

**Newton Planning Board
November 30, 2011**

The regular meeting of the Newton Planning Board was called to order at 7:38 PM on November 30, 2011 by Vice Chairman Le Frois.

OPEN PUBLIC MEETINGS ACT - FLAG SALUTE - ROLL CALL – RULES

PRESENT MEMBERS:

Mr. Le Frois
Mr. Flynn
Mr. Flaherty
Mrs. Le Frois (arrived 7:43 PM)
Mrs. Diglio
Mr. Russo
Mr. Caffrey
Mr. Hardmeyer
Mr. Torre
Mrs. Mattingly

BOARD SECRETARY:

Kathy Citterbart

EXCUSED:

Mr. Marion
Mr. Tharp
Mrs. McCabe

PRESENT PROFESSIONALS:

Mr. David Soloway, Esq., Board Attorney, from the firm Vogel, Chait, Collins & Schneider and David Simmons, Board Engineer, from Harold Pellow & Associates and Jessica Caldwell, Town Planner of Harold Pellow & Associates

NEW BUSINESS:

PBV-10-2011- George M. Miller,III/George's Salvage Co., Inc.

Block 803 Lot 48.05

10 South Park Drive

Approval to erect an 1137 sq. ft. canopy to the main building.

Carried to December 21, 2011 at 7 PM

No further notice necessary.

CONSIDERATION OF MINUTES

October 19, 2011

Mrs. Diglio made a motion to approve the minutes from the October 19, 2011, meeting with corrections. Mr. Flaherty seconded the motion.

AYE: Mr. Flynn, Mr. Flaherty, Mrs. Diglio, Mr. Caffrey, Mr. Hardmeyer, Mrs. Mattingly

**Newton Planning Board
November 30, 2011**

HISTORIC RESOLUTIONS:

HPC-15-2011- Neil Pelinku

Location: 156-160 Spring Street

Denied replacement of rotten wood trim on exterior windows and cover with custom bent painted aluminum trim coil and caulk trim to existing windows and building to stop leaks.

Mr. Flynn made a motion to approve the resolution. Mr. Caffrey seconded the motion.

AYE: Mr. Flynn, Mr. Flaherty, Mrs. Diglio, Mr. Russo, Mr. Caffrey, Mr. Hardmeyer, Mr. Torre, Mrs. Mattingly, Mr. Le Frois

HPC-15-2011 – Neil Pelinku

Location: 156-160 Spring Street

Approved the replacement of 12 windows with either wood or azak trim.

Mr. Flynn made a motion to approve the resolution. Mr. Caffrey seconded the motion.

AYE: Mr. Flynn, Mr. Flaherty, Mrs. Diglio, Mr. Russo, Mr. Caffrey, Mr. Hardmeyer, Mr. Torre, Mrs. Mattingly, Mr. Le Frois

RESOLUTIONS:

PBF-113-2011-Ave Care @ Newton

Block 802, Lot 37

85 ½ Trinity Street

Granted final site plan

Mrs. Diglio asked: Have we worked out an agreement concerning the easement?

Mr. Simmons gave an update of his meeting on site with Paul Baldwin and his crew, Ken Jaekel and his crew and Bill Moran for the property owner and the property owner himself. Mr. Simmons stated he has been in discussions with Mr. Hollander, the Town Attorney, and Mr. McConnell, the attorney for Ave Care. We discussed the two easements. These items are still in process.

Mr. Hardmeyer asked: What is the general condition of the pipe?

Mr. Simmons stated: Other than the one puncture that was done when they put the post in we did not see a lot of destroyed joints.

Mr. Simmons stated: The two test holes we did off the front right and the back right corners approximately 26 to 30 inches. The concrete pipe once it gets in the back that is only about 8 inches. I would say someplace of around 2 feet or so.

Mr. Caffrey made a motion to accept the resolution. Mrs. Diglio seconded the motion.

AYE: Mr. Flynn, Mr. Flaherty, Mrs. Le Frois, Mrs. Diglio, Mr. Caffrey, Mr. Hardmeyer

PBSP-07-2011-Michael & June Martin/Jersey Dog

Block 803 Lot 1.05

77 Water Street

**Newton Planning Board
November 30, 2011**

Granted Preliminary and Final Site Plan Approval

Mrs. Diglio made a motion to approve the resolution. Mr. Flynn seconded the motion.

AYE: Mr. Flynn, Mr. Flaherty, Mrs. Le Frois, Mrs. Diglio, Mrs. Caffrey, Mr. Hardmeyer

DISCUSSION

The Foodshed Alliance use of the Newton High School Cafeteria for a Winter Farmer's Market from November 5, 2011 to April 28, 2012.

Mr. Soloway stated: As I understand it, the Foodshed Alliance has made arrangements with Newton High School to run a Farmer's Market type operation on Saturdays. It is more than a one shot deal and the real question is really whether zoning and land use approvals are required for the operation. The Zoning Officer concluded they were required and the Foodshed Alliance wanted to come in and talk about it.

The Board is not going to take any formal action on this.

Eric Derby, Board member of the Foodshed Alliance and Kendrya Close the Executive Director.

Ms. Close stated: The Foodshed Alliance is a non-profit organization located in Blairstown, NJ but we encompass all of Northwestern New Jersey. We are the connection between the farmer and the community. Our job is to help farms find outlets for their products and to help the community learn how to buy more locally. We do that through various programs and the Farmer's Markets is one of them.

Mr. Derby stated: The Farmer's market operates from 10 AM to 2 PM on Saturdays and is proposed to go through April with the exceptions of Christmas Eve and New Year's Eve. The hours will change to coordinate for the SAT's that are happening at the school. So, we moved the operating hours to 3 PM to 6 PM for those three Saturdays. There are anywhere from 15 to 20 vendors depending on the week. We don't have a presentation for tonight. I thought it would be just a discussion.

Mr. Le Frois opened up this portion of the meeting for questions from the Board.

Mrs. Le Frois asked: What kind of traffic flow are you seeing from the community in terms of numbers of people, cars in the parking lot?

Ms. Close stated: Because it is from 10 AM to 2 PM, it is very spread out. We may have roughly 200 customers. But it is spread out.

Ms. Closed stated: They either walk or they park in the lot. To date there has not been an issue with the parking.

Mrs. Le Frois asked: Where is it located?

Ms. Closed stated: It is in the cafeteria.

Mr. Soloway stated: The issue here is for zoning purposes. It is whether this is a retail use. If so, what kind of approvals does it need because as I understand it retail is not permitted in the zone.

**Newton Planning Board
November 30, 2011**

Ms. Close stated: I think part of the confusion is that we are not a retail business we are only open 4 hours a week, there is a gray area to who we are.

Mr. Russo stated: A one day event is one thing but with multiple months and there is the exchange of goods for cash or payment. It is retail and it is not permitted in the zone and it does trigger some type of approval. It is just the question of what needs to be done.

Mr. Soloway stated: If you conclude it is a use and it is not permitted in the zone you would need a use variance and whether it was permitted or not some form of site plan is needed. It doesn't have to be a full blown site plan. Obviously you have typical issues and concerns regarding traffic and parking that you deal with on any application even if it is not an everyday use. This is an every week use.

Mr. Le Frois stated: We want to error on the side of being sure we address the variance if there is any hint of retail use. As you say, I don't think it is a significant effort to document the situation.

Mr. Flynn asked: Is there such a thing as a temporary use variance?

Mr. Soloway stated: No. I have looked and Mrs. Citterbart looked and I don't see anything in the ordinance that would authorize the Board to grant a special permit. If it was a one shot deal it could be a possibility. It could be a really neat thing but there is a process.

Mr. Russo stated: We want it to be successful because it brings people to the community. In the letter from Kendrya it stated 10 to 15 vendors and now we are up to 15 to 20 and we hope there are 20 to 30 or 40 and it is a big deal but then it will trigger parking issues.

Mr. Russo stated: My concern is you do have x number of hundreds of people showing up and I get the phone calls saying they are parking on the street or a fire truck can't get through. If this was a retail applicant we would be asking those questions about parking, lighting, hours, etc., because this is a residential area. They understand the high school and the use that comes with the high school but not necessarily anticipating a farmer's market and a retail use which is not permitted in the zone. My question is how do we make it convenient for the applicant because conceptually we are all in favor of a winter farmers' market but how do we make it easy for them to make an application? Do we put this on for December; do we have them go before TRC, what kind of escrow? It triggers all those kinds of questions.

Mr. Soloway stated: In my opinion, based on what I know, I think what they will need is an application for a use variance coupled with an application for site plan approval where I would think the TRC would favorable deal with requests for waivers and a lot of the site plan checklist requirements. You would get the information that you really need to intelligently address the issues that it raises which again are traffic, parking, hours, etc. They would file an application. There are fees required under the ordinance. The Board does not have the authority to waive any fees because I know the applicant has expressed they are nonprofit and they don't have any money. I don't think recommending waiving the TRC but there is a right under the ordinance to do that. I don't think this would be a complicated application to put together. In my legal opinion and based on what I heard, an application is required.

Mr. Russo stated: What if we do what we did with Jersey Dog. Have the TRC meet on the December 21 and have the application on for that night to expedite it.

Mr. Soloway stated: There is authority for the TRC to move an application if it deems it complete on the same date as the actual TRC meeting. I can't remember if that is a TRC determination or

**Newton Planning Board
November 30, 2011**

something to be done by the full Board. Everything would have to be in by the December 6 and you are going to hear the hearing that night and remember it is a use variance and you have to have the legal notice 10 days before hand to get it to the newspaper. I am not saying you can't do it but you will have to hustle.

Mr. Russo stated: The other question is the Foodshed Alliance the applicant or it is the Board of Education since it is their property.

Mr. Soloway stated: It is up to them. There is no reason why the Foodshed Alliance can't be the applicant; they certainly have the right to be. The Board of Education has to consent to the application. As part of the application, there is a letter of consent. It is not unusual to do this.

Mr. Torre asked: On issues of liability, how is the school protected? Does the Alliance have insurance or do the vendors have insurance.

Ms. Close stated: The Alliance and the vendors all have insurance.

Mr. Torre stated: Do you name the school as an additional insured?

Mr. Derby stated: As a farmer vendor, we name the Foodshed but I don't see why we can't name the school as well.

Mr. Derby asked: Are there any provisions for agriculture that exclude us from having to go through all of this.

Mr. Soloway stated: Not to my knowledge. There are some communities in their ordinance that have some special provisions for farmers' markets type things. I will also add that a lot of those farmers' market type things are out on a country road on a farm where they are permitted.

Mr. Russo asked: What are the perimeters? Can they come in this one time? Do they have to come in annually and see Kathy? We have to think forward on how to deal with this.

Mr. Soloway stated: If you are granted a use variance on a site plan as with any other application, as part of the permanent approval, you comply with the conditions and requirements of the approval. It would not be something they would have to come in every year. This might be something that Council might want to look at to deal with odd situations like this, but this is not how the Board is set up right now. If they came in with an application and the Board wound up granting approval, the Board would define as part of the approval what they are allowed to do and when they can do it.

Mr. Soloway stated: It will cost thousands.

Mr. Derby stated: There is a café across the street from the High School. I don't know if that is a precedent or if it is grandfathered; it seems like a retail use being open seven days a week and longer hours than what we are trying to operate as. We are only three to four hours a week for 5 months out of the year.

Mr. Le Frois stated: I am not aware of the history there but regardless this is a new use that did not exist before so we will have to go through current process we have today.

Mrs. Le Frois stated: You had mentioned that this is part of a grant that you received from the Board of Education. Is there an allowance in the grant for fees associated with establishing the Farmers Market?

**Newton Planning Board
November 30, 2011**

Jill Aquino, Newton High School nurse stated: We do have grant money and depending on how much the fee would be it would determine whether or not we could apply. It is a fair amount of money but I don't know what the fees are going to be and if the fees are going to take all the grant money than that will limit what we can do for the rest of the school year for the grant and the events we would like to hold for the rest of the school year.

Mr. Russo asked: Does the high school or the school district receive any compensation for hosting this?

Jill Aquino stated: No.

Mr. Derby stated: So before the paperwork is completed, are they restricted from running this operation?

Mrs. Le Frois stated: If at all possible this meeting should happen in December. Particularly because there are two dates in December when the Farmer's Market it not going to occur so there is less of an impact. December is a short month for the Farmers' market. I encourage you to do whatever needs to be done to have the application heard and clearly you heard from Council whatever considerations could be made on the application in terms of associated waivers that would be taken into consideration but I would strongly suggest you make the application and do the due diligence so you are ready for the summer. I hope you are hearing that the Board's position and the Council's position is that we want to see this succeed.

Mr. Soloway stated: This is an informal discussion.

Mrs. Le Frois stated: I understand that but I also don't want them to be discouraged by going through the process.

Mr. Flynn stated: Are you saying the operation should cease to exist.

Mrs. Le Frois stated: I think that is the question that is on the table.

Mr. Soloway stated: This Board does not have any authority to say they can do something not in the context of what is before us tonight, I believe the zoning officer allowed it to occur a couple of times pending this but I don't want to put her on the spot either. As the Board Attorney I am advising you that you cannot say you can do this tonight, you do not have authority.

Mr. Russo stated: I will put Ms. Citterbart on the spot because I am the one that allowed it to continue after speaking with Ms. Citterbart because I did not feel it fair to the Foodshed Alliance to shut it down since they did not really know the process of what was involved. My sense is I strongly encourage the Alliance to work on the application and I hope Mr. Soloway and Mr. Simmons do your due diligence in an expeditious fashion as possible so it does not eat into the escrow fund they would have to post and we get this done for December. We let it continue and Ms. Citterbart will keep an eye on it on Saturdays because I have asked her to that just in case a thousand cars show up and it affects the quality of life of the residents and I have to shut it down but from what I have heard nothing but positive things thus far from the community and from the people who have attended. I would rather do the right thing, have the application and get it documented that we approved it.

Mr. Soloway stated: There isn't anything else we can say at this point.

**Newton Planning Board
November 30, 2011**

Ms. Closed stated: I definitely want to go through with the process but it is the financial piece that concerns me. When you say money in escrow, is that money that can be returned?

Mr. Soloway stated: It can be. You pay two kinds of fees. There is an application fee, which does not get returned and the Board has no authority to waive it and there is also an escrow fee for all development applicants, which is what you would be and are required to pay the fees that the Board's professionals charge in reviewing the application. As a practical matter that would be the fees from Mr. Simmons and myself. Mr. Simmons would review the site plan and I would draft the resolution to confirm whatever the Board calls. On the escrow fees whatever does not get spent gets returned.

Mr. Soloway stated: I would try to get as organized as you can. Talk with Mr. Simmons. I don't know if you will need an engineer but he will require certain information.

Mr. Simmons stated: You should speak with the Business Administrator and see what information they may have and that might be a good basis to start from to help minimize cost. Based on what I am hearing, we are not talking about constructing anything; we are talking about utilizing existing facilities. The whole point of this is so that if Ms. Citterbart comes and says this is not where you are supposed to be, this is based on the approval we got of where you are supposed to be and where you are supposed to be handling this facility and holding this activity and then she has a basis for saying you are right or wrong.

Ms. Close stated: I do have a survey but unfortunately the surveyor went out of business but I think we can get a copy and make sure it is drawn adequately.

Mr. Simmons stated: I think that is a great idea.

Mr. Soloway stated: Get on the agenda for the TRC. They have to see that you are complete and ready to go. They have the authority to waive certain non-money submission requirements and Mr. Simmons is very influential in that process and ordinarily they would be guided by him in terms of figuring out what is needed to intellectually access the application. I would encourage you to speak with him.

Ms. Close asked: With us not knowing the process, how do we get the packet and the contact information?

Mr. Soloway stated: Mrs. Citterbart has the packet.

Ms. Close stated: Am I correct that you need this by Tuesday, December 6th.

Mr. Russo stated: I suggest we take a break and Ms. Citterbart can get the paperwork together.

Ms. Close asked: Would Ms. Citterbart be our contact through this process?

Mrs. Le Frois asked: Do you have an attorney?

Ms. Close stated: No. We do not.

Mr. Le Frois stated: Maybe a volunteer could serve in that role.

Mr. Soloway stated: No one wants to throw road blocks at you but there is a legal process that needs to be followed. This Board is flexible and willing to work with you.

Newton Planning Board
November 30, 2011

Mr. Flaherty stated: I am looking through the ordinance for an exemption. In R-1 the school is the principal use that is permitted. The conditional use is farm and agricultural activities uses are permitted uses subject to 20-20 and the stumbling block is that the sale of such products within the confines of the property upon which they have been grown or raised. That is what skunks you.

Mr. Derby stated: Thank you for looking into all the avenues we can take.\

OLD BUSINESS

Resolution #147-2011 – Revised Land Use Ordinance

Jessica Caldwell, Town Planner of Harold E. Pellow's office reviewed Resolution #147-2011 page by page with the Board.

PUBLIC COMMENT

Jenny and Jeff Lutz, 5 Overlook Road, Newton, NJ stated: We want to do some improvements. We live in what will be the T-2 zone. Since we are not conforming does that mean any improvements we want to apply for will we always have to come before the zoning board?

Mr. Soloway stated: Yes. Any non-conforming lot or structure will need variance approval.

Mrs. Lutz stated: Hypothetically, if we were to submit some plans to the town, if we were to submit for a zoning permit and we were to proceed to the TRC meeting level is there a possibility at that level that we could be told that our plans don't impact the traffic if that is what the Board finds and shoot off to the zoning permit and building permit or do we always appear and notify and go through the months and the expense.

Mr. Soloway stated: The TRC is authorized to make determinations to whether a particular application is complete and whether certain submission items can be waived. They are not going to make a decision to whether you are in the right place or what kind of approval you would need. That is the job of the zoning officer. I don't know enough about your situation to know whether anything you apply for winds up before this Board. As we speak tonight, this ordinance that we are talking about now does not exist yet. Anything you do now stills comes in under the old ordinance.

Mrs. Lutz stated: I would like to advocate for the permitted use for a granny flat. I would like to have my mom move in with us. We would like to move forward at some point with the plans to improve the home so we have room for her.

Mrs. Le Frois asked Ms. Caldwell: In the T-2 zone is the 2 acre requirement a fair requirement; are most of the properties conforming? Or are we putting a restriction that might be unrealistic on the existing properties.

Ms. Caldwell stated: I will take a look at that. We could lower it. The idea is to preserve the hilltop area so that they are not developed in an intensive way.

Discussion ensued.

With no other public coming forward, Mr. Le Frois closed the public portion of the meeting.

**Newton Planning Board
November 30, 2011**

ADJOURNMENT

Mrs. Le Frois made a motion to adjourn the meeting. Mrs. Diglio seconded the motion. The meeting was adjourned with a unanimous "aye" vote. The meeting adjourned at 10:36 PM. The next regularly scheduled meeting will be held on December 21, 2011, at 7:00 PM in the Council Chambers of the Municipal Building.

Respectfully submitted,

Katherine Citterbart
Planning Board Secretary