, natural areas.

Mr. Gurney was sworn in. Joseph Gurney from First Capital Engineering. All statements made before belatedly sworn were also truth.

Mr. Gurney stated: Just to the south, not adjacent to the property, within a quarter mile there's a Speedway fuel station and an Exxon fuel station. To the east there are properties zoned SD-3, retail manufacturing, and George's Salvage Company. A little further to the north there are properties that are zoned SD-3, retail manufacturing. Within another quarter mile of our property there's a Quick Chek fuel station and convenience store.

Mr. McGovern stated: Please describe the proposed project and what would change on the site in comparison to what's there now.

Mr. Gurney stated: Sure. Turn to sheet C3. As Frank mentioned Weis Markets is proposing a Gas N Go facility in the northeast corner of the existing parking lot. The Gas N Go is comprised of a 204 square foot kiosk, a 24 foot by 94 1/2 foot canopy, and a 46.67 foot by 193 foot concrete

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pad that all of that sits on. It will have three fuel dispensing islands with six fueling positions, two 15,000 gallon underground fuel tanks, and a proposed air station. The construction of the Gas N Go will displace about 40 parking spaces leaving 282 parking spaces to serve the store customers. Ordinance requires 243. After construction, there will remain a surplus of 39 parking spaces over the number required by ordinance and those numbers do not include six spaces at the Gas N Go fueling station.

Mr. McGovern questioned: This Gas N Go fueling station will be in the northwest corner of the site, correct?

Mr. Gurney stated: Correct.

Mr. McGovern questioned: Will it displace, interfere, or change any of the existing parking arrangements in the balance of the site?

Mr. Gurney stated: Yes. As I stated 40 parking spaces will be displaced by the construction of the Gas N Go. As I noted we will still meet zoning ordinances for parking and have a surplus of 39.

Mr. McGovern questioned: You're not proposing any changes to the alignment of the parking spaces or the flow of traffic outside of that northwest corner, correct?

Mr. Gurney stated: Correct. If you look at sheet C4 it will show the proposed kiosk. The kiosk will be served by public sewer and water. There are lateral connections proposed to the existing mains that run along the front of the stores we talked about previously. Stormwater runoff from the kiosk in the canopy are collected and piped underground by 8 inch PVC. It's discharging to an existing inlet as you can see there in the parking lot. That will carry it to the basin at the rear of the property. There will be 111 square feet less macadam pavement. Impervious coverage will be decreased by 111 square feet. If you look at the Erosion Sediment Control Plan we are disturbing about a half-acre of land. You can see that on sheets C3 and C5. All of that information you can find in the stormwater plan. On sheet C3 you will see a vignette in the lower left hand corner showing fuel delivery trucks. The trucks will enter and exit the property via the access to South Park Drive. That red graphic indicates the fuel truck entering, dumping their fuel into the underground fuel tanks at the Gas N Go, and exiting the site. It basically displays how the fuel will circulate through the site unencumbered. So any fuel vehicles that come in to drop fuel will be able to get in and out without making any other turns. They will go forward and move freely through the site.

Mr. McGovern stated: Let's talk about the lighting.

Mr. Gurney stated: Look at sheet C7. The lighting of the proposed kiosk and canopy will all be LEDs. The lighting is flush with the underside of canopy and prohibits spillover and glare light from leaving the property. The foot candles were adjusted downward from the original design per discussion and review comments from the Town Engineer. Weis Market standards are a little bit higher than are shown on this lighting plan, so we adjusted them down based on one of the engineer's comments. To follow up with that, on the overall plan the Gas N Go is located in the existing parking facility that is currently lit per the Town of Newton regulations. On the top part of the plan in the upper left hand corner you'll see a little circle with crosshairs in it. That is an existing light post that has to be relocated and that's the relocated position. That's it for the lighting plan.

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Mr. McGovern questioned: Why was this particular site chosen?

Mr. Gurney stated: This location was chosen to minimize the interruption of the existing site circulation patterns. The Gas N Go proposed location will not interrupt the circulation traffic into the property from Water Street. The access drive there has not been changed from the driveway off of Water Street through the parking facility towards the front of the store. That hasn't been changed nor have we interrupted the perimeter traffic circulation around the site. So what we tried to do was integrate that Gas N Go facility within the main circulation pattern that exists now. We talked a little bit about lessening the impervious coverage as a result of design and layout of the Gas N Go three landscape islands. If you want to look at C3 you'll see that we are proposing three landscape islands which have two purposes. One, they reduce the impervious coverage by 111 square feet. Two, they define the space that the Gas N Go is located in. They direct folks in and out of the Gas N Go and provide a defining area. Plus they add some aesthetics to the interior of the existing parking facility. We've got a number of shrubs, evergreens, deciduous, and some flowering trees that we're going to plant within those three landscape islands.

Mr. McGovern questioned: Have these plans already been reviewed by any other agencies?

Mr. Gurney stated: Yes. Since the initial submission, Newton Water and Sewer utility issued a letter on March 10, 2020 regarding draining capacity approval. I also had a discussion with Joe Carr. A number of his comments were integrated into the utility grading plan, specifically when it comes to sewer water connections to the existing main. Next, this plan was submitted and a request was made to the County of Sussex. We received an exempt site plan approval from those folks on March 18, 2020. Next, the Sussex County Soil Conservation District approved our application in a letter dated March 18, 2020. We met with the Town of Newton Technical Review Committee on April 15, 2020 and they issued a letter deeming the amended site plan and the use variance application complete. Finally, on March 6, 2020 Weis Markets, specifically Alex Ororbia and myself, met with Dave Simmons from Harold Pellow and Associates to review some of his comments and talk about the plan. The plan was adjusted based on that meeting. After that meeting we received a letter dated March 12th from Harold Pellow and Associates that listed a number of comments. We've addressed those. That compliance letter, along with the revised plan you're looking at now was resubmitted on March 31, 2020. Does anyone have any questions?

Mr. McGovern questioned: Will there be any change to the actual access from Route 206 into the site or from South Park Drive into the site?

Mr. Gurney stated: No, none at all.

Mr. McGovern questioned: Will there be bollards installed in the area around the kiosk?

Mr. Gurney stated: Yes. There are protective bollards around that area. Those are indicated on C3. You can see the graphic that indicates the proposed bollards. It's a typical graphic and they're also labeled.

Mr. McGovern questioned: Does the Board have any questions of the testimony up to this point?

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Mr. Marion questioned: I was looking at the map, especially C3. Although you are not making any changes to the entrance and exit onto Route 206 or Water Street if you do have a bit of volume of traffic exiting and entering, and somebody is trying to pull in and then make that immediate left into the gas area it could backup traffic onto Water Street. Is there any talk about maybe making that a do not enter and have people going a little further in to turn into the gas station?

Mr. Gurney stated: There was no discussion of that. I want to check something for myself. I have a full size set of plans. I'm going to give you a little bit more information.

Mr. McGovern questioned: While you are looking at that, what is the distance from Route 206 to that section?

Mr. Gurney stated: That's what I'm coming up with. If you come from the curb line out on 206 to that first drive access point you've got 120 feet. There was no thought or discussion in any of our reviews about restricting that access point because that's kind of how the access point exists right now.

Mr. Marion stated: Yes. But you don't have that volume of traffic going into the gas station.

Mr. Gurney stated: Correct. We believe that 120 feet is sufficient room and would deter a stacking issue.

Mr. Marion stated: That's three or four cars in. I'm not so worried about it during the week. When it comes to the weekends volume up there is heavy. Traffic on Water Street is usually at a constant standstill after 11:00 o'clock. I would request that as this meeting continues we give some consideration to my thought of making that an exit only portion and having people come in further. I don't know what the other Board members think but from a safety perspective that might be prudent. Also, when it comes to the deliveries of fuel is that done overnight? I see you're having the tanker go right across the entrance and exit of the supermarket.

Mr. McGovern stated: That's probably better answered by Mr. Ororbica.

Mr. Marion stated: I guess when we get there I can ask that question but I don't know if any of the other Board members had any thoughts on what I was proposing?

Mr. Le Frois stated: I'd be a little hesitant to request a circular circulation change if there's not a technical analysis performed that either says it'll work or it won't work. Maybe the applicant has taken a look at some traffic numbers. Maybe they have some information further in their testimony. Let's wait and see what may come up. If it's an issue, some additional technical information could be generated to show that it may or may not be a problem based on projections.

Mr. Marion stated: I'm just thinking of reality because I'm sure everybody on this call goes up through Newton on a Saturday and it is kind of congested. I am just trying to prevent the traffic from backing out on to Water Street.

Mr. Le Frois stated: In their review, since it's a State route, the State could potentially have a similar comment or maybe they don't feel it's an issue.

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Mrs. Vrahnos stated: I agree. I think we need more technical numbers before we make that kind of decision.

Mr. McGovern stated: There will be some testimony. There was a trip calculation and a traffic report included with the application. Mr. Luciani will be testifying about that. When he does he will certainly bring this issue up.

Mr. Le Frois stated: Thank you Mr. McGovern and a good comment Mr. Marion.

Mr. Wink questioned: Is there a fire suppression system proposed for this application?

Mr. Gurney stated: The Fire Chief has reviewed the plan and his comment was I believe that two emergency shutoff buttons are required. But Mr. Ororbias, can attest to the safety systems better than I can.

Mr. Le Frois stated: There's two ways we can approach this. We can either ask questions at the end of all the collective testimony or we can ask questions as we go specifically pertinent to what each expert testifies to. So what we've typically done in the past is categorized or kept our questions to the pertinent information that was discussed by the particular subject matter expert that's testifying on behalf of the applicant. Then if we have other questions let's hold those until the appropriate topic is covered. If it never is covered we can bring it up at the end of the collective testimony. Just to keep things moving along limit to questions related to the general layout that Mr. Gurney discussed and any other issue or other information that he specifically brought up in his field of expertise. This does not include operations or fire safety.

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

Mr. McGovern introduced his next witness, John Luciani, PE.

Mr. Luciani sworn in:

John Luciani, First Capital Engineering, 48 S Richland Avenue, York PA

Mr. Luciani stated his qualification as a Registered Engineer in Pennsylvania. Landscape Architects, Geologists, Surveyors, and Engineers are all under the same code in Pennsylvania. I'm also a registered Professional Engineer in New Jersey, Delaware, West Virginia, Maryland, Virginia, and a couple of other states. I'm also a Licensed Surveyor in Pennsylvania, Delaware, and Maryland. Not in West Virginia. But we had a Licensed Surveyor help us with this plan. I've been a Special Engineer for more than 30 years. I've been a Municipal Engineer and continue to do municipal engineering work a lot. I was the City Engineer in Scranton and I've been a Municipal Engineer in a number of central Pennsylvania townships for the last 25 years or so. I deal with plan reviews, traffic, highway design, occupancy permits, roadway design, and traffic signals. As Mr. Gurney mentioned we do a lot of work with commercial customers like Weis Markets. They have been a consistent customer. We've been working with them for 25 years.

Mr. McGovern questioned: Have you been involved in the design of many Gas N Go facilities?

Mr. Luciani stated: Yes. Many Gas N Go's. We worked with Hess before they got bought out by Speedway. We did dozens of Hess stores. We've done gas station canopies for Penske Trucking. We do other convenience store fuel stations. We probably have close to 100 fueling facilities

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including a natural gas facility in New York that was recently constructed. We do a lot on the commercial side with gasoline service stations.

Mr. McGovern questioned: Have you been intimately involved in the design of this particular project?

Mr. Luciani stated: Yes.

Mr. McGovern asked to qualify Mr. Luciani as a Professional Engineer. His New Jersey license and Certificate of Authority is current. The Board accepted his credentials.

Mr. McGovern questioned: We heard testimony of Joseph Gurney that he works under your direction at First Capitol. Is that correct?

Mr. Luciani stated: Yes. We are colleagues and he works under my direction, vice versa some days.

Mr. McGovern questioned: You worked hand in hand on this particular project. Is that correct?

Mr. Luciani stated: Yes.

Mr. McGovern questioned: And you heard the statements he made. Are they true and correct?

Mr. Luciani stated: Yes. They are very accurate and true.

Mr. McGovern questioned: I want you to answer a couple of questions that were asked. One was about the fire suppression system. Are you aware of this system?

Mr. Luciani stated: I know that on a lot of these facilities fire extinguishers mounted near the canopy are quite often required and that has been a concern or question that many planning boards have had. Typically, the fire extinguishers mounted in the area of the kiosk have often been sufficient for any incident that would occur in that area.

Mr. Le Frois questioned: Would it be safe to say that you will abide by any state or local code requirements?

Mr. McGovern stated: Absolutely.

Mr. McGovern questioned Mr. Luciani: Was an evaluation done in terms of traffic flow in and out of the site?

Mr. Luciani stated: Yes. As part of our scope, when you provide a new application you attempt to model or estimate the quantity of traffic that will be added to the site and the roadways. We use, as do all traffic engineers, the Institute of Transportation Engineer's manuals. I happen to be a member of ITE. ITE has a catalog to help estimate the new traffic being generated by building expansions. For fuel stations they actually project the volume of traffic based on the number of fueling positions. As testified to earlier there are six fueling positions. So in theory if we put 100 fueling positions out here, your volume of traffic using the ITE estimate would be commensurate with that number of fueling positions. There are two times that we looked at. One is the morning peak hour from 7 to 9 am and the pm peak hour is between 5 and 7. That's when people are

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going to work or coming from work; Pre-Covid 19. Those are times when the roads are heavily traveled. I heard the weekend traffic is a pretty peak time also for Water Street. We projected for the six fueling positions, and we looked at worst case. You can see on the plan there are five small rectangles. The lowest one projects the traffic from the grocery store. But we're not changing the grocery store we're adding a gas canopy. So the pertinent ones are the two rectangles in the middle of the page and the one to the right is the worst case scenario. It shows the weekday PM peak hour in theory. Based on national averages a gas canopy with this many fueling positions would have 42 vehicles entering and 41 vehicles exiting. Notice they show pass-by trips; 18 and 17 for a total of 35. What this graphic says is that the total number of trips of 83, deducting out people already on the road shows that this gas canopy will generate 48 new trips. There's a problem with that number and I'll tell you what that is. If you understand how the gas canopy works at Weis Markets you get tremendous discounts if you buy enough groceries like we do. There's a thing called internal capture. That means people are already in the grocery store and they fill up their shopping carts and on departure they read on the receipt that they're going to get \$0.25 or \$0.30 off per gallon up to 20 gallons. So now you're going to go and fill up your vehicle and that's called an internal capture trip. It's not new because they are already there. So there's a lot of internal capture which is different than let's say the Speedway store. Weis really wants to use this with their existing customers and give them those discounts. But that doesn't mean to say that somebody driving down Water Street wouldn't pull in here to get fuel. When we say 48 new trips it doesn't include the internal capture so that number could be greatly reduced. The reason why we did this is if there were over 100 new trips the State of New Jersey would want to talk to us about our driveway and its operations. We're at 48 and that number is overestimated because the internal captures aren't included. But what that tells me and other engineers is that even though this is a new facility on this site the volume of traffic won't be such that it will be new traffic generated to get in and out of this driveway.

Mr. McGovern stated: But will there be some new traffic?

Mr. Luciani stated: There will be some new traffic, no doubt. I'm sure Weis hopes that there's more new traffic but statistics show that a lot of it is from internal capture.

Mr. McGovern stated: Talk about trucks entering the facility to fuel or large vehicles. Are there vehicles that cannot be handled at this facility?

Mr. Luciani stated: Absolutely. First of all, in addition to gasoline there will be auto diesel sold here. So one might say we're going to get tractor trailers coming in and off of Route 80 to come in here to fuel up. The answer is clearly no. The reason why is first of all the pump capacity. The fueling capacity is pretty slow. The fuel tanks on a truck are hundreds of gallons and even though we have auto diesel, the discharge rate going into those vehicles is way too slow for a truck to fuel up at this location. It would take a long time to put the fuel in. As I mentioned we at First Capital have done a lot of fueling stations and we've done truck stops. Today in a truck stop they fuel from both sides of the vehicle they have a master and a slave fueling system so both of them are fueling on both sides of the truck at the same time. The trucker doesn't want to sit there for an hour waiting for his truck to get filled up. He wants to get out of there as quickly as you fuel your personal vehicle. So it's really not geared for large tractor trailers. Although as Mr. Gurney talked about in sheet C3 we do need to be able to get a fuel delivery truck to fill those tanks. A fuel truck needs to maneuver in there. That fuel truck is what they call a WB50. If it was a school bus, a school bus could probably fuel at that location if it needed to. It would take a while to fill the tank. I don't believe Weis is targeting that population. They want to get

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their customers to redeem their coupons at that location. So we can accommodate larger vehicles, but over the road tractor trailers with a sleeper berth, a WB67, and the turns needed to be made to get into that site would not accommodate very easily, if at all.

Mr. McGovern questioned: Are you familiar with the construction design of the kiosk itself?

Mr. Luciani stated: Yes. As Mr. Gurney said Weis has built this type of facility many times and we've worked closely with them.

Mr. McGovern questioned: Will it be equipped with the emergency shutoff switch?

Mr. Luciani stated: It is. I believe that was a comment from the Fire Chief when he looked at it and I think he's quoting the fueling code from New Jersey as to where the shutoffs would need to be. Interestingly enough I will say this, the bulk of Weis Markets Gas N Go's are in Pennsylvania and Maryland. In New Jersey we are fully aware that you must have an attendant and you can't fuel your own vehicle under penalty of law. That attendant must be trained and certified to operate that fueling facility. We don't have that luxury in Pennsylvania or in Maryland but I think it adds another level of safety by having a trained and certified attendant fueling the vehicles.

Mr. McGovern stated: That's all I have from Mr. Luciani right now. Does anybody have a specific question for him?

Mr. Marion: Looking on C3 at the back of the kiosk there's a propane station. I'm assuming that's to do those tank exchanges for barbecue grills?

Mr. Luciani stated: That is correct. It is also my understanding. I'm going to ask Mr. Ororbio to correct me if I'm wrong but that's typically 20 lb. tanks for backyard grills.

Mr. Ororbio stated: Yes. That is correct.

Mr. Flaherty questioned: Again looking at C3, the egress and ingress to the station. Are there going to be stop signs or anything to prevent vehicles from exiting and just crossing over that entrance there on either side of the island? As you leave the pumps there you can turn left or right and then you come up to the main driveway. Are there stop signs there or anything written on the pavement? I could see people just coming out, turning, and crossing over without anything to stop them.

Mr. Gurney stated: Yes. There are stop signs and stop bars at the entrances.

Mr. Flaherty questioned: Is it on both sides of it because when I looked at the store side I didn't see them. People come in and out in either direction. Before they get onto the exit roads, I think there should be a stop.

Mr. Gurney stated: There's not but there can be. We can add that. We didn't notice it and we didn't get a comment on it therefore it didn't get on the plan. But that's not a problem.

Mr. Soloway questioned: Where exactly would that be?

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Mr. Le Frois stated: I know exactly where he's talking about. As you enter the site it would be the second possible left you could take. It would be to protect the traffic coming out from there. So the configuration would look exactly like the other driveway. Where you have a stop sign on the right and you would have a stop bar across there. Maybe you have a solid stripe there to sort of keep traffic separated on either side of that.

Mr. Flaherty stated: Right. But also on the other side of it as you go up they could exit in either direction so I think there needs to be a stop bar on the opposite side of it.

Mr. Le Frois stated: Yeah I see what you're saying.

Mr. Soloway questioned: Assuming this gets approved we can add a condition that additional stop signs or stop bars be added as requested by the Town Engineer instead of trying very hard to describe exactly where this is.

Mr. Gurney stated: Yes. We can work with Dave Simmons.

Mr. McGovern questioned Mr. Gurney: Regarding the fire suppression system, please point out on the plans where the emergency shut offs are.

Mr. Gurney stated: I'm referring to a response letter on the approvals required from the Fire Sub-code Official. Will there be an emergency utility shut off in one spot? Can there be two shut offs? We responded that the attendance kiosk is equipped with two emergency shutoff push type switches that completely disable the facility. One is located inside the kiosk the other is located outside the kiosk front wall. These items will be available for review in the building permits set. We addressed that comment in the March 31 compliance letter to HPA. In that letter the building permit plans will have the locations on ones inside the kiosk and one in the front.

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

Sworn in: Mr. Alex Ororbia, Weis Markets Inc., 1000 2 2nd Street, Sunbury, PA 17837. Senior Manager of Land Development.

Mr. Ororbia stated: I have been with Weis Markets for the last 25 years. I have been in charge of design and development of stores and fuel stations with Weis. To give you a little bit of background and let you know how excited we are about the prospects of building this facility in Newton I have a few points that I'd like to make specific to the project. Overtime it has been mentioned that the business model of supermarket has changed and it has to be updated to serve our customer's needs. Therefore back in 2001 we began installing fuel stations at our sites. Today we have about 42 facilities in New York, Pennsylvania, Maryland, and West Virginia with nine more in the wings at different stages of development. Fuel stations have become a big part of our one-stop shopping convenience offer to our customers. We have a system called a club membership which allows our customers to redeem discounts at the pump. That works only one way. The more you shop at the store, the more you save on fuel. They're very excited to provide these improvements here in Newton as we have been operating this store since 1992. As you have heard from our engineers the facility is designed with first and foremost public safety in mind. We have provided easy access from Water Street. The facility is placed in an underutilized portion of our parking lot. It's well integrated through the site with excellent internal circulation. Our customers will have a state of the art facility. The system has several backups to

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prevent leaks. There're leak detectors at the tanks, at the pumps, at the house. One thing that we take pride in is that we went the extra mile to get the system outfitted with liquid as well as vapor detectors in an automatically computerized system. As soon as a leak is detected the system shuts off completely and the facility is inoperable until that leak is investigated and resolved. Access from the pumps to the attendant kiosk is ADA accessible. There are no ramps or steps. Everything is graded flat. The customer is protected from traffic in an area in front of the kiosk. The station will be staffed by two attendants both of them EPA certified class C operators. That means that they not only have to be extremely well familiarized with the equipment but they also have to be very cognizant of all safety and inspection protocols. We submitted all this information to Mr. Simmons during review of the project. Additionally, the kiosk will provide some small sales of candy, snacks, soda, bagged ice, and propane refill tanks. The cage for the propane tank is relatively small so there's probably going to be no more than eight tanks at any one time within that cage. You also have seasonal displays that are shown around the pumps. Those usually carry motor oil, windshield washer fluid, de-icer, and rock salt as indicated in the plan. We expect transactions to be handled by the attendants in two ways, either pay at the pump if it's strictly for fuel or into the secure front window in front of the kiosk. It is locked at all times and it's outfitted with a restroom strictly for employee use only. Once again, we are very excited and very eager to open this facility at the store in Newton. The other thing that I wanted to point out to you is that we are very cognizant of cross traffic circulation within our site. Customer and staff safety is paramount to us. Fuel delivery is restricted to off peak times. The important safety protocols that we submitted to Mr. Simmons for review explain how the tanker is supposed to take extreme care and measures to dump fuel to restore the underground tank. That operation takes at most 45-50 minutes from the time the tanker enters the site to the time it leaves the site. We will always confine the deliveries to the off peak times. We do not want cross traffic situations and we don't want to impede the flow of customers to the gas station. Up to 40-50% of the customers that use our gas stations are customers at the store either coming to the site first to fuel and then shop or the reverse. So we don't expect a major congestion problem or stacking going out of the site. The stores and the fuel stations are well managed. At any time if we have any situation where there is a traffic jam of any sort we definitely have additional staff that can show up at the facility to try to direct traffic and minimize any impact. The other issue that I want to mention is the fire suppression and methodology. We replied to Mr. Simmons in the plan review. Our facilities are equipped with computerized automatic controls. It will shut it off in case of a leak. But in case of an emergency, the operators have access to a push-type switch button inside the kiosk at the front wall where they are sitting. If the attendant is outside of the kiosk there's a back-up push button at the front exterior wall.

Mr. McGovern questioned: When do you anticipate the unloading of the fuel at the facility. Is there control of that?

Mr. Ororbias stated: Yes. We control the deliveries. As I mentioned because we don't want that tanker to interrupt the flow of our customers in the site delivery happens very early in the morning or late at night.

Mr. McGovern questioned: What are the hours of operation?

Mr. Ororbias stated: They are in concert with the store. Typical hours of operations are between 6 in the morning and 11 at night.

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Mr. McGovern stated: I want to talk about the signs a little bit. You have a freestanding sign at the front of the facility along Route 206?

Mr. Ororbia stated: Yes. The site is outfitted currently with a pylon sign at the main entrance at Water Street. This existing pylon sign was approved by the Town back in 1990. The sign consists of a very large panel that says Weis Markets, and a small sign underneath in between the two vertical posts that says pharmacy. We are proposing to modify the large face. Instead of saying Weis Markets it would say Weis Food and Pharmacy. Underneath it we plan to replace the pharmacy sign with a digital pricing sign to advertise the price of the regular and diesel fuel at the new facility. The proposed signs will be the same size as the existing sign.

Mr. McGovern questioned: Do you have a sign on the kiosk itself?

Mr. Ororbia stated: There's a little bit of a decal that says gas rewards on the back face of the kiosk. That is advising Club Members to come and redeem. It is not visible from the road. It faces the store.

Mr. McGovern questioned: Will there be signs on the canopy?

Mr. Ororbia stated: Yes. We want to advertise the price of the fuel. By adding a couple of small signs there, 30 square feet each, to say Weis Gas N Go. Part of the challenge of the site has to do with the topography and the elevation of Water Street. So in a certain direction, going northbound, you will not be able to see the canopy very clearly. So we are trying to advertise the facility to passersby coming on the southbound side of Water Street before they even get a chance to see the large pylon. Because of the vegetation along the street it is not necessarily a long view before you can tell where the gas station is.

Mr. McGovern questioned: So two of the signs on the canopy will be advertising or notifying the people in the area of the Weis Gas N Go facility? And one will be on one side and one on the other?

Mr. Ororbia stated: Yes. You can see that on sheet C6.

Mr. McGovern questioned: And the other two signs on the canopy will be pricing?

Mr. Ororbia stated: Yes that is correct.

Mr. McGovern questioned: Going back for a second to the freestanding sign. How will the pricing be displayed? Will that be a digital arrangement?

Mr. Ororbia stated: It will be an LED illuminated sign. The regular gasoline price will be advertised in red LED, the diesel will be advertised in green LED. Part of Jessica Caldwell's comments was concerning the ordinance regulations that only allow certain illumination values for message boards and so forth. So taking that into consideration, although these are not considered message boards but rather static signs, we will comply with the ordinance. This is a maximum illumination of 8000 nits in the daytime and 400 nits at night. So the signs are completely dimmable and will comply with your ordinance.

Mr. McGovern questioned: Changes to the information on those signs will be fairly minimal correct?

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Mr. Ororbia stated: Yes that is correct. Fuel prices don't change that rapidly. Our experience is once a week the price will change. This is not equivalent to a message board that would be constantly changing.

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

Mr. McGovern introduced his next witness, Brigitte Bogart.

Sworn in: Brigitte Bogart, 47 S Franklin Turnpike, Ramsey, NJ.

Ms. Bogart stated her credentials: I have a Bachelor in Environment Design and Architecture from North Carolina State University; I have a Masters in City and Regional Planning from the University of Pennsylvania; I am a licensed Professional Planner in New Jersey and have been since 2000 and I am also a member of the American Institute of Certified Planners. I used to be a partner at Burgess Associates in Westwood. Over the last eight years I started my own planning firm and have been working for myself since 2012.

The Board accepted her qualifications as a Professional Planner.

Ms. Bogart stated: I'd like it to just give a little background about the site from a planning perspective. First I'd like to go through the property description. I know you heard a lot from our engineer who talked about the property itself but I think there's three key features from a planning perspective that goes to the heart of my testimony. One, it's almost a 9 acre site, 8.9 acres in area. It has 340 feet of frontage and extensive depth, over 800 feet. The lot actually is underutilized at the moment. The front portion really doesn't get utilized. There's excessive parking right now. It is located in the SD-3, retail manufacturing zone. The retail existing on-site is permitted. Drive-throughs are permitted as an accessory use which I'll get into in a second. Lastly, it is developed as a supermarket and it already has substantial development on site. It has an existing parking lot and is well lit. As it is we're just adding additional lighting to enhance the lighting for our proposed use. What I think is important from a post-development perspective is the canopy and kiosk are substantially set back from the road way. The kiosk is over 200 feet from the front line and 88 feet from the sideline. The canopy itself is over 170 feet from the front line. The reason I bring these two issues up is because we're looking at our sign variances that I will get into later on in my testimony. It is important to note the signage we're proposing and need variances for are not going to be causing visual clutter from the street perspective. It's purely for onsite circulation purposes. Besides the fact that we're so far set back from Route 206 or 94, the benefits to our application are that we're adding landscaping, reducing pervious coverage, adding new LED lighting to the site, and we're actually making more efficient use of the land itself. That specific comment goes to the heart of your Master Plan goals which I will get into when I attempt to justify the variances that are requested this evening.

Mr. McGovern questioned: Can you talk about the areas around the site and the consistency of this site with that area?

Ms. Bogart stated: Sure. In addition to the fact that I think this site is perfectly suited for this additional development based upon all the testimony you heard tonight it is also particularly suited for this development based upon the surrounding land use pattern. Up and down 206 you'll see a lot of similar drive-through usage. To the north we have ShopRite with the extensive parking area. To the east we have the recycling yard and then to the north and west we have

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a number of drive-throughs with Wells Fargo, PNC, Lakeland, and the Walgreens. We have a repair shop near us, Mavis and the Firestone auto repair shop. We have a number of fast food restaurants with drive-throughs including McDonald's, Dunkin Donuts, Kentucky Fried Chicken, and Burger King. All of these are very similar to what we're proposing so I think our proposal really fits into this development pattern. To the south is the Speedway gas station and the Exxon, both with mini marts. I think our proposal is really consistent not only with what is permitted in the SD-3 district but also with this current development pattern. It is important from a planning perspective to ensure that your proposals in your development are consistent with the area itself.

Mr. McGovern stated: Now we have taken a position in this application that this is a permitted use that we're proposing as a drive-through retail facility. Can you testify to that by using your expertise?

Ms. Bogart stated: Yes. As we mentioned we are looking to go through an interpretation to see that it's a permitted use and if not we will address the use variance. But from my perspective and from the research I've done I believe it is a permitted use in the SD-3 district. Retail is permitted and drive-through retail is permitted as an accessory use. In the Town of Newton Code it talks about what a drive-through facility is. As the definition says it is associated by design, physical facilities, services, or packaging procedures, encourages or permits customers, and this is the important part, to receive services or obtain goods while remaining in their vehicle. That's exactly what we're doing here. We're not letting anybody get out of the vehicle to receive services. The accessory use definition says it's a use subordinate to the main use of the land or the building on a lot customarily incidental there too. So I think that we are and we fit into the definition of your Newton Code as an accessory use, drive-through facility, and should be permitted. I did take it a step further and I looked at other codes and the Webster's Dictionary definition of drive-throughs. They're all very similar. All the definitions say that drive-through facilities are where a patron can receive a service or product without leaving their cars. I went through Wikipedia, Cambridge Dictionary, and a book published by the American Planning Association, which is a membership that all Planners in New Jersey and throughout the nation belong to. They had six or seven different codes that describe drive-through establishments and define them. They all defined them as providing services to patrons that remain in their vehicles; from Minnesota, Michigan, North Carolina, California, and Connecticut. I believe that most importantly, it fits into your local code definition as a drive-through facility. So from my planning perspective we should be considered a permitted use.

Mr. Soloway questioned: Did any of those other definitions mention gas stations?

Ms. Bogart stated: It doesn't specifically identify all of them. They never identified specifically gas stations or any other product. They all specifically say products or services and it is very general.

Mr. Soloway questioned: Gas stations are a separately designated use in Newton, is that correct?

Ms. Bogart stated: Yes.

Ms. Caldwell stated: I did address this issue in my report. I listed both the drive-through facility and the gasoline service station definition. And I think that while a drive-through facility does sound similar and it could possibly fit, I think that a gasoline service station fits more closely. I think when you look at definitions of uses and there's one that fits more closely, there's no reason to stretch it out to something that fits less well. This may seem to be a bit different than a regular

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gas station because it's associated with the larger grocery store. Quick Cheks and Wawa's are types of facilities that also have gas station service facilities. And because of the way that the ordinance is with drive-through facilities, I don't think it's really contemplated by the ordinance that gasoline would be considered a drive-through facility. I think that would potentially impair the Zone Plan or Master Plan to have an interpretation that considered drive-through facilities to include gasoline service stations. Wherever drive-through facilities were permitted you would potentially be able to have an accessory gas station.

Mr. McGovern stated: The Newton Code does have a definition in the zoning section. But when I did a word search through the entire code, I never actually found it used anywhere. It's defined but it doesn't seem to appear anywhere in any context.

Ms. Caldwell stated: It is conditionally permitted in the T-4 and the T-5 zones.

Mr. McGovern stated: So that's our presentation on the interpretation. Should we move on to the use variance presentation?

Mr. Le Frois stated: Yes. Continue with testimony.

Mr. McGovern questioned Ms. Bogart: From a use variance perspective, what is it that we need to show the Board tonight in terms of criteria.

Ms. Bogart stated: I heard in the beginning that there's two Board members that can't participate as I go through the use variance testimony.

Mr. Soloway stated: They are not participating.

Ms. Bogart stated: As this Board's aware the MLUL sets forth statutory criteria for the granting of use variances. You're allowed to grant a D variance or use variance in particular cases for special reasons. The courts have found the special reasons or purposes are how we further the purposes of the Municipal Land Use Law. In this case, I believe we further four purposes. Purpose A, to encourage municipal action to guide appropriate use in development of all lands in the State in a manner which will promote the public health, safety, morals, and general welfare. I believe that this site is particularly suited for the proposed use given the zoning and the surrounding development pattern. It will generally conform to the uses observed up and down the Route 206 corridor and it generally conforms to the uses permitted in your zoning code. As you heard from our traffic engineer, it is going to cut down on the traffic going in and out of the site as opposed to this site being developed separately and apart from the supermarket. We're using the existing access and utilizing the base of the customers that are on site already as the customers for the service station. So I think for those reasons we further purpose A. We also further purpose G, from my perspective, to provide sufficient space and appropriate locations for a variety of uses including commercial uses. The reason I believe that we further purpose G is because drive-through facilities in general are permitted as an accessory use in this zone and as you heard from my earlier testimony it is consistent with the surrounding development pattern. So I think that this is a very appropriate use for this location. The third purpose, purpose H, to encourage the location and design of transportation routes which promote the free flow of traffic while discouraging location of such facilities and routes which results in congestion. We're utilizing those existing access points and we are not creating new access points. At the same time we're really being more efficient in the use of the land by allowing for this vacant empty underutilized area to be developed with a use that we feel is

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permitted. Lastly, purpose M, to encourage coordination of various public and private procedures and activities shaping land development with a view of lessening the costs of development and making more efficient use of the land. This really goes to the heart of the goals of the Master Plan which I will get into in a second. It really is taking advantage of and utilizing an under-utilized portion of the site currently to the benefit of the customers and for convenience purposes. So you're allowed to now grocery shop and fuel your vehicles on one site as opposed to two separate stops. These are the special reasons that I believe should be considered for our use variance application. The second portion of the criteria we have to address is the negative criteria. We have to prove that there's no substantial detriment to the public good and also that there is no substantial impairment to your Master Plan. For all the reasons you heard from our engineer and our traffic engineer I don't believe there's any substantial detriment to the public good. It's naturally fitting into the general zoning, it fits into the existing surrounding development pattern, it provides efficient use of the land, and it really coordinates traffic well. We're also adding additional landscaping and improving aesthetics of this site and reducing the impervious coverage. So there are a number of benefits of the application to the general public. I don't believe there's any substantial impairment to your Master Plan or Zoning Ordinance, because these uses are generally consistent with what is permitted there. Your 2008 Master Plan subsumes to your MLUL purposes. So the four purposes that I just indicated previously that I think are furthered by this application are also identified in your Master Plan. In addition, there are two goals that I think are important to this application. One is an economic goal. It does refer to the CBD but it talks about fostering commercial reuse of existing older structures within the CBD or new construction on vacant lots in scale with the existing buildings respecting the historic fabric of the downtown. I know the downtown has a completely different scale and fabric than the 206 corridor but I think it's important here because we're looking at new construction on what is essentially a vacant lot in front of the food store. So I think we further that purpose. The second goal is the circulation goal. To develop and improve and coordinate street systems which enables safe and efficient movement of people and goods providing for separation to the maximum percent possible with local traffic. Again this goes to the heart of the traffic testimony that was provided and the fact that we're making more efficient use of this land and keeping with those existing access points. Your Master Plan also talks about the SD-3 zone in general and how it's generally along the 206 corridor and permits retail, big box retail, and drive-through retail. So I think from that perspective we're very consistent with the SD-3 zone requirements and the plan requirements. I think that we have addressed the negative criteria from my perspective and the Board has a right to grant the use variance that may be required. The last portion of the use variance justification is through a court case of the Supreme Court versus Keith Mitichi and we have to prove that either our site or proposal is inherently beneficial or that the site is particularly suited. In this case we obviously are not inherently beneficial but I think that this site is particularly suited for this use for all the reasons that I stated throughout my testimony. I believe we meet the Mitichi criteria.

Mr. McGovern questioned: Then in terms of the signs we're looking for some C or bulk variances as well, correct?

Ms. Bogart stated: Correct.

Mr. McGovern stated: Then specifically can you please give the grounds for that request?

Ms. Bogart stated: We've agreed to comply with the freestanding sign requirements but we do need variances for new pricing signs which are on the canopy at 48 1/2 square feet. The two

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canopy signs that are for Gas N Go are at 30 square feet each. The kiosk has a wall decal that is approximately 21.25 square feet and a variance is required. When I started my testimony I talked about how far away from the street that these signs are and the kiosk is and how it really won't have the concept of visual clutter towards the street to the general public. It's really just to orient patrons that are on site on how to get to the gas station and alert them of the gas prices which is required by law. So these variances can be granted under the C2 variance criteria to prove that granting the variances will further advance the purpose and intent of the Municipal Land Use Law and then we have to prove that the benefits will substantially outweigh any detriments and again address the negative criteria. I believe that these sign variances could be granted because they further two purposes of Municipal Land Use Law. Purpose A, to guide municipal action for the appropriate development of all lands. The signs are appropriately sized for the site, for the setback and for the scale with the proposed canopy and kiosk area so I think we further purpose A. Then purpose I, to promote desirable visual environment through creative development techniques and good civic design and arrangement. The coordinating design between the existing supermarket sign and what we are proposing and the fact that it is in scale with the kiosk and can't be seen from the street is promoting a desirable visual environment. Typically, when you see a sign variance, the first thing on your mind is will it create a nuisance to the public? Is it distracting to the public? I don't think that's the case here. They were coordinated with the existing supermarket sign. There's no visual clutter and it's easy to identify the facility and get patrons in and out of the gas station area allowing them to really focus on the circulation on the site itself. Lastly, to address the negative criteria, obviously prove again there's no substantial detriment to the public good. As I mentioned, typically with sign variances visual clutter is the number one detriment to the public good and I don't believe that's the case here for all the reasons I mentioned previously. I don't believe there's any substantial impairment to the Master Plan. Drive-throughs are permitted as an accessory use and the setbacks comply with zoning regulations. The signs proposed are in scale with the canopy and the accessory use as proposed. So for all those reasons I believe that this Board has a right to grant the use variances that are requested and the sign variances.

Mr. Marion questioned: We haven't really heard much testimony about the kiosk. Is that going to be just for the employee and maybe a register to ring up products that are out on the pallets like the propane? Or is there a small concession inside the kiosk for candy, cigarettes, lottery tickets, or things of that nature?

Mr. Ororbis stated: The kiosk is secured and is strictly for employees only. Any transactions of sales of small items can be performed through a lazy-susan through the secure front window. This is not a concession stand where people can enter.

Mr. Marion stated: OK thank you.

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

Mr. Simmons reviewed his report dated March 12, 2020 and stated: We did have several meetings with the applicant and their professionals and went over many items and I think it's fair to say that the vast majority of comments in my March 12th report were addressed by the various applicants and their professionals this evening. We had discussed most of the items but just a couple items I'd like to highlight. On page two of the report, the applicant is to advise of any provisions being made for emergency generators at the gas station. I don't recall if they addressed that or not. Can they just highlight that?

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Mr. Ororbia stated: The electrical service is provided with a remote meter, a transfer switch and a quick disconnect. So we will not have a permanently installed emergency generator, however the transfer switch and the quick disconnect allows us to bring into the site an emergency generator plug-and-play to keep the fuel station operational during a power outage.

Mr. Simmons stated: OK good thank you. The other item that I had was under lighting, # 7 on page three. Correct me if I'm wrong but the gas station hours are basically going to dovetail on the grocery store hours; approximately 6:00 AM to 11:00 PM. When the grocery store is shut from approximately 11:00 PM till the next morning at 6:00 AM will the canopy lights be left on or would only certain lights be on for security?

Mr. Ororbia stated: After the gas station closes its operations the system goes into night light mode; which means that two of the light fixtures underneath the canopy will remain on. Just as a reminder the rest of the shopping center and the parking lot is still illuminated even when the store goes into shut down hours. That is a function of timing in light sensors.

Mr. Simmons stated: All the other items in my report the applicant has either agreed to comply with or has complied with on the revised. I think they are in agreement with everything else that we talked about so I don't have anything further to add.

Mr. Soloway stated: I would also note that the applicant submitted a letter which should be in everybody's packets dated March 31 specifically attempting to respond to the questions and issues raised in Mr. Simmons's March 12, 2020 report. I would recommend to the Board, if they grant an approval, to make those responses conditional requirements of the approval because they provide an answer to a lot of those questions.

Ms. Caldwell reviewed her report dated March 11, 2020 and stated: On the first page is basically an introduction and explanation of the application. On the second page I reviewed the parking and I think it's worth noting and reiterating that there are 322 existing spaces on the site where 243 spaces are now required. The proposal would eliminate 40 parking spaces and there would still be an excess of parking on the site. So I do agree with the testimony that's been put forth that the front of this site is underutilized. On Page 3 I reviewed the signs. Essentially, the one change from my report which has been discussed is that on the existing freestanding sign the applicant agreed to conform to the existing non-conformity there. So the additional signage is basically replacing existing signage. I don't believe there is a variance required there. The applicant does require variances for the canopy sign as well as the kiosk signage. Any internally illuminated signs have to be specifically approved by the Board. We did get the testimony we do need this specific approval to allow for those internally illuminated digital signs that are proposed for the pricing signs both the free standing sign at the front of the site and the signs on the kiosk. In terms of the overall zone, it is a large piece of property almost 9 acres. It does generally comply with the zone. However the existing structure is set much further back than would be permitted by the current zone. It was obviously built prior to this zoning being put into place. The location and size of the accessory canopy meets the ordinance and there is no variance required there. We did discuss the interpretation and the difference in the proposal about the drive-through facility interpretation and whether or not it's a gasoline service station. While I tend to agree with a lot of the testimony on the use variance and I think that it is a use that fits the site I don't support the interpretation that this would be a drive-through facility as a gasoline service station. I think that that could be potentially harmful in other locations where that type of use was not contemplated. The rest of my report essentially goes through the

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criteria for the D1 and the C variances which I think the applicant's planner covered quite nicely. That covers my report.

Mr. Le Frois stated: I have one question. What is the impact of classifying it as a gasoline station as opposed to a drive-through facility?

Mr. Soloway stated: If you classify it as a drive-through facility you have made a finding that the gas station is a drive-through so that anywhere drive-throughs are permitted in the ordinance gas stations are now permitted.

Mr. Le Frois stated: So it basically creates a precedent that could be used in the future.

Mr. Soloway stated: Correct.

Mr. Marion stated: The one thing the definition says is the drive-through facility is for obtaining goods while remaining in the vehicle. The gas station you could be getting out of the car to look at the kiosk or to purchase propane, or get out of your car to fill gas cans or purchase anything on the pallet. I would agree with Ms. Caldwell that this would be classified as a gas station as opposed to a drive-through.

Mr. Le Frois stated: In addition we may go to self-service someday. That's my opinion as well. Any other questions from the Board for the applicant or any of their professionals? I thought it was a nice job explaining everything and a thorough explanation of what was what's proposed.

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

Mr. Soloway stated: I believe you should have three separate votes. First you should vote on whether to accepting the interpretation that it's a permitted use in the zone. If you determine that it isn't, then you should separately vote on the use variance. I think you can include the site plan with the use variance but I would separate out, for voting purposes, the sign variances. I think they can be separately addressed and in theory could be separated from everything else if you were so inclined. I know that you want to combine everything in one vote. Mr. McGovern, do you have a problem with that approach?

Mr. McGovern stated: Not at all.

Mr. Flaherty made a motion that the proposed fueling facility is a drive-through facility and a permitted use. Mr. Flaherty made the motion. Mr. Marion seconded the motion.

Nay: Mr. Flaherty, Mr. Marion, Mr. Wink, Mrs. Vrahnos, Mrs. Hall-Romer, Mr. Russo, Mr. Le Frois

Motion denied.

Mr. Russo made a motion to approve the application for a use variance with site plan approval without reference to the sign variances with the following conditions: compliance with the recommendations and requirements set forth in the March 12, 2020 report of the Town Engineer and the representations responding to that report in the March 31, 2020 letter from First Capital Engineering specifically responding to that report; along with the usual conditions of ordinances, petty escrows, and fees, and any other approvals required. Stop bars or stop signs be added as may be required by the Town Engineer. Mr. Marion seconded the motion.

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Aye: Mr. Flaherty, Mr. Marion, Mr. Wink, Mrs. Vrahnos, Mrs. Hall-Romer, Mr. Russo, Mr. Ragsdale, Mr. Couce, Mr. Le Frois

Motion approved.

Mr. Russo made a motion to approve the entire group of sign variances that have been requested by the applicant. Mr. Marion seconded the motion.

Aye: Mr. Flaherty, Mr. Marion, Mr. Wink, Mrs. Vrahnos, Mrs. Hall-Romer, Mr. Russo, Mr. Ragsdale, Mr. Couce, Mr. Le Frois

Motion approved.

Ms. Caldwell excused herself.

121 Water Street Redevelopment Plan
Block 10.01, Lot 4

Mr. Soloway addressed the Board: A Redevelopment Plan has now been prepared and has been sent over by the Council to this Board for review. Under the Redevelopment Law you are required to make a determination as to whether the Redevelopment Plan is inconsistent with the Master Plan, but you're not voting. If this Plan is adopted by the Council it supersedes the Zoning Ordinance and will govern zoning requirements for this project.

Mr. Russo stated: Annie Hindenlang from Topology is the Conflict Planner who will go through the presentation. Our Redevelopment Counsel, Tiena Cofoni from McManimon, Scotland & Bauman is also participating. You should have all received my memo dated June 9th with a copy of the plan and a copy of the presentation. So I'm going to pull up the Plan and share the screen.

Ms. Annie Hindenlang, Conflict Planner from Topology walked through her presentation and described the Redevelopment Plan and it's consistency with the Master Plan.

The Board had no questions.

Mr. Simmons stated his support of the Redevelopment Plan. He noted it is a prime piece of property for redevelopment and suited for the uses proposed in the plan. He also noted that there are existing Newton utilities running across the property. Whoever develops it will have to be responsible for moving them.

Ms. Tiena Cofoni, Redevelopment Counsel from McManimon, Scotland & Baumann brought up Affordable Housing. It has not yet been determined at this site.

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

Mr. Marion made a motion to accept the Redevelopment Plan and to find it consistent with the Master Plan with no additional recommendations. Mr. Russo seconded the motion.

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Aye: Mr. Flaherty, Mr. Marion, Mr. Wink, Mrs. Vrahnos, Mrs. Hall-Romer, Mr. Russo, Mr. Ragsdale, Mr. Couce, Mr. Le Frois

Motion approved.

CORRESPONDENCE

Sussex County Resolution Authorizing Agreement between the Town of Newton and Thorlabs for a Traffic Signal at County Route 616 and 621, dated May 14th, 2020.

PSE&G document

EXECUTIVE SESSION

None.

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

Mr. Flaherty made a motion to adjourn the meeting. Motion seconded by Mr. Marion. The meeting was adjourned at 10:24 PM with a unanimous “aye” vote. The next meeting will be held on July 15, 2020 via ZOOM.

Respectfully submitted,

Katherine Citterbart
Planning Board Secretary

MEMORIALIZING RESOLUTION
OF THE PLANNING BOARD
OF THE TOWN OF NEWTON
APPROVING THE APPLICATION OF
WEIS MARKETS, INC., FOR USE VARIANCE
AND PRELIMINARY AND FINAL SITE PLAN
APPROVAL, WITH RELATED BULK VARIANCES,
TO CONSTRUCT A GAS STATION ON
BLOCK 9.03, LOT 16
DECIDED: JUNE 17, 2020
MEMORIALIZED: JULY 15, 2020
APPLICATION NO.: PB- 3-2020

WHEREAS, Weis Markets, Inc., having the address of 1000 South Second Street, Sunbury, Pennsylvania 17801 (hereinafter the “Applicant”) has made application to the Planning Board of the Town of Newton (hereinafter the “Board”) for an interpretation, or in the alternative, a use variance, along with preliminary and final site plan approval and bulk variances relating to signage, to allow construction of a gas station with a kiosk, canopy and six fueling stations on property known and designated as Block 9.03, Lot 16, with the street address of 119 and 121 Water Street, as detailed in plans entitled “Amended Site Plan Weis Markets Gas-N-Go #143, Weis Markets, Inc., Town of Newton, Sussex County, New Jersey” dated May 26, 2020, consisting of eight sheets, and an “As-Built Survey Plan of Weis Markets, Inc. – 119 Water Street”, prepared by Arthur A. Swallow Associates, with the latest revision date of May 21, 2014 (hereinafter collectively referred to as the “Approved Plans”); and

WHEREAS, the matter was heard before the Board at a public hearing of the Planning Board of the Town of Newton conducted remotely via the Zoom video meeting software, on June 17, 2020; and

WHEREAS, it has been determined that the Applicant has complied with all of the procedural requirements, rules and regulations of the Planning Board of the Town of Newton; and

WHEREAS, the Planning Board of the Town of Newton hereby makes the following findings and conclusions, based upon the evidence submitted to the Board at the hearing:

1. The Applicant was represented by Francis J. McGovern, Esq. Sworn testimony in support of the application was given by Joseph Gurney, the Director of Land Development for First Capital Engineering; by John Luciani, P.E., President of First Capital Engineering; by Alex Ororbia, Senior Manager of Land Development for the Applicant; and by Brigette Bogart, P.P. The qualifications of Mr. Luciani as a Professional Engineer and of Ms. Bogart as a Professional Planner, respectively, were accepted by the Board.

2. The Applicant is seeking approval to construct a gas station with a kiosk, canopy and six fueling stations in the northern corner of the existing parking lot on the property. The property is the site of a supermarket that initially received preliminary site plan and variance approval from this Board by Resolution memorialized on January 15, 1992. In addition to the supermarket, the property, which is nearly nine acres, also has 322 parking spaces for the supermarket.

3. The property is located in the SD-3 Special District 3 Retail Manufacturing Zone, and has frontage along Water Street (US Route 206). Gas stations are not a permitted use in the SD-3 Zone. The Applicant argues that a gas station meets the ordinance definition of drive-through retail facility, which is permitted as an accessory use in the zone, and seeks an interpretation pursuant to N.J.S.A. 40:55D-70b

that it is a permitted use. In the alternative, in the event the Board denies the interpretation, the Applicant seeks a use variance to allow the proposed use, along with preliminary and final site plan approval, and certain bulk variance relief, as detailed below, relating to signage that is proposed as part of the application.

4. During the course of the hearing, the Applicant's witnesses reviewed the proposal as detailed in the Approved Plans. The Applicant stated that there was more than sufficient room on the property for the proposed gas station. The property has access from two separate driveways, one from Water Street, and the second from South Park Drive. It is surrounded by commercial uses. No change is proposed in the ingress or egress, and the Applicant stated that the proposed gas station on the property would not interrupt or interfere with existing traffic circulation on the site. According to the Applicant, fuel delivery vehicles typically visit the site in the very early morning or late evening hours, take approximately 45 to 50 minutes to complete delivery, and will be able to move freely through the site. In response to concerns expressed regarding the possibility of stacking on Water Street because of the increased number of vehicles that would visit the property, particularly on Saturdays, the Applicant, referencing a March 11, 2020 Traffic Generation Executive Summary that was submitted with the application, stated that based upon State Highway Access Management Code standards, the anticipated increase in traffic would not be significant, and that no permit would be needed from the State Department of Transportation. The Applicant noted that it anticipated that many of the users of the gas pumps would be vehicles that combined a trip to the supermarket with buying gasoline, so that there would not be as many customers visiting the site for the sole purpose of utilizing the pumps as might be anticipated.

5. The fueling stations will be staffed by two certified attendants. There will be other items for sale at the kiosk. Customers will be able to purchase propane tanks for their backyard grills, but there should be no more than eight propane tanks in one cage at a time. Other items that might be sold at the kiosk include snacks, candy and cigarettes, oil, antifreeze and windshield washer fluid. The anticipated hours of operation for the gas station are from 6:00 a.m. until 11:00 p.m., which are the same hours as for the supermarket.

6. The site currently has 322 parking spaces, 40 of which will be eliminated in order to accommodate the gas station, leaving 282 spaces on the site. Based upon the ordinance standard set forth in Section 320-23A, 243 spaces in total will be required, so there will still be more than ample parking on site.

7. During the hearing, the Town Engineer discussed a report, dated March 12, 2020, that he issued to the Board in which he reviewed the application, and made various recommendations. It was noted that by letter dated March 31, 2020, First Capital Engineering submitted a detailed response to that report, in which it responded to questions asked by the Engineer and agreed to comply with certain recommendations made in the report. As noted below, both the March 12, 2020 report and the March 31, 2020 response of First Capital Engineering will be attached to this Resolution, and the Applicant will be required to comply with the statements/representations made in the March 31, 2020 letter response. The Applicant agreed to this as a condition of approval.

8. The Applicant also seeks several bulk variances relating to the proposed signage for the gas station. Pursuant to Section 320-25(B)(2), the maximum area permitted for a freestanding ground mounted sign is 40 square feet, and the Applicant initially proposed to add a gas price cabinet sign to the existing freestanding sign that

would increase the area to 40.25 square feet. The Applicant agreed to reduce the size, so that the existing sign would not be increased in area, thus eliminating the need for this variance.

9. The Applicant still requires bulk variance relief to allow a canopy sign with an area of 30 square feet, which exceeds the allowable 8 square foot ordinance limitation, and for a kiosk wall detail sign with an area of approximately 21.25 square feet, which does not comply with the ordinance requirement of 1 square foot per lineal foot of façade. The Applicant noted that the kiosk sign will only face the supermarket, not the road. The Applicant needs the canopy sign to be visible to cars going south on Water Street. This sign advertises the gas station operation, and will also include the pricing information that is required by law. The pricing signs will be LED, with the price for regular gasoline illuminated in red, and diesel in green. The Applicant represented that it will comply with the illumination limits (measured in nits) required by Ordinance Section 320-25(D)(3). Ms. Bogart, the Applicant's planning witness, opined that given the size of the lot, signage in excess of the square footage limitations contained in the ordinance would not be out of scale, and would not cause any visual clutter.

10. At the conclusion of the hearing, in making its determination on the application, the Board separated the application in a manner where it took three separate votes. The first vote or determination related to the Applicant's request for an interpretation that the gas station use is permitted; the second, following the denial of the interpretation, was for a determination as to whether the application for a use variance and site plan approval should be granted; and the final vote related to the signage and the variance relief requested for it.

11. With regard to the interpretation, the Board has no difficulty in concluding that a gas station is not a drive-through retail facility within the meaning of the ordinance, and is therefore not a permitted use in the SD-3 Zone. A drive-through facility is defined in the ordinance as “a facility associated with a use that by design, physical facilities, service, or by packaging procedures encourages or permits customers to receive services and/or obtain goods while remaining in their motor vehicles.” The Applicant argues that the gas station use meets this definition because the customers utilizing it are permitted to receive the services, i.e. get gas, while remaining in their motor vehicle. That is not the only item that will be for sale at the gas station facility, however. The customers are invited to purchase other items, and if they do, they may well exit their vehicles. Moreover, on a commonsense level, the Board simply does not accept that the definition of a drive-through facility was intended to include a gas station, which is a separately defined term in the ordinance. A gasoline service station or filling station is defined as “any building, structure, or area of land used for the retail sale of automobile fuels, oils and accessories, and where repair service and sale of propane and/or kerosene, if any, is incidental.” The Board believes that if the Town Council had intended that gas stations, which are a common use frequented by most of the population, would be included within the definition of a drive-through facility, it would have said so. It did not, and instead separately defines gasoline service stations. Moreover, the zones in which drive-through facilities and gas stations are permitted do not exactly correspond with each other, as they would if gas stations were deemed to be a drive-through facility. The Board believes that drive-through facilities are intended to apply to uses such as banks, pharmacies and fast food restaurants, where they are frequently incidental to the primary, indoor use. For all of these reasons, the Board denies the interpretation.

12. The Board does find, however, that the Applicant has successfully demonstrated that a use variance should be granted to allow the gas station. The Board finds that so-called special reasons exist for the granting of the application, because it furthers certain of the statutory purposes set forth in the Municipal Land Use Law, specifically, by providing sufficient space in an appropriate location for the proposed gas station use, by doing so in a manner that promotes the free flow of traffic, and by encouraging the more efficient use of land. The Board further finds that the location proposed for the gas station is a particularly suitable one, because the nearly nine acre lot (much of which is arguably underutilized) provides more than ample space to accommodate the additional use, and because it is in keeping with the surrounding commercial development pattern. The Board also notes that the granting of the application will result in adding additional landscaping to the site, and will actually reduce the amount of impervious coverage. The Board therefore finds that the application satisfies the so-called positive criteria for the grant of a use variance.

13. The Board further finds that the requested use variance can be granted without substantial detriment to the public good and without substantially impairing the intent and the purpose of the zone plan and zoning ordinance, thus satisfying the so-called negative criteria. Given the size of the property and the surrounding development pattern, the Board finds that there will not be a significant negative impact on any surrounding property. The Board also finds that allowing the addition of this gas station use on this large property in this commercial area will not substantially impair the intent and the purpose of the zone plan and zoning ordinance. With regard to reconciling the proposed use with the failure of the zoning ordinance to permit it, the Board notes that gas stations functioning as an accessory or secondary use on supermarket properties is a

relatively recent concept in New Jersey that is evolving, and may not have been contemplated when the ordinance was written and adopted by the Town Council.

14. As previously noted, the Applicant is requesting bulk variances for its proposed signage. Specifically, the Applicant is proposing a 30 square foot canopy sign, with only 8 square feet being permitted by Section 320-25(B)(2), and a kiosk wall decal sign of 21.25 square feet, with only 6 square feet (1 square foot per lineal foot of façade) permitted by Section 320-25(B)(2). The Board finds that it is appropriate to grant the requested variances pursuant to N.J.S.A. 40:55D-70c(2). This is a large property on which the gas station will only be a secondary use, that will primarily be accessed by motorists traveling on Water Street, a busy State highway. For safety reasons, it is important that those motorists, as well as motorists already on site, be able to clearly identify where the gas station use is, and be able to see the pricing information required by State law from a sufficient distance away to avoid sudden stops or turns. The proposed signage will fulfill the purposes of the Municipal Land Use Law by promoting safety and the free flow of traffic. Given that the property is nearly nine acres in size, and located in an area where it is surrounded by other commercial development, the Board finds that the requested sign variances can be granted without substantial detriment to neighboring properties and the public good, and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance. The Board further finds that the safety benefits of allowing the larger, more visible signs substantially outweigh any detriment that might be caused by the grant of the variance relief.

15. The Board further finds that the use of internal illumination, in the case of the canopy sign, and the utilization of digital/LED lettering in the case of the fuel pricing portion of the sign, comply with the requirements of Ordinance Sections 320-25(D)(2)

and (3). In the case of the internally illuminated canopy sign, the Board finds in accordance with Section 320-25(D)(2) that it is in keeping with the surrounding area and the architectural features, as such, of the rest of the installation, that it is not in conflict with the goals of the Master Plan for the zone, and that it will not cause a nuisance to adjacent properties.

16. With regard to the digital/LED sign, also known as an electronic message board, the Applicant stipulated, and a condition of this Resolution shall require, that the maximum luminance shall comply with the requirements of Section 320-25(D)(3) and that the lettering on the sign will not change any more frequently than one message per 15 seconds. The Board finds that this sign will not cause any traffic safety concerns, and will not be a nuisance to adjacent properties.

17. Except for the use and bulk variance relief granted by the Board, the Board finds that the application otherwise conforms to all applicable ordinance standards for preliminary and final site plan approval, and that it is therefore appropriate, subject to the conditions set forth below, to grant the application for preliminary and final site plan approval.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Town of Newton, County of Sussex, State of New Jersey that the application of Weis Markets, Inc., for a use variance, sign variances and preliminary and final site plan approval for the construction of a gas station with a kiosk, canopy and fueling stations is hereby approved, subject to the following terms and conditions:

1. The terms of the approval are to be strictly in accordance with the Approved Plans and the testimony presented to the Board, which are incorporated into this Resolution by reference.

2. The Applicant shall comply with the recommendations and requirements of the Town Engineer as set forth in his report of March 12, 2020, and with the representations/response to that report set forth in the March 31, 2020 letter of First Capital Engineering, both of which are attached to and incorporated in this Resolution. Compliance shall be to the satisfaction of the Town Engineer.

3. The Applicant shall add stop signs and/or stop bars on site where required by the Town Engineer.

4. The Applicant shall comply with the requirements of Ordinance Section 320-25(D)(3) as to maximum luminance and the frequency with which messages may be changed, to the satisfaction of the Town Engineer.

5. Except to the extent specifically inconsistent with or modified by the Approved Plans or the requirements of this Resolution, the Applicant shall continue to comply with the terms and conditions of all prior Resolutions relating to this property.

6. Upon completion of the project, an as-built plan of the site is to be prepared by a licensed New Jersey professional land surveyor, to the satisfaction of the Town Engineer.

7. Before commencement of any site work, the Applicant shall schedule a preconstruction meeting if directed by the Town Engineer.

8. All taxes, fees, assessments, escrows and other monies due to the Town of Newton shall be paid in full. Any monies are to be paid within twenty (20) days of said request by the Board's Secretary.

9. The Applicant shall obtain approval from all other governmental agencies with jurisdiction relating to the Application or the property.

10. The Applicant shall comply with all rules, regulations, statutes and ordinances of the United States of America, State of New Jersey, County of Sussex, and Town of Newton.

SO RESOLVED, as aforesaid:

AYES:_____

NAYS:_____

ABSTENTIONS:_____

The foregoing is a true and correct copy of the Resolution of Memorialization of the Town of Newton Planning Board made pursuant to N.J.S.A. 40:55D-10(g) and adopted at a regular meeting assembled remotely on Zoom on June 17, 2020 memorializing the Resolution of Intent of the Town of Newton Planning Board at a meeting conducted on Zoom on May 20, 2020.

TOWN OF NEWTON PLANNING BOARD

BY:_____



TOWN OF NEWTON
RESOLUTION #169-2020

July 13, 2020

“Resolution of the Town of Newton, in the County of Sussex, New Jersey, Directing the Town Planning Board to Review and Comment on the Proposed Merriam Gateway Redevelopment Plan Amendment Pursuant to the Local Redevelopment and Housing Law”

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Act"), authorizes municipalities to determine whether certain parcels of land in the municipality constitute areas in need of redevelopment; and

WHEREAS, a redevelopment plan was adopted for a portion of the Town of Newton Rehabilitation Area, designated by the Town of Newton on April 23, 2007, pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law"), including parcels, public streets and rights-of-way adjacent to and including Sparta Avenue and Diller Avenue (the "Plan Area"); and

WHEREAS, a redevelopment plan known as the Merriam Gateway Redevelopment Plan, was adopted by the Town Council in November 2010 and amended in September 2012, March 2015, and July 2017 for a portion of the Rehabilitation Area identified on the official tax map of the Town as: Block 18.03, Lot 10 (former Block 1104, Lot 22); Block 22.02, Lots 8, 9, and 10 (former Block 1209, Lots 10, 11, 12.01); Block 18.02, Lots 9, 10, 11, 12, 14, 15, 16, and 17 (former Block 1301, Lots 1, 1.04, 10, 11, 12, 13, 14, 15, 16); and Block 22.04, Lots 1, 2, 3, 4, 5 (portion), 13, 14, and 15 (former Block 1308, Lots 1 (portion), 1.01, 1.02, 10, 11, 12, 13, and 14); and

WHEREAS, in accordance with the Act, the Town has prepared a proposed Amendment to the Redevelopment Plan for the Redevelopment Area, which is attached hereto as Exhibit A; and

WHEREAS, the Town Council desires to utilize the Planning Board's expertise and experience in crafting a redevelopment plan for the Plan Area;

NOW, THEREFORE BE IT RESOLVED, by the Town Council of the Town of Newton as follows:

1. The Town Council hereby authorizes and directs the Newton Planning Board to review the draft Redevelopment Plan Amendment attached hereto as Exhibit A, and to transmit its comments to the Town Council within 45 days, as required by N.J.S.A. 40A:12A-7(e).
2. This Resolution shall take effect immediately.

CERTIFICATION

THIS IS TO CERTIFY that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, July 13, 2020.

Lorraine A. Read, RMC
Municipal Clerk

MERRIAM GATEWAY REDEVELOPMENT PLAN AMENDMENT



TOWN OF NEWTON
Sussex County, New Jersey

July 13, 2020



**J Caldwell
& Associates, LLC**
Community Planning Consultants

MERRIAM GATEWAY REDEVELOPMENT PLAN AMENDMENT TOWN OF NEWTON, SUSSEX COUNTY

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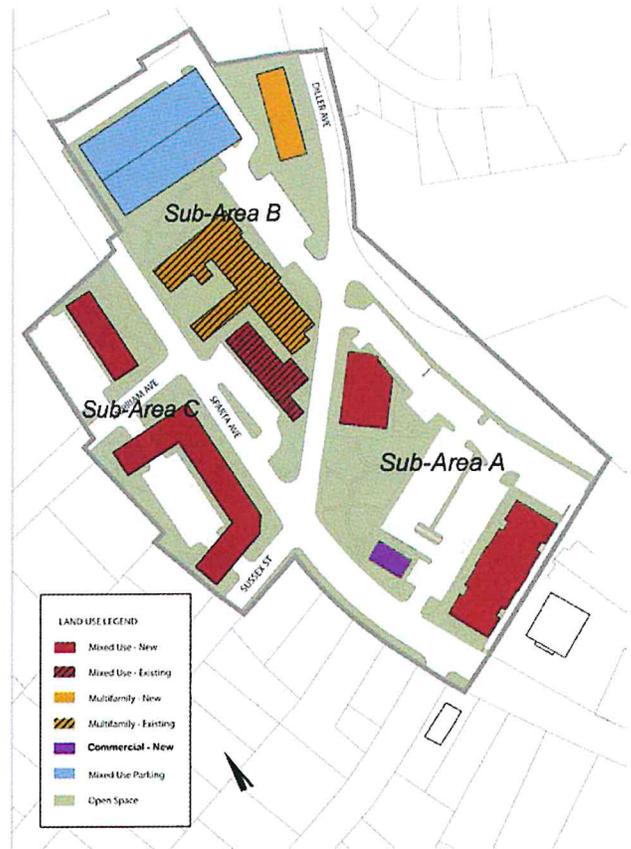
Jessica Caldwell, P.P., A.I.C.P., Town Planner, P.P. # 5944

PLAN CONSISTENCY REVIEW

BACKGROUND

The Merriam Gateway Redevelopment Plan (the “Plan”) governs a portion of the Town of Newton Rehabilitation Area, designated by the Town of Newton on April 23, 2007, pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the “Redevelopment Law”), including parcels, public streets and rights-of-way adjacent to and including Sparta Avenue and Diller Avenue (the “Plan Area”). The Plan was adopted by the Town Council in November 2010 and amended in September 2012, March 2015 and July 2017.

The Plan Area includes 20 tax lots on portions of four tax blocks, as well as the adjacent street rights-of-way of portions of Sparta Avenue, Diller Avenue, Sussex Street, and Railroad Place. The Town of Newton has updated tax lot numbers since the adoption of the original Merriam Gateway Redevelopment Plan. The new lot and block numbers for the parcels located in the Plan Area are: Block 18.03, Lot 10 (former Block 1104, Lot 22); Block 22.02, Lots 8, 9, and 10 (former Block 1209, Lots 10, 11, 12.01); Block 18.02, Lots 9, 10, 11, 12, 14, 15, 16 and 17 (former Block 1301, Lots 1, 1.04, 10, 11, 12, 13, 14, 15, 16); and Block 22.04, Lots 1, 2, 3, 4, 5, 13, 14 and 15 (former Block 1308, Lots 1, 1.01, 1.02, 10, 11, 12, 13 and 14). The Plan Area covers 10.18 acres. The Plan divides the Plan Area into three (3) sub-areas: A, B and C. The parcels within Block 22.04 (former Block 1308) comprise Sub-Area A, the parcels within Block 18.02 (former Block 1301) comprise Sub-Area B, and the parcels within Blocks 18.03 and 22.02 (former Blocks 1104 and 1209 respectively) comprise Sub-Area C. The figure to the right shows the Sub-Areas along with the originally proposed conceptual layout for the area.



The purpose of this Plan Amendment is to allow for Parking as a principal permitted use in Sub-Area A and to allow for Treatment Centers as a principal permitted use in Sub-Area B of the Plan Area. Sub-Area A has an existing parking area for Thorlabs and given County right-of-way requirements for Sparta Avenue and numerous utility easements on the property, it is reasonable to keep the area as parking. The option of building a structure on the property in the future is still available in the Plan.

AMENDMENTS TO THE REDEVELOPMENT PLAN

The Redevelopment Plan contemplates the potential for amendments to the Plan. At Section 8.0 of the Redevelopment Plan, it states, "as development occurs within the Area, development priorities and market demands may change. This Plan should have the ability to meet the changing needs of market demand, the Town of Newton and its citizens. Amendments may be required in order to accommodate these changes." As noted previously, the amendments proposed are being developed to provide for Treatment Centers as a permitted use in Sub-Area C of the Plan Area.

The Redevelopment Goals stated in the Plan focus on creating positive development, rehabilitation and redevelopment within the Plan Area. The focus of these goals is met by creating greater opportunities to redevelop and rehabilitate uses within the Area. Some specific Redevelopment Goals furthered by this Plan Amendment are as follows:

1. To allow more efficient use of land and to expand the Town's tax base.
2. To create well-planned development that provides for expanded opportunities for a mix of uses within the Town and region and also promotes financially sustainable development.

The proposal is consistent with the Town of Newton's Master Plan because the proposed amendment furthers Newton's Master Plan Goals of promoting new development and redevelopment while maintaining the historic character of the area. The proposal is also consistent with the State Development and Redevelopment Plan, which designates the Town of Newton as a Regional Center. As a Regional Center, the Town provides a variety of commercial and residential uses in a compact development pattern. For these reasons, the proposed Plan Amendments continue to further the stated goals of the Plan, the goals of the Town of Newton Master Plan and the State Development and Redevelopment Plan.

Further, the Plan Amendment proposes to allow parking for a major use within the Plan Area, Thorlabs and for a location for a use that is not permitted in other locations in the Town, specifically Treatment Centers for drug and alcohol rehabilitation. This is a use that is important for society but also difficult to locate. The proposal to locate the use within the Merriam Gateway Building in Sub-Area B of the Plan Area is a location that is found to have little impact on adjacent properties and provide for an appropriate location for the use. Maintaining parking as a permitted principal use in the Plan in Sub-Area A would allow for Thorlabs to maintain the central parking area for their employees while allow for redevelopment in other locations within and around the Plan Area.

The proposed Plan Amendments do not impact the zoning plans of any adjacent municipalities as the area is not in close enough proximity to adjacent municipalities to have any direct impact.

Based upon the foregoing, it is recommended that the following amendments be made to the Merriam Gateway Redevelopment Plan.

MERRIAM GATEWAY REDEVELOPMENT PLAN AMENDMENT

At Section 3.0 Definitions, add the following:

Definitions shall include the following:

“Treatment Center: A treatment center is a medical use that provides drug and alcohol rehabilitation in a state licensed medical setting. The treatment center may include a residential component whereby patients remain in the facility for approximately 30 days. Treatment includes detoxification treatments, medication for depression or other disorders, counseling and therapy.”

At Section 4.0 Land Use Regulations, add the following subsection:

4.1 Permitted Uses, on page 22, the following shall be added:

At the end Paragraph 1, Add, “A Treatment Center shall be a permitted commercial use in Sub-Area B of the Land Use Plan where mixed-use commercial, commercial and residential uses are permitted.”

Add, “5. Off-Street/Surface Parking facilities shall be a permitted principal use in Sub-Area A of the Plan provided that the rail trail planned for this section of the Plan Area is constructed across the site.”

Under Interim Uses, Item 1., Surface Parking Facilities, add the following,” except for Sub-Area A where Off-Street/Surface Parking Facilities is a principal permitted use.”

4.2 Land Use Plan, on page 24, following first paragraph, the following shall be added:

“Off-Street/Surface Parking facilities shall be a permitted principal use in Sub-Area A of the Land Use Plan provided that the rail trail planned through this section of the Plan Area is constructed. A Treatment Center shall be a permitted commercial use in Sub-Area B of the Land Use Plan where mixed-use commercial, commercial and residential uses are permitted.”

At Section 5.7 Parking Plan add the following subsection:

“5. Treatment Center: 2 spaces per 1,000 square feet. Parking shall be for employees and visitors to the Treatment Center. Patients or Clients will be transported to the facility by employees or visitors to the site. No overnight parking for patients or clients will be provided on site.”