

**Newton Planning Board
July 18, 2012
7:00 PM**

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

OATH OF OFFICE

Joseph Ricciardo (Class III)
Melissa Logan (Alt. 1)

FLAG SALUTE

MEMBERS PRESENT: Mr. Torre, Mrs. Mattingly, Mr. Marion, Mr. Tharp, Mrs. Diglio, Mr. Ricciardo, Ms. Logan, Mr. Hardmeyer and Chairman Le Frois

ABSENT: Mr. Flaherty, Mr. Steinberg, Mr. Russo

PROFESSIONALS PRESENT: David Soloway, Esq., Board Attorney, of Vogel, Chait, Collins & Schneider, David Simmons, Board Engineer, of Harold Pellow & Associates.

BOARD SECRETARY: Kathy Citterbart

CONSIDERATION OF MINUTES

June 20, 2012, Regular Meeting

Mrs. Digilio made a motion to approve the amended June 20, 2012 minutes. Mr. Marion seconded the motion.

AYE: Mr. Torre, Mrs. Mattingly, Mr. Marion, Mr. Tharp, Mrs. Diglio, Chairman Le Frois

HISTORIC RESOLUTIONS:

None

PLANNING BOARD RESOLUTIONS

None

OLD BUSINESS

None

NEW BUSINESS

Robert Occhifinto #PSPV-05-2012
Block 20.02, Lot 1
42 Hicks Avenue

Newton Planning Board
July 18, 2012
7:00 PM

Applicant is requesting preliminary site plan approval and variances for the construction of two (2) warehouse structures with loading docks and on-site parking.

Megan A. Ward, Esq. of Kelly and Ward, LLC represented the applicant.

Ms. Ward stated: We are proposing to construct two warehouse buildings. This application is subject to this property being in the M-1 Light Industrial Zone. Public and private warehouses are a permitted use in the zone. Building 1 will be 9,600 sq. feet and Building 2 will be 5,500 sq. feet. The property is a little over 15 acres but it is shaped like a bow tie so this application has to do with about 7.5 acres, the part closer to Sparta Avenue. We are seeking site plan approval and we are also seeking two variances. One is a rear-yard variance for Building 1. At its closest corner, the new building will be 19 feet from the lot line. Even though 30 feet is the rear-yard setback requirement in the zone because it is adjacent to a residential zone in Andover Township, we believe that the 55-foot setback might apply. And secondly, we are requesting a parking variance. We have proposed 12 parking spots and based on the square footage it would be 28 spaces required in the zone.

SWORN: Robert Occhifinto, Property Owner and Alan Campbell, of Robert Campbell Associates, Engineers and Surveyors since 1964.

Mr. Soloway stated: The application as submitted seeks rear-yard setback variances based upon the distance from the rear of the proposed buildings to the municipal boundary line. Under the case law, most likely, that is not the most correct measuring point. It appears from the Deed that was submitted with this application that this property and the one in Andover are one in the same lots. They are not separate lots for development purposes. They were never subdivided. There is case law that indicates in a situation like this where the property is split by the municipal boundary line, for purposes of calculating the rear-yard setback; you would measure to the property boundary line and not the municipal boundary line. It appears that on one side it is close to compliance but they probably still need a rear-yard setback.

Chairman Le Frois stated: Would you suggest we modify the application based on the supporting information?

Mr. Soloway stated: Yes. Based on that law, the Board needs to know exactly what the proposed rear-yard setbacks will be. When you grant a variance you need to be precise.

Ms. Ward stated: We are prepared to do that. For the Board's information, the adjacent property in Andover Township is also owned by Mr. Occhifinto. It is part of the same Deed from 1985.

Alan Campbell gave his qualifications and the Board accepted them.

Mr. Campbell stated: This is Lot 1, Block 20.02. It is at 42 Hick Avenue and it is the M-1 Zone, Limited Industrial Zone. The property is approximately 15 acres in total. It is about 1,500 to 2,000 feet from Newton-Sparta Road Eastbound along Hicks Avenue. The property is like a bow tie. Mr. Campbell referred to **Exhibit A-1, Sheet 1 of Site Plan for Robert Occhifinto dated April 2012, Revision, June 5, 2012** and he also referred to **Exhibit A-2, Sheet 3 of the Site Plan, Colorized Site Plan for Robert Occhifinto dated April 2012, revised June 5, 2012** and described the exhibits and what is being proposed. The colored **Exhibit A-3** demonstrates where the lighter green area is which will be disturbed and graded for storm water access and for maintaining the lawn from the buildings. The darker green area will be preserved tree lined within the transition area. The

Newton Planning Board
July 18, 2012
7:00 PM

perimeter of the buildings will be preserved with extensive trees that have matured over the years. The site will have a requirement of an access permit from and to the transition area from the DEP, which will be a Transition Area Crossing Permit. The constraints that I described forcing us to build the property's development scheme to the rear, is what drives for the rear-yard variances.

Mr. Campbell reviewed Sheet 3 of the Site Plan, which has been red lined to clarify the rear-yard variances under the Municipal Land Use Laws. Addressing Building 2 and the adjacent property which is Block 111 Lot 4, owned by Mr. Occhifinto and is within the same tract so the municipal boundary is no longer the rear yard, the tract line will now be the rear yard. The Easterly rear corner of Building 2 will have a rear-yard setback of 80 feet. The Westerly rear corner will have a setback of 65 feet.

Ms. Ward asked: So Building 2 complies within the requirements?

Mr. Campbell stated: Yes.

Mr. Campbell stated: Building 1 will not have any changes. The property line and the Township line of the tract will be one of the same. We are looking for a rear-yard variance where we can have a 19-foot rear yard. The required set back is at 55 feet. We are proposing to have a setback easement on the adjoining properties in Andover Township to prohibit any development within that area thus preserving the intent of having a rear yard which is on Block 111 Lot 3 in Andover Township part of the first tract.

Mr. Ricciardo asked: How are the adjacent properties in Andover Township zoned?

Ms. Ward stated: They are zoned residential. That is why we are proposing 45 feet.

Mr. Tharp asked: Are ramps supposed to be considered as part of the building for the setback?

Discussion ensued on ramps.

Ms. Ward stated: Just to clarify in terms of the Andover Township property, what is proposed to be done on that property?

Mr. Campbell stated: The property in Andover Township will have some grading. The property rear to the town line which is described as the tract line will have some grading to accommodate the site improvements on Newton. The Andover Township side will have approximately a 30 or 40-foot strip of grading where the trees will be cleared and we will have a slope and grass area to replace it. This will be reviewed by the Andover Township municipality and that application will be a condition of this approval.

Ms. Ward stated: This is indicated in Mr. Simmons' report item 3 d.

Mr. Torre asked: What types of products are being stored in the warehouse?

Mr. Occhifinto stated: My Company manufactures food products, so we are storing aluminum cans and completely filled aluminum cans filled with energy drinks, and soda.

Mr. Ricciardo asked: Why do you need two warehouses and not one?

Newton Planning Board
July 18, 2012
7:00 PM

Mr. Campbell stated: We explored three or four different development schemes. It would be less costly to build one building, but we cannot get the square footage and have the loading dock area and have the turning motions facilitate the grade constraints and light.

Mr. Tharp asked: Will the turning radii fit the fire trucks?

Mr. Ricciardo stated: No. The Fire Department requires access to all four sides of that building; rear access for them to get a vehicle back there. They also require a fire hydrant within 500 feet of your property and the nearest fire hydrant is 930 feet away from you which means you are going to have to install a fire hydrant in front of your property which means you are going to have to extend the water line and loop it back and if you extend the water line down into the fire hydrant in front of your property you will be charged for water whether you tap into it or not. The fire vehicles require full access to all sides of your building. They also have to have a cul-de-sac so they can turn the longest fire truck completely around without backing it up. This applies to any kind of new development in the Town of Newton. This is not something new. It goes back to Shoprite, Weiss, Home Depot, Holiday Inn, Walgreens, etc. All of them were forced to do this because of the Fire Department requirements.

Mr. Le Frois stated: The suggestion would be for them to meet with the Fire Code Officials.

Mr. Campbell stated: In 2009, we were here with this Town with this concept plan and we met with the Fire Sub Code Official at that time. In 2009, when I met with him, there were certain requirements that were put on the site similar to what you are talking about which were then forthcoming in ordinance. Once the ordinance was adopted we went away. Since that time, it was our understanding that the ordinance was rescinded at which time now we have returned with the site plan because there was no longer the ordinance requiring those things. He informed me that an ordinance would be coming out that would rescind these requirements.

Mr. Ricciardo stated: I called him today and I questioned it because I know what we have been doing for the past 10 years and he told me exactly what I said to you is what he told me is going to be required.

Ms. Ward asked: Where is the nearest fire hydrant?

Mr. Ricciardo stated: 930 feet.

Mr. Campbell stated: As we had gone down this road in 2009, it was not cost prohibitive considering the expansion of the water system which at that time was around \$800,000. We did research on the Fire Ordinances and discovered that the State has different requirements than the Town of Newton. That is why when the Fire Ordinance that you are referring to went into effect we went away.

Mr. Ricciardo stated: That is why I called him today.

Mr. Campbell stated: I understand.

Discussion ensued on the Fire Codes, turning radius, and fire hydrants.

Mr. Soloway stated: This Board does not have the authority to waive or grant variances from those types of ordinances. Your authority is noted for the Zoning Ordinance and the Land Development Ordinance. The applicant has to obtain Fire Department approval. It is up to the

Newton Planning Board
July 18, 2012
7:00 PM

Fire Department to make that decision. Typically that would be a condition of any approval that this Board voted to grant on.

Mr. Soloway stated: If the Board approves this application, the approval will be contingent upon the Fire Department's review and approval. I don't think we should dictate turning radius for the Fire Department. However, the Board does have a responsibility to examine circulation and turning radius for all types of vehicles.

Mr. Ricciardo asked Mr. Campbell: How can you address the turning radius for the fire trucks?

Mr. Campbell stated: If the fire truck needs to access the site, it will pull up, back up and pulls in.

Mr. Ricciardo stated: They will not do that. They want a cul-de-sac.

Mr. Le Frois stated: It would appear that the current configuration is not acceptable to the Fire Official based on past experience but they might be able to work something out. That is not for us to decide. We don't know the answer to that right now. Our recommendation would be for you to meet with them and find out what you have to do.

Mr. Campbell stated: In 2009, we discussed this concept with the Planning Board. After that discussion, I met with the Fire Official and he imposed obligations and restrictions on site development which were not consistent with the State Codes. They were consistent with what he desired to have imposed on the site. Six or seven months later an Ordinance was adopted which was stricter than the State Code. That ordinance would make this property so that it could not be developed. That is why you haven't seen us in three years. It was through my research that I recall having documentation that this ordinance had been rescinded. Once it was rescinded it is no longer enforceable at which point we would fall under the State Codes and be subject to State Code.

Mr. Le Frois stated: I can assure you that everything we do is subject to Fire Sub Code Official approval. If that is an issue, which it sounds like it is based on Mr. Ricciardo's conversation with the Fire Official, then that needs to be addressed.

Mr. Campbell stated: If the Fire Sub Code Official is requiring items that are as per ordinance or as per State Code, I will have to agree with him. But if he is requiring items that are not as per the Ordinance or the State Code, then this is what drove this site plan back to the Board.

Mr. Hardmeyer asked Mr. Campbell: When is the last time you had a conversation with Mr. Inga?

Mr. Campbell stated: 2009.

Mr. Soloway stated: The applicant has the right to continue to proceed with the hearing and deal with whatever issues there are. If the Board approves the application tonight, one of the conditions would have to be that they get the approval from the Fire Sub Code official. If the Board does approve the application based on that condition and the applicant does go to the Fire Sub Code Official and he requires as part of his approval any modifications of any significance, they would have to come back to this Board for Amended Site Plan approval. It is

Newton Planning Board
July 18, 2012
7:00 PM

not necessarily that the Board would be relinquishing it if it was something visible, for example, circulation, or a structure, but it would have to come back to the Board, if it was something like how many gallons in the well, which is not our issue.

Mr. Le Frois stated: Duly noted, there is an issue with the Fire Department but we will continue with the application.

Mr. Occhiffinto confirmed there are no flammable or combustible products being stored in the warehouse.

Mr. Marion asked: Is there a reason why the driveway is shaped like an "S" based on Sheet 4 of the Grading Plan?

Mr. Campbell stated: The profile of the existing driveway and what is being proposed is demonstrated on Sheet 5 Proposed Plan of the driveway. There are nine soil logs that are on reported Sheet 2.

Mrs. Digilio stated: You were correct in that the ordinance that you were referring to was rescinded; however, we rely on State Codes which have become more stringent and in our new codes we address the turning radius for fire trucks, I don't know if it was addressed in the old codes, but I know in the new codes it has been addressed to apply so that the turning radius for the fire trucks are always considered in the new codes.

Mr. Campbell stated: I will reread the State Codes and we will comply with those.

Mr. Hardmeyer question to Mr. Simmons: Is the 10 percent grade of some of the driveway a concern?

Mr. Simmons stated: The 10 percent grade is a negotiable grade as far as the vehicle goes. Years ago, in addition to measuring the overall lengths of the fire trucks, we measured the distance of clearance underneath. One thing you have to watch is that the maximum rollover is not exceeded which could cause a problem of bottoming out. We will double check the vertical curves to avoid the bottoming out situation.

Mr. Hardmeyer asked: Recently there was a new Ordinance passed in the Town that requires if trees are removed you either have to replace those trees or put money into Newton's Tree bank. Even if it is not required, as a good neighbor, we would appreciate it if you could help us with our tree resources in town.

The Board had many questions on the materials being stored and the operations of the business.

Mr. Occhiffinto answered the questions.

Mr. Occhiffinto gave an overview of exactly what they will be doing at this site. Almost all the activity at the site will be during the daytime, Monday through Friday. The lighting will be on between the hours of 7 AM and 10 PM. The site lighting will be on controls along with an alarm system in the buildings.

The Board continued with their questions.

Chairman Le Frois asked: Would any of the warehouses be subject to a health inspection?

Newton Planning Board
July 18, 2012
7:00 PM

Mr. Campbell stated: No. It is a finished product.

Mr. Ricciardo asked: Accidents always occur, what type of spillage or losses of product do you occur?

Mr. Occhiffinto stated: Very little, less than one percent. It is contained in the tray because it is wrapped in light plastic and in cardboard.

Ms. Ward asked: How will recycling and solid waste be handled?

Mr. Campbell stated: We will maintain that internally. There is not that much activity on the site that would generate waste so if there is an office and a waste basket for a cup of soda or coffee they will dump it in the garbage can. That is the only anticipated waste management.

Ms. Ward asked: Please describe the setbacks on each proposed building from Hicks Avenue.

Mr. Campbell stated: Proposed Building 1 is approximately 144 feet in the front-yard setback and proposed Building 2 is approximately 300 feet from Hicks Avenue. The trees will be maintained that are shown on **Exhibit A-3 Colored Exhibit Property Section Sheet 5.02** of site plan last revised June 5, 2012.

Mr. Simmons referred to Page 2, Item 2 under zoning the M-1 Limited Industrial Zone. The only variance involved is the rear-yard setback. There is an easement on it from Andover Township. Under Site Plan, Item a, the parking requirement will have to be discussed with the Board. The biggest item would be for the applicant to be aware of the limited uses based on the parking that is available.

Mr. Soloway stated: In the new ordinance this is a permitted use.

Ms. Ward stated: We agreed that if someone wanted to change the use it would be subject to an application.

Mr. Torre asked: Is it safe to assume that there is no road parking available there and it is precluded by the County?

Mr. Simmons stated: Yes.

Mr. Simmons stated: Under Item B, Sheet 3, on the Site Plan it shows a right-a-way. It says it has been abandoned but my concern is that we need to have the official vacated documents. My other concern is on Sheet 3, where it says existing Woods Road, there is an old roadway before the County did the new roadway. It goes through the corner of proposed Building 1 and through the parking area and right through proposed Building 2. Normally there is a Vacation Ordinance that gets rid of those types of roadways.

Mr. Soloway stated: This application would have to get County Planning Board approval so that should be raised there. In theory if it is not vacated, the County still has rights through the area that runs through the corner.

Ms. Ward stated: My recollection is it has been abandoned but not vacated. On Mr. Catalano's Survey it indicates the various dedications for the road and obviously Hicks Avenue is an improved County Road that has been existent for some time. I don't see it as a risk.

Newton Planning Board
July 18, 2012
7:00 PM

Mr. Soloway asked: Do you happen to recall what is on the Title Work when the applicant bought the property?

Ms. Ward stated: I don't know. I have not seen the Title Work.

Mr. Soloway stated: To say it is abandoned, what does that mean?

Ms. Ward stated: It is not used and it has not been for some substantial time.

Ms. Ward stated: We did have the same situation arise on property that Mr. Occhifinto has in Andover Township. We did have it vacated. We agree that this application is subject to Sussex County Planning and Engineering approval so that is something we will address through that process.

Mr. Ricciardo asked: If the County approves it, would that be an official abandonment or vacation or would you have to get them to endorse something?

Ms. Ward stated: The County Planning and Engineering jurisdiction is fairly limited to something that is adjacent to property owned by the County. This clearly is subject to County review because we are only adjacent to a County Road but acquire access from it.

Mr. Campbell stated: I can comment that in 2009, I had a pre-application meeting. I had preferred to use the existing Woods Road as access. I suspect as we make our application and the minutes of our meeting come forward, I will be addressing that with the County.

Mr. Ricciardo asked: Would that roadway give you better use of the property?

Mr. Campbell stated: I don't believe it would. It traverses the property parallel to the wetlands.

Mr. Simmons stated: Item 3c refers to Building I not Building H.

Mr. Simmons addressed the Storm Drainage. HPA looked at the Storm Drainage proposed and if you look at Sheet 3 there is a Storm Water Management Basin. Our analysis indicates it is acceptable. It also provides some drainage down where the entrance comes off the County Road, which is acceptable. They do have to go to NJDEP to get approval to cross the wetlands in the transition areas.

Mr. Simmons reviewed the Utilities and Landscaping Plans and the proposed sign.

Mr. Campbell stated: The sign will be established upon the completion of the County's review.

Mr. Simmons stated: In regard to the architectural plans, they did not specify a floor plan. They gave a basic concept plan for the metal buildings.

Mr. Campbell explained to the Board where the air conditioning unit would be placed which will be on a concrete pad. He referred to Exhibit A-4, Facility Report.

Mr. Simmons stated: In the Facility Report the applicant provided, the environmental issue would be the wetlands and the storm drainage. The applicant does have to get DEP approvals to address those issues.

Newton Planning Board
July 18, 2012
7:00 PM

Mr. Simmons stated: 10b, the applicant did elaborate on the proposed warehousing materials for the Board and confirmed that no manufacturing takes place on site.

Mr. Simmons stated: The applicant will provide a little more construction details.

Mr. Ricciardo asked: Would the applicant consider pervious concrete or pervious asphalt which would allow the drainage of the water to be filtered naturally through the earth rather than having to go into a storm system?

Mr. Campbell stated: He is familiar with three or four different types of course pavements. I would not recommend it for the access drives themselves because of the slopes. I would take it into consideration for the parking areas. From my experience with truck traffic, it has not been very positive with these types of pavements.

Ms. Ward asked: In regards to the parking variances that you provided testimony for regarding the number of employees, do you have any opinions with regard to other uses that are permitted in the Limited Industrial M-1 Zone as to parking requirements?

Mr. Campbell stated: The parking requirements as per the M-1 Limited Industrial Zone for the nature of the uses that are permitted within the zone, clubs, lodges, workshops, recreational facility, etc. those types of uses are requiring significantly more parking for that nature of use. Our Site Plan application proposes a maximum of 6 employees on the site. Mr. Occhifinto has given testimony of the nature of the operation which might have two or three employees a couple of days a week. The twelve spaces we are providing are more than sufficient and that the Ordinance is more in tune to tailoring requirements of other uses within the zone.

Mr. Soloway stated: If you grant the parking variance allowing 12 parking spaces on this property for warehouse use and if in the future the applicant changes his business plan or sells it to somebody else and who uses it as a warehouse but runs the operation differently or warehouses a different type of material, I would not assume they would have to come before this Board.

Mr. Torre asked: Are you saying that applies to any warehouse in the Town of Newton?

Mr. Soloway stated: No, just for this site. The variance runs with the land and it is permanent. It is not for any use. If someone wants to use it for something other than what is permitted, they need to come back to the Board and get a site plan. If somebody turned this into a warehouse that stores some different kind of material or if the warehouse doesn't operate the way this applicant does and they don't store anything flammable, they don't have to come back as long as it stays a warehouse use.

Mr. Campbell stated: If there was a change in occupancy, it would still have to be a warehouse thus it would also meet the conditions of the application we are pursuing tonight, thus is why we are designing and recommending 6 employees. Even though we don't need six employees we are providing in the application for six employees and we feel 12 spaces are adequate. If someone wanted to use these buildings for anything more than what the S-1 approval is for or would require greater occupancy than is approved by the site plan and the septic capacity then it would have to come back to the Board.

Chairman Le Frois opened the meeting up to the public. With no public coming forward, Chairman Le Frois closed the public portion of the meeting.

Newton Planning Board
July 18, 2012
7:00 PM

Mr. Marion asked: If someone in the future were to buy this property, are you able to expand the parking?

Mr. Campbell stated: Only by diminishing the number of loading zones. This means we would have to diminish the loading operations in order to facilitate additional parking spaces. We explored in 2009 trying to get additional parking and due to the topographical conditions and transition regulations it was not feasible at that time.

Mr. Marion asked: So if in the future if this does come up for sale, it's a warehouse facility, if someone needs to expand the parking, theoretically, they can't.

Mr. Campbell stated: As of current regulations with the DEP, no.

Mr. Marion stated: My concern is if we approve this, we are approving it as a "niche" building for the applicant and that is the only use and if we can't find a buyer for it, it will sit vacant.

Mr. Campbell stated: It is a warehouse for users which store materials which are non-hazardous and meet the S-1 criteria and have a maximum of six employees.

Mr. Ricciardo stated: That is very limiting.

Mr. Campbell stated: It is a very restrictive piece of property. It is 15 acres of which we are viably trying to develop perhaps 2 areas of it.

Discussion ensued on the restrictions on the property and the Tree Bank.

The Board took a ten minute break to see if they could find the Tree Bank Ordinance.

Chairman Le Frois stated: We did not find any separate Ordinance.

Ms. Ward stated: I agree. We did not either.

Ms. Ward stated: Due to the lateness of the hour, there are a couple of complex issues that came up and we would respectively like to continue the meeting to the August 15, 2012 meeting at 7PM, no further notice required.

CORRESPONDENCE

Chairman Le Frois stated: There are five resolutions that include reappointments to this Board or new appointments and also the Area In Need of Redevelopment for the Armory. This is information for you to consider.

Newton Land Use Ordinance – Adopted May 2, 2012

EXECUTIVE SESSION

Chairman Le Frois made a motion for the Board to go into Executive Session at 10:34 PM. Mr. Torre seconded the motion. The motion was accepted with a unanimous "aye" vote.

Mr. Ricciardo made a motion to come out of Executive Session at 10:52 PM. Mrs. Diglio seconded the motion. The motion was accepted with a unanimous "aye" vote.

Newton Planning Board
July 18, 2012
7:00 PM

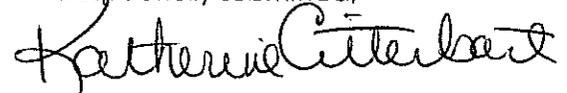
PUBLIC PORTION

No public stepped forward

ADJOURNMENT

Mr. Ricciardo made a motion to adjourn the meeting. Mr. Tharp seconded the motion. The meeting was adjourned at 10:45 PM. with a unanimous "aye" vote. The next regularly scheduled meeting will be held on August 15, 2012, at 7:00 PM in the Council Chambers of the Municipal Building.

Respectfully submitted,

A handwritten signature in cursive script that reads "Katherine Citterbart".

Katherine Citterbart
Planning Board Secretary

**Newton Planning Board
July 18, 2012
7:00 PM**

Exhibit Page

**Exhibit A-1, Sheet 1 of Site Plan for Robert Occhifinto from April 2012, Revision, June 5, 2012
Exhibit A-2, Sheet 3, Colorized Site Plan for Occhifinto dated April 2012, revised June 5, 2012
Exhibit A-3 Colored Exhibit Property Section last revised June 5, 2012**