

Newton Planning Board
September 19, 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.

FLAG SALUTE

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

PROFESSIONALS PRESENT: David Soloway, Esq., Board Attorney, of Vogel, Chait, Collins & Schneider, David Simmons, Board Engineer, of Harold Pellow & Associates, Jessica Caldwell, P.P. of J. Caldwell & Associates, Paul W. Ferriero, PE, CME, Ferriero Engineering.

BOARD SECRETARY: Kathy Citterbart

CONSIDERATION OF MINUTES

August 15, 2012, Regular Meeting

Mrs. Diglio made a motion to approve the August 15, 2012 minutes. Mr. Flaherty seconded the motion.

AYE: Mr. Torre, Mrs. Mattingly, Mr. Flaherty, Mr. Tharp, Mr. Russo, Mr. Hardmeyer, Mr. Steinberg, Chairman Le Frois

HISTORIC:

#HPC-03-2012- SAK Associates LLC
Block 7.05 Lot 11
24-24 ½ Church Street

Recommendation to deny the application to demolish the building to the foundation and replace by a parking area to relieve parking congestion in the area and aid in flow to traffic to patronized premises, and provide overflow parking to church functions.

Mr. Soloway stated: SAK Associates LLC is appealing. Their attorney is on vacation and he asked if they could carry it to the October 17, 2012 at 7 PM.

#HPC-05-2012 Lakeland Bank
Block 8.01 Lot 5
Former Block 715, Lot 8
30 Park Place

Recommendation to approve as presented construction of a retaining wall to the rear of the building in the alley.

Mr. Russo made a motion to approve the resolution with typo changes. Mr. Marion seconded the motion.

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

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PLANNING BOARD RESOLUTIONS

Anwar Garmout (#PSPV-06-2012)

Block 8.08, Lot 34

16 Washington Street

Granting variance relief to allow construction of a parking area.

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

AYE: Mr. Torre, Mr. Flaherty, Mr. Tharp, Mr. Russo, Mr. Hardmeyer, Mr. Steinberg, Chairman Le Frois

OLD BUSINESS

Robert Occhifinto (#PSPV-05-2012)

Block 20.02 Lot 1

42 Hicks Avenue

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

Mr. Soloway stated: We left off with this with some uncertainty as to whether or not the Town has in place a tree bank ordinance. It has been determined it does not.

Megan Ward, Esq. represented the applicant and stated: We placed all of our testimony on the record including Mr. Campbell's testimony regarding the planning support for the parking variance and the minor rear yard variance. There were a couple of questions that arose during the hearing and due to the lateness of the hour; we all agreed that it would be a prudent idea to continue the meeting. One of the questions was if the Town did have a tree bank ordinance in place. As Mr. Soloway mentioned it does not. Keep in mind this is a 15 acre site and the amount of disturbance would be approximately 2 acres. The remainder of the site would remain in its wooded condition and undisturbed.

There was also a question as to the abandoned road. We did do further research and it is, in fact, an abandoned road and it has not been used for many decades but it has not been vacated. Our position is this development will not change it and this layout would not impede the use of the road. If we have to request that it be vacated, we do not have a problem doing that.

The last thing that arose was certain issues that Mr. Inga, Fire Sub Code Official had conveyed to Mr. Ricciardo. Both Mr. Campbell and I have done extensive research. Our position is we disagree with Mr. Inga, respectively but what he is suggesting is based on uniform standards in the NFPA but they are not in the NJ State Fire Code. In fact, when NJ adopted the fire code that is based on the standard, there were specific portions that were not adopted and those provisions are included in the portions that NJ did not adopt. A good part of them and the standard appendix B was specifically deleted and NJ did not adopt. While they are suggestions, they are not regulations that apply to this application. There are many other reasons that we do not need to get into because we agree we have to obtain any other approvals and permits as are necessary. We agree we are bound to comply with the law and we will do so. If it turns out that something needs to change based on that process, then it is on us to come back to this Board and request some changes to the site plan accordingly.

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Mr. Soloway stated: Just so we are clear, your position is you do not agree with Mr. Inga and it is your position that it is not this Board's obligation to resolve the dispute. You are acknowledging if the Board approves the application, among other conditions that the Board can appropriately impose, a condition requiring that you do obtain the approval of the Fire Sub Code Official or some other official or body that may have jurisdiction in the event of an appeal for whatever determination he makes. You will comply with the Fire Sub Code requirements, whatever they are, and to the extent that compliance requires any visible change in the site plan you will come back before this Board, is that correct?

Ms. Ward stated: Yes. Whatever we need to do we will do. Like I said, we agree to be bound by the law and to follow it. If that requires us to make a change then we do acknowledge we do need to return. Ms. Ward referred to Mr. Simmons's report of June 14, 2012 and stated we agree to the items required for approval.

Mr. Soloway stated: A memorandum has been issued by Mr. Inga, dated September 12, 2012 where he makes a number of points.

Ms. Ward stated: There is no confusion. I have it.

Mr. Soloway stated: There are a couple of things in the memorandum that the Board can address.

Ms. Ward stated: I can tell you that was in response to one of things that we already did in anticipation of that next step in the process. We had our architect prepare a report addressing the issues that Mr. Inga rose which includes Mr. Utter, the Construction Official in the process.

Mr. Soloway stated: Again, I don't want there to be any confusion if this Board approves the application. Any issue as to the adequacy of the water supply for firefighting purposes is to be decided by the Fire Sub Code Official or the appropriate official, correct?

Ms. Ward stated: As to the applicability of what the fire codes are and how they apply.

Mr. Soloway stated: I asked whether there is sufficient water to meet the Fire Sub Code purposes to fight a fire.

Ms. Ward stated: I am not trying to argue with you, but in Fire Sub Code, there are different things that trigger different aspects of fire flow of water availability. I think what you are talking about is if it was to be determined that this site has to be accessed by public water by a hydrant there are standards that would apply.

Mr. Soloway asked: Who makes that determination as to whether you are compliant?

Ms. Ward stated: The Fire Sub Code Official and the Construction Official.

Mr. Soloway asked: Another question in the report is where will the water come from? Do you acknowledge that any improvements that will be constructed on the property in order to bring the water to the site would be a Planning Board issue?

Ms. Ward stated: Do you mean reconfiguring the driveway?

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Mr. Soloway stated: Whatever it has to be. Because if you don't have the fire approval yet, we don't know what it will be. I thought your proposal is that it is going to be this way and you are confident that you are right and he is wrong, but if it is determined that he is right and you have to construct any improvement to get his approval then you will have to come back before the Board, correct?

Ms. Ward stated: If we need to make changes to the layout then we will come back before the Board. Mr. Campbell has prepared a fire protection plan. We acknowledge the issues exist and we will address them.

Mr. Soloway stated: Mr. Simmons' raises a point about Fire Department access. He implies there should be access to the building from three sides. I gather you do not agree with that. If he is correct it seems to me that you would have to make some changes to the site plan.

Ms. Ward stated: Correct, we do not agree. Mr. Campbell has confirmed that.

Mr. Soloway stated: Is it your position that you will satisfy the fire alarm issues?

Ms. Ward stated: I do not consider that a site plan issue.

Mr. Soloway stated: I do not either, but I just want to make sure we are on the same page.

Mr. Soloway asked: Will it be gated?

Mrs. Ward stated: No.

Mr. Soloway asked: The site plan indicates there will be no sidewalks around the building. Will there be a safe place for the employees in case of a fire?

Mr. Campbell stated: When the architect reviews the plans there will be concrete pads if applicable.

Mr. Ricciardo asked: Are you talking about a secondary egress and ingress from the building in case of an emergency?

Mr. Campbell stated: For pedestrians, yes.

Mr. Ricciardo asked: I have a question for our counselors. The counselor for the applicant stated she is basing it on the NJ Fire Sub Code. She also stated she would go along with the laws for the Town of Newton. If the laws for the Town of Newton are more stringent than the State Codes is it enforceable? I have done plans that say whichever is more stringent.

Mr. Soloway stated: I would have to research that. The applicant said they will comply with the controlling code. If the Newton code is stricter and it is permissible for the Newton code to be more strict than presumable, that is what they will comply with. If it is not to be that strict then they will comply with the State Code.

Mr. Ricciardo stated: It is obvious to me that they are going to have to go to the Fire Sub Code Office and all the agencies that require approval of this plan. If the Fire Sub Code official insists he is correct, how is this settled and who settles it?

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Mr. Soloway stated: The Fire Sub Code Official is under the Construction Code official and if the applicant is still not satisfied, I believe the appeal is to the County Board of Construction.

Chairman Le Frois opened this portion of the meeting up to the public. With no public stepping forward the public portion was closed.

Mr. Simmons asked: Is it the intent to vacate the abandoned road?

Ms. Ward stated: Yes. We can vacate it.

Mr. Ricciardo made a motion to approve the application as presented pending approvals from all agencies that needs to review it and the applicant applies to the Town to vacate the abandoned road.

Mr. Soloway stated: There is a rear yard variance as part of this for the one building to be 15 feet from the property line. The second building does not need it because the property extends into Andover Township. The applicant is required to maintain a 45-foot area in the rear where there will be no structures and the applicant is required to obtain the approvals from the agencies in Andover Township because there is grading contemplated in Andover Township. The use of the building is limited to warehouse purchases only. Both buildings will be limited to 6 employees total. The building will look similar to what is depicted in photographs in A4. There will be compliance with the recommendations set forth in Mr. Simmons's June 14, 2012 report specifically items 3c, d, e, 7b, 8d, 11a, b and 12 and you are also granting a variance to allow for 12 parking spaces. Is that correct, Mr. Campbell?

Mr. Campbell stated: Yes.

Mr. Flaherty seconded the motion.

AYE: Mr. Torre, Mrs. Mattingly, Mr. Flaherty, Mr. Tharp, Mrs. Diglio, Mr. Ricciardo, Mr. Russo, Chairman Le Frois

NAY: Mr. Marion

NEW BUSINESS

13-19 Woodside Avenue & Thorlabs Urban Renewal, LLC (#PFSPV-08-2012)

Block 18.03 Lots 3, 5, & 11

Physical Location: 13-15 & 19 Woodside Avenue/56 Sparta Avenue

Applicant is requesting preliminary & final site plan and variance approval for a parking lot.

Mr. Flaherty recused himself due to a conflict of interest.

Peter T. Donnelly, Esq., Graham, Curtin, Morristown, NJ, represented the applicant.

Mr. Donnelly stated: I am here on behalf of two applicants tonight. 13-19 Woodside Avenue L.L.C and Thorlabs Urban Renewal LLC. Thorlabs owns 56 Sparta Avenue.

SWORN: Dan Disario from Langan Engineereing, Christian Roche from Langan Engineering, Jason Dunn, Expert in Planning and Landscape Architecture from Dykstra Associates, PC, Robert Regimbal, Esq. Thorlabs

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Mr. Roche gave the Board his qualifications and the Board accepted them and he stated he reviewed the plans.

Mr. Roche gave an overview of the plans. The proposed application has two components. He marked the Exhibit A-1, Ariel photograph of the proposed development site, dated 9/19/2012; the second component is that we are proposing two signs.

Mr. Roche stated: Exhibit A-2, Rendering of proposed development, 9/19/2012, seeks to demolish building on western half. We are looking to expand the parking to 78 spaces. The parking stalls will be 9 x 12 and we are also proposing 12 compact parking stalls and they will be 8 ½ x 15. We are at 15 percent of our total stalls and the requirement in Newton is a maximum of 20 percent.

Mr. Donnelly asked: The existing building on Woodside that 13-19 Woodside owns, is there currently some outdoor equipment that you plan on moving?

Mr. Roche stated: Yes.

Mr. Donnelly asked: Can you talk about the variances that are related to this project?

Mr. Roche stated: There are 2 variances and 2 design waivers we are asking for. The first variance deals with the proposed lot coverage on the site. Under the current zoning regulation the maximum allowed impervious lot coverage is 70 percent. The lot as is is at 83 percent impervious lot coverage.

Mr. Donnelly stated: How do you plan on handling the impervious coverage?

Mr. Roche stated: What we are proposing is to expand the previously constructed underground retention basin on the Thorlabs complex to handle any increase runoff from this property.

Mr. Donnelly stated: Will our storm water management plan be compliant with the requirements?

Mr. Roche stated: Yes. We also meet the landscaping requirements and the shade tree requirements.

Mr. Donnelly asked: Is there any negative impact by increasing the impervious coverage by 3 percent?

Mr. Roche stated: No.

Mr. Roche stated: The 2nd variance is for parking. Parking is permitted in the third layer. While we are 3 feet from the property line there is an additional 12 feet to the existing curb line on Woodside Avenue. The street scape will remain with the pedestrian sidewalk. We are proposing a row of hedges to screen the parking lot.

Mr. Roche continued: The 1st design waiver deals with the entrance coming in from the north. New design standards call for 30 foot wide entrances for two-way traffic; we are proposing a .4 foot wide entrance. This lot is designed for vehicles and pickup trucks and emergency vehicles. We do not want large trucks coming through this entrance.

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Mr. Donnelly asked: On right side of the Ariel, I see some pictures of cars and they are in existing striped parking spaces that are remaining untouched, correct?

Mr. Roche stated: Correct.

Mr. Donnelly stated: In your packet is a parking easement and my reading of that is they have the right to use the spaces depicted on the map attached to the easement and are those 7 spaces on the outside what we are touching?

Mr. Soloway stated: I do not have the map so I cannot respond.

Mr. Donnelly stated: We looked at this carefully and we designed it so it did have any detrimental on our neighbors who may have the right to park on our side as a result of their rights under the easement agreement.

Mr. Ricciardo asked: What kind of operation is in that building?

Mr. Regimbal stated: Currently Thorlabs operates it integrated systems business unit. The business unit does manufacturing of light and assembly of high speed protonics industry. There are 15 employees.

Mr. Donnelly stated: The mechanical equipment that is being removed has become obsolete but the operations are staying.

Mr. Ricciardo asked: What kind of HVAC equipment will be installed there and where will it be installed?

Mr. Regimbal stated: There is existing HVAC that is internal. It was added outside to meet the operational needs of the Optics Business Division. It is a great unit. We are going to deploy it somewhere else.

Mr. Donnelly stated: What we removing is not traditional HVAC you would consider to cool the building, it is for the equipment.

Mr. Roche stated: The two other design waivers deal with buffering on the Northern and Western property lines. The current regulation requires a 10 foot planted buffer from the surface parking to the property line and what we are proposing to do is having some smaller buffers. We are proposing a decorative fence in addition to a large amount of landscape planting. The proposed fence can be seen in the bottom portion of the plan. The fence will be 6 x 4 feet.

Mr. Soloway asked: What is A-3?

Mr. Roche stated: It is a material report.

Mr. Soloway stated: I have been handed a driveway easement agreement. That agreement does reference a map which says the neighboring property owner has the right to utilize all parking spaces, exits and driveways depicted as Lot 11 and proposed lot 14.02 and it appears that there are seven parking spaces. I don't think it is the Board's task to interpret this agreement and rule on who has rights.

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Mr. Donnelly stated: It is a good point. It is a private easement agreement between two private parties. The other party has not come forth. We are happy to talk to them. We did consider the fact the neighbor might be concerned that our people will park on his lot. That is not the case; the easement specifically says our employees cannot park on his lot and his employees cannot park on our lot.

Mr. Soloway stated: It does give the neighboring property owner the right to use the entrances and exits.

Mr. Donnelly stated: Yes, to the right of the building. It is our position that we fully comply with the easement agreement and have not negatively impacted their rights.

Mr. Ricciardo asked: What generates the need for the new parking lot?

Mr. Regimbal stated: The primary reason is to give it a campus like atmosphere for the two adjoining Thorlabs' operations. We have current operations running at 13-19 Woodside and we have occasion for employees to go back and forth between the two lots. Another element is included in the Traffic study. Our 56 Sparta Avenue parking is probably 95% utilized. This gives us flexibility in terms of where people park between the two lots.

Mr. Ricciardo asked: If you remember, when we reviewed the original Thorlabs plan we had asked that this lot be used as an auxiliary driveway and we were told that it could not be because it was not part of the Thorlabs' facility. What has changed? Did Thorlabs buy it?

Mr. Donnelly stated: Both entities are owned by the same person, Alex Cable. I do remember our discussion on that and I did disclose that fact at the time. I told this Board that 13-19 Woodside was owned by Alex Cable and it is outside the redevelopment zone and there was some discussion about your comment about including it as a driveway and there was discussion with redevelopment council about it not being in a redevelopment zone and ultimately we decided we did not want to include it as a driveway and the situation has changed.

Mr. Ricciardo stated: My suggestion was that it was used for truck access so it did not go through the residential property on Pine Street we wouldn't have tractor trailers on Pine Street.

Mr. Regimbal stated: We still do not have tractor trailers on Pine Street. We don't want deliveries coming through Woodside that is not what we are asking for.

Mr. Roche stated: We are proposing 15 shade trees, 3 evergreen and approximately 150 shrubs. We are also providing 4 light fixtures internal to the parking lot. The light fixtures will match the other light fixtures. One of the main concerns with the light fixtures was to make sure we didn't have any spill of light onto adjacent properties and based on our site plan, we do not have.

Mr. Steinberg asked: What is the reason you are using a 6-foot fence in lieu of the 10-foot landscape buffer.

Mr. Roche stated: If we were to use the 10-foot landscape buffer, it would significantly reduce the parking yield.

Mr. Steinberg asked: Will the fence be maintained by the homeowner or Thorlabs.

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Mr. Roche stated: Yes the fence will be maintained by Thorlabs.

Mr. Hardmeyer asked: Is there anything in the ordinance that requires 78 parking spaces?

Mr. Roche stated: There is nothing in the ordinance that requires it.

Mr. Donnelly stated: At 56 Sparta Avenue we have our approvals. We are not doing any additional building only adding parking. We want to make sure all our people stay on site and no spill over.

Discussion ensued on the parking.

Mr. Ricciardo stated: The buffer is a very important item. I don't want to see almost no buffer adjacent to a residential unit or area. It is extremely important to maintain the buffers.

Mr. Tharp stated: There is about 10-15 feet between the fence and the pavement.

Discussion ensued on the buffering.

Mr. Tharp asked: What about eliminating the new access to Woodside and letting all the traffic come in from the existing multi shared driveway and get a couple more spots?

Mr. Roche stated: We wanted to provide a direct access to this parking lot if we are going to be parking 78 cars in there. The employees will be on an 8 hour shift.

Mr. Tharp stated: I would eliminate the entrance.

Mr. Roche stated: We will be meeting with the County to review the site triangle. If they have any issues we will refer to their judgment.

Mr. Ricciardo asked: I don't understand reducing the buffer between commercial and residential. How many parking spaces could you get if you did not get a variance for the buffer between the commercial and residential? How drastic would that affect your plan?

Mr. Roche stated: We would lose about 15 spaces.

Mr. Regimbal stated: At peak our lot is 95% utilized. This year we added 82 employees. There is no doubt that in time we are going to need additional parking. We have 295 spaces at 56 Sparta Avenue and 15 at Woodside. We have 420 employees at the main location and 15 at Woodside.

Mr. Soloway asked: How many employees do you anticipate having at the main location.

Mr. Regimbal stated: As many as can fit. The number of people that can work out of that location depends on the types of operations going on.

Mr. Soloway stated: To my knowledge there is not a parking banking ordinance under the new ordinance. There were some banked spaces at the main location.

Mr. Ricciardo asked: How do you plan on stopping the UPS truck from coming through?

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Mr. Regimbal stated: We don't intend to regulate them. Currently we have UPS and FedEx deliveries at the 13-19 Woodside facility. What we don't want is the heavy trucks coming through Woodside and trying to traverse into the Sparta Avenue site.

Mr. Dunn presented A-4, **Front Landscape Plan**, and gave a description. It will be the Thorlabs Logo and we will add some lighting to it so it can be seen at night. There are two types of lights we are considering. We have not decided yet. One would be ground mounted or recess lighting to light the back of the sign and letters like shadows. It would not glare onto Sparta Avenue. We are requesting a deviation from your Redevelopment Plan because the plan does not contemplate any signage, whether it be free standing or ground mounted. We do not feel it will be a negative impact to the Redevelopment Plan or the Master Plan.

Mr. Donnelly asked: What will the material be around the sign?

Mr. Dunn stated: It will be natural flagstone stacked on top of each other. The construction will be a concrete retaining wall or casted in place and the façade will have the flagstone. It will be a dark gray color and be capped with a 2 inch thick blue stone.

Mr. Donnelly asked: There is a pipe in that location. Will there be any damage by putting the sign in?

Mr. Roche stated: The pipe is 5 feet deep and the retaining wall will be no more than 18 inches in depth. The landscaping will be low growing. They will have a shallow root system. We will relocate two of the Ash trees to construct this.

Ms. Caldwell stated: Signs are not technically permitted because in a Redevelopment Area they need a deviation for the sign. Other areas in Town allow for a 40- square feet free standing type of sign. This is a reference point.

Mr. Tharp asked: Is the 40-square feet for a combination of several signs or for each sign?

Ms. Caldwell stated: It is for one sign. You can have a two-sided sign.

Mr. Ricciardo asked: Why are these sign not mounted on the building?

Mr. Regimbal stated: They are not mounted on the building because we feel they will look better on the ground. The customers that visit our site suggested these signs. We have a Sparta Avenue address and we would like to have our sign on Sparta Avenue.

Mr. Dunn stated: It is also a visibility issue.

Mr. Ricciardo asked: Why did you change the material from the brick to the limestone?

Mr. Regimbal stated: It was Alex Cable's suggestion.

Mr. Regimbal asked: Do you have a preference on the type of lights use?

Mr. Ricciardo stated: I do not want it externally lit.

Mr. Dunn stated: We are proposing the ground mounted flood light. Two flood lights per sign with a 50 watt bulb.

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Discussion ensued on what the letter will look like on the sign.

Mr. Dunn stated: He is not sure.

Mr. Ricciardo stated: How can we vote on something we do not know.

Mr. Dunn stated: It will be a pvc type material.

Mr. Roche addressed Mr. Simmons report.

Mr. Simmons stated: 4 a. under Site Plan/Circulation is just a correction that the block and lot numbering match the new numbering the Town did. 4 b. I recommend that the nitrogen gas site plan be shown on the site plan as proposed to the Board has the complete picture of the site.

Mr. Dunn stated: This is on Exhibit A-2. The proposed parking lot has no impact on the ability to construct a nitrogen tank in the future.

Mr. Simmons asked: Even though it has not been constructed, the intent is still to construct?

Mr. Donnelly stated: The applicant is looking into other technologies. They are not going to say they are absolutely going to construct it but they are still considering constructing it.

Mr. Donnelly went through 4 c. d, e, and f. of Mr. Simmons' report. He stated they will comply.

Stormwater management was addressed on Mr. Simmons' report. Mr. Donnelly stated they will comply with items a-d.

Environmental Impact Statement – Mr. Roche stated: The actual field work has been complete. We are in the process of filing the paperwork with DEP and waiting for the final sign off.

Mr. Simmons referred to Traffic Impact Study – Will comply.

Mr. Simmons referred to Utilities- Will comply.

Mr. Simmons referred to Lighting – The lights will be operated throughout the night. Dust to Dawn. Item b. the intent is to have the exposed 2 feet concrete. Item c, the internal parking light fixtures will be the same as Tax Lot 11. The architectural style lights are only used at the site entrances.

Mr. Simmons referred to Landscaping- The trees and shrubs along Woodside Avenue may need to be pruned and/or removed for safety purposes.

Mr. Simmons referred Architectural Plans – The applicant is to advise the Board as to what this building will now be used for.

Mr. Simmons referred Construction details- Pavement repair details are needed for Woodside Avenue where the watermain and sanitary sewer utility work will occur.

Mr. Ricciardo asked: Why are lights going to be on all night.

Mr. Regimbal stated: We will match what is there.

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Mr. Roche introduced Exhibit A-6, Lighting Plan.

Mr. Marion questioned the proposed entrance from Woodside, are you planning on gating the entrance?

Mr. Roche stated: We plan on using a temporary gate during construction.

Ms. Caldwell went through her memorandum dated August 21, 2012. She referred to 2.b. Landscape and Buffering 1. Mr. Roche stated they have 70 percent landscaping.

Chairman Le Frois stated: Throughout the entire meeting we have been hearing 10 foot minimum buffer. Your letter stated 25 foot minimum. For the record is it a 25 foot buffer?

Ms. Caldwell stated: For the record it is a 25 foot minimum buffer.

The applicants will comply with items iii. and iv. under Landscape and Buffering.

Applicant will comply with conditions under Parking Lot, Grounds signs and a location for the exterior dumpster with a screen will be provided on the plans for the existing building on Lot 5 per Ms. Caldwell's report.

Mr. Donnelly asked Mr. Roche to talk about what types of things are built into the plan to mitigate any negative impact the neighbors may feel regarding the buffering.

Mr. Roche stated: The main thing is the decorative wooden fence. It will help to shield the car lights and provide a sound barrier. We also are including Green Ash trees that will exceed beyond the fence. They will be installed at 14 feet.

Mr. Ricciardo asked: Are you going to change your plan to reflect the 14 feet and not 6 feet.

Mr. Roche stated: Yes.

Mr. Donnelly stated: Per your plans it looks like you have four trees. Can you put in any more for better buffering?

Mr. Roche stated: I would not recommend planting more trees like that. When they grow they grow in together. We try to space the trees based on what their mature height and widths will be.

Discussion ensued on the property line and encroachment of the trees.

Mr. Donnelly stated: If we thought there was a real concern, I am sure Thorlabs will install a couple of evergreen trees to protect from the headlights.

Mr. Roche stated: We are talking about increasing the parking by 43 spaces. They will be coming and going on average during normal business hours.

Mr. Tharp asked: Are we okay with the 4-ft buffer?

Mr. Ricciardo stated: First, it is far below the recommended width and second the trees are so close in that small buffer that if the one tree grows big enough it can be up against the house

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and who is going to clean up leaves and the gutters? The buffer is a major concern to me. I would like to see them use pervious pavement.

Mr. Donnelly stated: We have not considered pervious pavement. But we have prepared for stormwater management.

Mr. Ricciardo stated: My concern is not that what you are using won't work it is more that the stormwater system in this Town is 100 years old and the more we dump into it the more taxed it becomes. We don't want to have to replace it in 10 years. It is an expense we cannot afford. What I am suggesting is a pervious paving system or concrete pervious system that will allow the water to naturally drain into the soil and be naturally filtered rather than dumping it into our sewage system.

Mr. Roche stated: We are trying to avoid ground water recharge due to potential environmental issues on the property.

Mr. Ricciardo asked: What environmental issues are on the piece of property?

Mr. Roche stated: There was a soil issue.

Mr. Ricciardo continued: So you don't want to do ground water recharge there even though you don't have environmental studies done on that particular sight. You don't have any idea if it has to be cleaned or not.

Mr. Roche stated: We have storage fill on site. It is more of a conventional design procedure.

Mr. Simmons agreed with this.

Chairman Le Frois stated: It is one thing to go from 10 to 4.5 but the 25 foot is a huge discrepancy particularly between a commercial type use and residential.

Discussion ensued on the buffer.

Chairman Le Frois stated: My concern is the parking spots support a future growth plan and trying to maximize that which I totally understood as a business owner, yet granting relief for something that is not really required. If you came in and said you were doing an expansion to building and by code we need this many more space and we are looking for this many spaces and we need a buffer variance that is something completely different than what we have been talking about tonight.

Mr. Torre stated: The other thing is the impact on the neighbors.

Ms. Logan stated: Not only leaves but storms like we had the other night, there could be branches and physical damage to the house if the branches get large enough and fall.

Chairman Le Frois opened up this portion of the meeting up to the public.

SWORN: Tara Pankz, 14 Woodside Avenue, I live across from where the entrance will be to the right. The HVAC system that is there now, is that 25 feet?

Mr. Roche stated: No it is not. It will be coming out now.

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Ms. Pankz asked: What are you going to put there?

Mr. Roche stated: All of mechanical equipment and one air conditioning unit for internal for the building.

Ms. Pankz asked: What about the transformer?

Mr. Roche stated: That is staying.

Ms. Pankz asked: The fence that is there is a buffer. When he first put it in, all we saw was the air conditioning unit and it was very loud. He was very nice as soon as I said something. He came and put the trees up. Is that all coming down?

Mr. Roche stated: That is all coming down. However, we are proposing additional plantings around that transformer area. The tree right there will also being coming down.

Ms. Pankz asked: Will the shared entrance stay open?

Mr. Roche stated: Yes.

Ms. Pankz stated: I do not understand why you have to put another entrance in when there is already one there?

Mr. Roche stated: With the increased volume of cars parking there, we preferred to have a second and direct entrance to and from the site.

Ms. Pankz stated: A fire truck will be able to fit but not a trailer tractor?

Mr. Roche stated: Yes.

Ms. Pankz asked: Will any more electrical lines be going in?

Mr. Roche stated: No. There will be no alterations to the building.

Ms. Pankz asked: The traffic count that was done in July was inaccurate. That road is used for schools to get from Merriam Avenue to Halsted so that road backs up all the time. To do a traffic test in the middle of July was not accurate and if the lighting is a problem, would it be possible to put it on timers?

Mr. Roche stated: They will be on timers.

Ms. Pankz asked: How high will the shrubs be that will be along Woodside?

Mr. Roche stated: They will be 3 ½ feet tall.

Ms. Pankz asked: Who will have the final say on the entrance? Will it be Newton or the County?

Mr. Ricciardo stated: The County.

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Ms. Pankz asked: I heard through rumor there will be another 2 stories going in on the Thorlabs building and a parking garage.

Mr. Roche stated: The rumor you heard was probably from the Redevelopment Plan from the site when it was put in. I think the Redevelopment Project Plan calls for a possible Phase II with some of these additional elements. There is absolutely no intention for Thorlabs to do that.

Ms. Pankz asked: Is there any way we can use the existing entrance instead of making another entrance?

Mr. Tharp asked: Why not put the driveway there and gate it and just use it for emergency use for fire?

Mr. Ricciardo stated: It is a point to discuss.

2nd Public

SWORN: Charles Briggs, 73 Pine Street stated: As you know I am an advocate on buffers.

Mr. Briggs expressed his concern about the fence and the Ash trees. He also stated: I think you are taking advantage of parking spots that you do not need.

No more public stepped forward. Chairman Le Frois closed the public portion of the meeting.

Mr. Ricciardo asked: What is the size of the ladder truck?

Mr. Simmons stated: The overall length is 46 feet and it is 21.66 feet from the center line of the front axle to the center line of the back.

Discussion ensued on the entrance.

The Board and the applicant took a ten minute break to discuss the buffering options.

Mr. Donnelly stated: We did come up with an alternative. What we are proposing is the new entrance at Woodside Avenue will be "In" only. It eliminates a need for a site triangle from the County. So it will save both trees.

Mr. Regimbal stated: We have proposed to reconfigure the parking along the residential side. Rather than having the spots perpendicular spaces, we have proposed to relocate 90 degrees providing for parallel parking spaces and by doing so we are able to increase the buffer distance from the 4 feet to a little over 10 feet.

Mr. Donnelly asked: What does it do to the plantings?

Mr. Regimbal stated: It allows us to shift the plantings further from the fence so it will be less of a concern from a maintenance standard with the leaves.

Mr. Dunn stated: First, by moving the buffer back to 10 feet, the trees won't be over hanging and secondly, we are proposing to change the tree type to something smaller. It still would have a deciduous canopy more like an ornamental nature that will grow to about 20 feet high maximum.

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Mr. Donnelly stated: The buffer will be at least 10 feet.

Mr. Soloway stated: You need to be specific on that. When you grant a deviation, you need to be specific with what you grant. Will there be more shrubs now that you have a 10 foot buffer?

Mr. Donnelly stated: The shrubs will be the same.

Ms. Digilio stated: I would say shrubs with mulch would be very nice. I would take the shrubs you have now and spread them out and stagger them.

Chairman Le Frois asked: Is the applicant satisfied with these changes.

Mr. Donnelly stated: There are other people who are not here that need to be consulted but the preliminary answer is yes.

Mr. Regimbal stated: The answer is yes. If we are losing 8 spots it still makes expediential sense to do the project.

Mr. Soloway asked: The total parking spaces will be 70?

Mr. Roche stated: We might have the potential to add one more space to make it 71.

Mr. Ricciardo stated: Where are you going to add the one space?

Mr. Roche stated: I can reduce the width of the entrance because it will be One Way only.

Mr. Ricciardo stated: You will now be reducing the ability for a fire truck to have accessibility. I don't agree with that at all.

Mr. Roche stated: We don't need to change the width. We will keep it the same.

Chairman Le Frois opened up the meeting to the public.

Tara Pankz asked: Is there any possible way, since the transformer is staying, to leave the tree and the shrub that he already put in, there? He did a wonderful job. He put up screening and then put up a fence facing out. Is there any way to keep that and park behind it because I would imagine you can't get that close to the transformer? This would center the entrance a little.

Mr. Regimbal stated: I think with the tree being right in the center of the entrance, it will have to be removed. It will affect the entire alignment.

With no more public coming forward, Chairman Le Frois closed the public portion.

Mr. Steinberg stated: It appears there is a single home owner who is affected by this entire plan. My concern is the fence. I think it is going to be a maintenance nightmare.

Mrs. Mattingly stated: I think the wood is very nice and if they were really concerned, they would have attended the meeting. They put in nice bushes and it seems like Thorlabs will take care of the fence too.

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Mr. Tharp stated: History would make you think that.

Mrs. Mattingly stated: That is all you have to base your decision on.

Mr. Tharp stated: They seem like they want to be good neighbors.

Mr. Russo stated: No, not seem, they have been good neighbors.

Mr. Ricciardo asked: Were all the neighbors in a certain radius notified?

Mr. Donnelly stated: Yes. No one called my office.

Mr. Ricciardo stated: I think there is no need for any further discussion.

Mr. Marion stated: I think what you did in 10 minutes time of redesigning the buffer shows your willingness to work with the Town. It was their responsibility to come and if they aren't here it is nobody's problem but theirs. We did what we could for them with the additional buffering. I think what you are proposing looks well.

Mr. Soloway stated: Even though it is one application, it really is two applications. I think you should vote separately on the sign. The application on the Woodside Avenue property is for preliminary and final site plan. It is for a variance to allow maximum lot coverage which will not be greater than the 83 percent they applied for. It is to allow a driveway entrance of less than the required 30 feet. A waiver from the parking lot street frontage screening requirement, which is a minimum of 10 feet, the applicant is proposing 2.3 feet along the front edge. A waiver from the screening buffer requirement from a neighboring residential property, the ordinance requires 25 feet and they are proposing at least 10 feet. A variance to allow parking in the front yard which is called the front yard and is no longer permitted under the ordinance. Subject to compliance with Mr. Simmons' report as per the testimony tonight, subject to compliance with Ms. Caldwell's report as per the testimony tonight and amending the plan to the new entrance on the Woodside Avenue side will be "In" only, there will be four parallel parking spots along the Westerly side of the property that allows you to do not less than a 10 foot buffer. Change the trees that would only grow to approximately 20 feet maximum to lessen the impact on the adjoining property. The shrubs will be staggered with mulch in between in the buffer area to the satisfaction of Mr. Simmons and Ms Caldwell. There will now be a total of 70 spaces on the site. A ground water recharge waiver, a loading space waiver, which is a preexisting condition. Subject to Mr. Simmons, the sign installation will not interfere with the existing drainage pipe, the sign will be ground mounted with the light shining on the sign in anticipation of two lights on each light for a total of four lights. The sign will be plastic or PVC and doweled into concrete.

Mr. Russo made a motion to approve the sign variance request. Mr. Marion seconded the motion.

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

Mr. Russo made a motion to approve the 13-19 Woodside Avenue preliminary and final site plan waiver. Mr. Ricciardo seconded the motion.

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

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Chairman Le Frois stated: We are modifying the rule from we hear no testimony after 10:30 PM to no new testimony after 12:00 midnight so that we can hear the next applicant. For the record Mr. Flaherty is back on.

Recused: Mr. Marion, Mrs. Diglio, Mr. Ricciardo, Mr. Hardmeyer, Ms. Logan

Present members: Mr. Torre, Mrs. Mattingly, Mr. Flaherty, Mr. Steinberg, Mr. Tharp, Mr. Russo, Chairman Le Frois

Professional Present: Paul Ferriero, Ferrero Engineering, Jessica Caldwell, J. Caldwell Associates, and David Soloway, Esq.

Marlorana Enterprises, LLC (#SPMSV-07-2012)

Block 2.05, Lot 13

104 Sparta Avenue

Formerly: Block 1201, Lots 5 & 5.03

100-110 Sparta Avenue

Applicant is requesting preliminary site plan, preliminary major subdivision and associated variances to construct 54 townhouses and six (6) low and moderate income apartments.

Mr. Anthony Fiorello, LLC appearing on behalf of Marlorana Enterprises, LLC.

Mr. Fiorello stated: Our last meeting was finished up after testimony of Mr. Donohue. Mr. Donohue has prepared a list of all the variances and waiver we are seeking.

Mr. Donohue was previously sworn.

Mr. Fiorello asked: After our last meeting did you prepared a list of all the variances that you testified to and waivers of ordinances that we talked about and you made certain modifications to your site plan?

Mr. Donohue stated: Yes.

Mr. Donohue introduced **Exhibit A-1, revised site plan, dated September 19, 2012 revision of sheet 3/10**. I would also like to state that we met with the County Planning Board, they reviewed the application plans that were submitted and we did receive approval from the improvements that are shown on the plans. They did have one condition which is on the Phasing Plan. They have requested that the driveway on the East Western side be constructed in Phase I so the removal of the 10 spaces, the construction of the curb and sidewalk and the entire intersection be constructed in Phase I along with the other driveway entrances. The applicant has agreed to that.

Mr. Fiorello asked: That resolution was prepared and will be submitted to the Board when received?

Mr. Donohue stated: Yes.

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Mr. Donohue stated: Building 10 will be done in Phase II. As the County has requested and the applicant agreed, the removal of the 10 spaces along Sparta Avenue and the construction of the improvements with the driveway will be done in Phase I instead.

Mr. Torre asked: Did the County make any suggestions about the traffic concerns?

Mr. Donohue stated: No, they did not. They preferred this development over the prior one that was approved.

Mr. Donohue discussed the changes made to the site plan. The changes were to indicate where the sidewalks would go on the opposite side of the roadway since we are proposing sidewalks on one side on the interior loop.

We mentioned last time that the four dumpster locations would go down to two. We have indicated those two locations on the plan and we have also indicated area where sidewalks would be constructed on the opposite side to provide a means to some of the dumpsters. There was a request last time by the attorney to prepare a plan showing suggested places where these sidewalks would go. We needed a sidewalk to go to a residential area. It is a means and a method to get to where the dumpsters are going to be located.

Mr. Soloway asked: Did you provide this plan to Mr. Ferriero?

Mr. Donohue stated: No. This plan is being discussed right now.

Mr. Donohue went through the variance list (see list prepared by Donohue Engineering).

Mr. Donohue stated: There is a requirement to have plantings at entrances to non-residential properties so at both entrances we are not proposing plantings because it is within the site line requirements of the County for Sparta Avenue. Those two areas we are not proposing entrance landscaping.

Mr. Donohue continued: We are not proposing planting in either proposed retail parking lot areas. The front parking lot area is existing. We want to keep the prime parking spaces out front.

Mr. Soloway asked: Is the 15% interior parking lot landscaping the same requirement for the townhouse lot? The ordinance appears to say the parking lots containing more than 10 spaces at least 15% of the interior parking area shall be landscaped.

Mr. Donohue stated: The only one would be adjacent to Building 10. We are providing 12 parking spaces. We could put one tree in the middle beyond that we are going to lose parking spaces. We are proposing to comply with that requirement.

Mr. Soloway stated: It was discussed last time that one of the landscaping items, the applicant is proposing a landscaping plan to the satisfaction of Ms. Caldwell and Mr. Ferriero.

Discussion ensued on having some additional landscaping.

Mr. Donohue stated: We are proposing trees to be planted. They won't be exactly in the lots but they will surround the lots, otherwise we would be removing spaces. The ordinance wasn't

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clear on how to calculate it. Would it be within the border of the curbing or is it some other measurement?

Ms. Caldwell stated: The interior landscaping is interior to the parking area.

Mr. Soloway stated: It says they should be distributed evenly throughout the parking area.

Ms. Caldwell stated: If you have islands and bull noses as Mr. Ferriero said those are perfect places to plant trees.

Mr. Donohue stated: If that is your understanding, than we would comply with that requirement.

Mr. Donohue stated: I had a question on 240-8C (4) the landscape screening for open parking. I read it as adjoining property not the interior of the property. I do not believe we need a variance for that.

Ms. Caldwell stated: My concern was that you do have parking adjacent to the residences while it is interior to the development you are still going to have an issue of headlights going on to the residences perhaps providing the 3.5' hedge around the parking lot.

Mr. Donohue stated: We can provide that. It is not shown on the plans right now but we will provide the 3.5' hedge adjacent to the interior parking. My other question was there was some discussion of sidewalks on both sides as stated in the ordinance. I know the ordinance states sidewalks along streets.

Mr. Soloway stated: The ordinance does not specifically say both sides. The R.S.I.S. does and the ordinance incorporates R.S.I.S. That is why it is a variance deminimus exception.

Mr. Tharp asked: We don't have an updated landscaping plan?

Mr. Soloway stated: To be fair to Mr. Donohue, I don't think it was contemplated that he would have that tonight. My notes indicate there will be a landscaping plan to the satisfaction of Mr. Ferriero and Ms. Caldwell if the buffering can fill the objections of section 240-7A-4A. Since the application is for preliminary only that would be subject to review by the Board.

Mr. Tharp stated: I was more concerned about the buffer around the Pine Street residences. I didn't know if we should get something visual.

Mr. Ferriero stated: My notes reflect that as well.

Chairman Le Frois opened up this portion to the public.

1st public

SWORN: Andy Van Orden, 1 Linmor Avenue asked: Is 54 townhomes the maximum you can put in there?

Mr. Donohue stated: Based on the layout, that is the maximum I would suggest.

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Mr. Van Orden stated: There is a black bear population in this area. I am a little concerned with the black bear traffic and the dumpster, it is going to be pretty inviting and it is going to be a problem. I am not sure if the vinyl fence will be strong enough to keep those bears out.

Mr. Soloway asked: Can we bear proof the dumpsters?

Mr. Donohue stated: We can have wood board-on-board fence which will make it a little stronger. I don't know if it is bear proof.

Mr. Torre stated: We have bear proof dumpsters in our offices and they work.

2nd Public

SWORN: Mr. Charles Brigg, 73 Pine Street, Newton stated: I have a situation where the applicant wants to do this in Phases and we all know about his first project and it was to be done in Phases and it wasn't. It was maliciously ransacked of all the trees. There are no trees left. This new project is supposed be done in Phases. I would like to see the landscape done first, the shrubs put in, the grading be done the way it is supposed to be done and not having 20 foot boulders pushed up against my property, the fencing and all the grading done. You are going to put in a paved driveway, what if this project fails? We are looking at pavement and nothing gets done for the homeowners around Pine Street and Orchard Street. He wants all this stuff. Maybe we can tone down the housing and eliminate some buildings and eliminate some of the need to go through variances. The first Phase we had to eliminate parking to get the buildings in. How about now we eliminate some of the buildings to get some of the other stuff in? I would still like to see the landscaping get done before anything else.

Chairman Le Frois asked: What is the phasing of the landscaping around the perimeter?

Mr. Donohue stated: On the Phasing Plan on Phase I we are indicating to install the 6 foot high fence along the property line. We are indicating the landscaped Evergreen buffer to be installed from the western end to Road 3. We would grade it to final grade then plant. We would come back later to regrade. In each Phase, we are indicating tier lighting and landscaping.

Mr. Briggs asked: Will the trees that will be planted by the infiltration system be a problem?

Mr. Donohue stated: I do not believe it will be a problem. We will look at it.

3rd Public

SWORN: Mr. Hardmeyer, 70 Pine Street asked: When will the Landscape Plan be available for review?

Mr. Donohue stated: It will be submitted with final application.

Mr. Hardmeyer stated: There will be a chance to comment on it at that time?

Mr. Donohue stated: It is a condition of preliminary approval so it will be submitted with drawings that get signed by the Board.

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Mr. Soloway stated: There is a public hearing on final site plan generally it is not a noticed hearing.

Mr. Hardmeyer asked: How many items would they liked changed from our existing ordinances?

Mr. Soloway stated: About 17. Some of them are preexisting conditions or conditions related to the subdivision. Some of these are Design Waivers are where the new ordinances came in.

With no more public stepping forward, Chairman Le Frois closed the public portion of the application.

Mr. Tharp asked: Looking at Mr. Inga's letter regarding Phasing, one of his comments is Fire Service mains will be completed prior to the construction of the homes. I know we talked about the phasing and there would be a loop of the water main but not in Phase I. Am I interpreting Mr. Inga's letter in that the loop has to be completed in the very beginning?

Mr. Ferriero stated: The line must go in before all the buildings are built and then will be looped before Phase II begins.

Mr. Russo stated: I would defer to Mr. Ferriero for the phasing of the project.

Mr. Ferriero stated: I think the phasing works based on how they have it laid out. There is one thing that should be discussed and that is when they have preliminary site plan approval are they permitted to construct?

Mr. Soloway stated: We discussed last time, generally no and it will be made clear in the resolution.

Mr. Ferriero stated: So they have to have the final approval and then we would get the final resolution and the final plans.

Mr. Fiorello stated: Introduced Exhibit A-2, NJDEP Letter of Interpretation, dated February 3, 2010. Exhibit A-3, NJ Fresh Water Wetlands Permit, Dated August 23, 2010. Exhibit A-4, Report from the County stating this project is more appropriate than what was previously approved.

Mr. Fiorello started his questioning of Mr. Tom Rybek.

Mr. Rybek has been previously sworn in.

Mr. Rybek reviewed the Unit Plans, dated June 18, 2012. The plans show the end units, which have a two car garage, an entry way, which is a side entry, a kitchen area, dining area, living space, proposed patio outside, stairs leading to the upstairs, and a powder room. When you enter the second floor, you have three bedrooms, two baths, closet space, laundry facilities, walk-in closet and two bedrooms are on the other side. The middle units are two bedrooms, with a one car garage, you enter through the front, there is a powder room as you enter, a stair case leading upstairs, laundry facility, closet, kitchen area, small dining room, and living space plus the possibility of a patio and siding doors leading outdoors. Upstairs you go into an open space area which is an open sitting area. You can also have a home office for a study area, master suite with its own bathroom and a walk-in closet and a secondary bedroom which is a guest room or a kid's room with a bathroom opening into the open space. **Exhibit A-5, colored front, rear yard elevations, dated September 19, 2012.** These are front, rear and side elevations

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of the townhouse units. They will be constructed of siding and brick fronts with some keystone elements separating the units and giving each individual identity with different sloped peaks and window types and cornices on the brick elevation.

Mr. Rybek spoke about the low/moderate income housing and introduced the proposed floor plan and elevations, dated June 18, 2012. He stated: There is an existing building in the front of the property. The front of the building has existing columns, brick and it is a 2.5 to 3 story structure. It has a front entry way and a rear entry way. We are proposing for egress purposes and ADA purposes a small addition in the rear where we house a mechanical area, a lift, an elevator and a stair tower. On the ground floor will be a club house, or meeting room for the use of the residences and owners. There is a center staircase, which is existing. On the second floor will be one bedroom and two bedroom units. We still have to investigate the square footage of the units and the layout. Right now the building is being occupied by commercial tenants. A full exploratory demolition has to happen and then drawing will be done to accommodate all the ordinances and requirements of the standards we are proposing.

Mr. Ferriero asked: Will that be completed by the final?

Mr. Rybek stated: No. It will be impossible because the space is occupied.

Mr. Ferriero stated: You can come in after the space is no longer occupied.

Mr. Rybek stated: Yes, we can do that.

Mr. Tharp stated: We can't approve something if we do not know what it will look like.

Mr. Rybek stated: You will know what it is going to like on the outside. The outside will not be changing. On the inside you have an idea of what we are doing. We are proposing an addition in the back and the division will meet the requirements ADA will meet the requirements for the sq. footage for bedrooms and all the items will be addressed. We will comply with all Codes and Regulations in the State of New Jersey and the ordinance you now have. Where the exact walls and exact doors will be, I can tell you. This is a graphic representation of what we are intending to do.

Mr. Rybek introduced **Exhibit A-6, Perspective of Typical Cluster of Units, dated September 19, 2012**. It shows the representation of what will be the flavor of the neighborhood with the landscaping, the trees, the vegetation, the patios and the entrances to the units themselves.

Mr. Soloway asked: If that what it will look like in terms of building type, etc?

Mr. Rybek stated: Yes.

Mr. Rybek introduced **Exhibit A-7, Rear perspective of a Typical Cluster**. This is how the units will look when built. It also shows how the backyard will look for the residents.

Mr. Fiorello asked: In your opinion can this project be constructed without substantial detriment to the public good?

Mr. Rybek stated: Yes, because looking at the Master Plan of Newton and looking at the development the way it is designed right now, the way the units are designed and the slope of

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the site, the way it is and how they are built into the sight becomes a natural buffer between the commercial and the one-family residential units that are in the rear of the property.

Mr. Fiorello asked: Is there less coverage proposed for this development than that which would be required had it been developed the way it had been previously approved?

Mr. Rybek stated: You have more green area; you have less parking, less building structures, less impact on the site itself with less traffic and less circulation in and out of the site as compared to the commercial application that was approved.

Mr. Fiorello asked: Would this fit better with the neighboring area?

Mr. Rybek stated: Yes.

Mr. Fiorello asked: This comports more in line with how the County feels it should be developed?

Mr. Rybek stated: Yes.

Mr. Fiorello asked: Does this type of development preserve certain environmental aspects of the land?

Mr. Rybek stated: This development helps the environmental impact on this site, it manages water much better, it has more green areas, and it has a natural buffer, green and building, from the parking and other structures that are existing in the surrounding areas.

Mr. Fiorello asked: In terms of the visible environment that it creates, do you have an opinion as it tends to promote the general welfare?

Mr. Rybek stated: The proposal is designed in the height requirements that are recommended by the Town. It also takes into account the exterior standard of the surrounding areas so yes it does comply.

Mr. Fiorello asked: Would it have any negative impact on the zoning plan, zoning scheme, and the Master Plan?

Mr. Rybek stated: No, it does not.

Mr. Fiorello asked: Does the Master Plan envision a provision of opportunities for various segments of the community of Newton, not only for moderate income earners but also for moderate to low income earners? Does this plan accommodate six low/moderate income housing units? Does it fit into the Vision Plan that the Master Plan seeks to create for the future of this municipality?

Mr. Rybek stated: Yes, it does and gives flexibility of different family structures by having the townhouse development the way it is proposed.

Mr. Fiorello asked: Does this plan have any negative impact upon the zoning plan or the progress of this Town in the future?

Mr. Rybek stated: No, it does not. I think it enhances the property values of the surrounding properties.

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Mr. Fiorello stated: I have no further questions of Mr. Rybek as a Planner.

Mr. Soloway asked Mr. Fiorello: Having him address the negative criteria, I assume based on the requirement in the Land Use Law that when you bifurcate the site plan from the Use Variance that was previously granted, the negative criteria continued to apply to site plan application? Are you having him address planning issues in the context of the variances and waivers that you are seeking or are you relying on the testimony of Mr. Donohue?

Mr. Fiorello stated: We are relying on Mr. Donohue's testimony.

Mr. Tharp asked: Who will maintain the low income housing units? Would it be the Homeowner's Association which is not formed yet and there were some questions as to whether the Homeowner Association should be responsible for the housing unit? How should that work?

Mr. Fiorello stated: The owner of the apartment will be responsible for the interior and the exterior will be the responsibility of the Homeowner's Association.

Ms. Caldwell asked: These are supposed to be rentals so what do you mean by maintain?

Mr. Fiorello stated: The people who rent will be responsible to maintain the interior of the premises, walls, floors, etc.

Mr. Tharp asked: What about the building maintenance?

Mr. Fiorello stated: The building maintenance is the responsibility of the Homeowner's Association once it is formed. The apartments will be owned by an owner. The owner can rent them to a low and middle income family.

Mr. Ferriero stated: I would assume the owner of the apartment, not the tenant, is a member of the Homeowner's Association and that owner pays dues to the Homeowner's Association.

Mr. Tharp stated: So the apartments are owned by an individual?

Mr. Fiorello stated: The Homeowner's Association does not own the apartments. The apartments will be owned by an owner. The owner can rent them to a low and moderate income family.

Mr. Soloway stated: You are saying the low and moderate income housing will be owned by an owner? Is it contemplated that the owner will be the occupant?

Mr. Fiorello stated: They have to qualify for low and moderate income housing in order to live there and that is governed by income standards that are set the State and Federal government.

Mr. Ferriero stated: They cannot be owner occupied. They have to rentals.

Mr. Steinberg stated: So someone is going to own the apartment building that doesn't necessarily live in the development. They could live in Nyack but they will be paying dues to the Association as the owner of that building?

Mr. Ferriero and Mr. Marforana stated: Yes.

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Mr. Fiorello stated: Except for the ground floor which is common area so the Condominium Association maintains that. It includes the club house, meeting room etc.

Mrs. Mattingly asked: On the townhouses, are they going to be owner occupied? Or can they be purchased and then rented out.

Mr. Fiorello stated: Just as any home you can buy a townhouse or buy a home and rent it out.

Mrs. Mattingly stated: You could also say that it has to be owner occupied.

Mr. Soloway stated: No you can't. You will get a mix. Some people will buy it as an investment and some people might start out as an owner occupant and wind up renting.

Mr. Marlorano stated: They are not being built to rent. They are being built to be sold.

Mr. Torre stated: And whoever owns it is part of the Homeowner's Association and they are responsible for the fees.

Chairman Le Frois opened up this part of the meeting to the public.

1st Public

Previously Sworn: Mr. Van Orden asked: You mentioned this is not adverse to the Master Plan, however our Master Plan was developed less than 10 years ago and we are in a Town where a large area is tax-exempt. This particular area was rezoned; it was commercial, now it is light industrial. The Master Plan was a lot of money and time and a lot of research put in to it and there is a nice balance of residential, commercial, light industrial so that we would not over burden the school system, over burden our infrastructure. I fail to see how you can say that this 54 housing unit is in compliance with the spirit of the Master Plan when clearly this will throw the balance out of whack.

Mr. Rybek stated: I do not know what the occupancy of units will be but if you look at the type of units that are being designed; it could be people that are coming out of single family homes that are elderly that will be moving into these units. It could be people who are starting out who are moving into Town, do not have any kids and it could be their first residence. If you look at the tax base, you are looking at one piece of the Master Plan. The other thing you have to look at is the benefits this site has. Those benefits are it becomes a buffer between the rear residents and the existing commercial space. If the application went through and it was built as a shopping mall, you will have a greater environmental impact. You will have a much hotter area with all the paving and you will have a lot more traffic than what is there now. You will have other impacts. In my humble opinion, I think this is a much better use for where it is located in the Town.

Mr. Van Orden stated: I am glad you brought up the present use that was granted. I would like to remind the Board that Mr. Fiorello gives the impression that the Town embraced the plan of this being zoned for a commercial development. I would like to remind everyone that the original proposal was in fact shot down by this Board and the applicant subsequently sued. It was overturned by a judge and was finally approved by this Board but by a vote of 3 to 2. There were four years that it was fought. The only reason why many of my neighbors have gone through with this idea is because right now it is has been clear cut. I just want to remind everyone that the Town did not originally embrace the initial application.

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The other question I would like to bring up is, as you said, this development will not have a negative impact on the area. What if only half of these units sell and only half of the units get built? Now we have a proposal where you have a road cut through, you have half the units in, and these units are behind a Quick Check, next to a swamp and sold for almost a quarter million dollars. I can only image what those residents will do when they see that the project will not be finished the way they expected. I don't see how this is going to help the area and maintain their value.

Mr. Martorana stated: You are implying it won't happen.

Mr. Van Orden stated: It has happened in the past. Developers have half committed, half built something. It could happen again. The applicant is under the obligation that showing this will not have a negative impact. That is part of the variance, isn't that true?

Mr. Soloway stated: Yes, the applicant is required to demonstrate that the site plan won't cause a substantial detriment to the public good.

Mr. Van Orden stated: We have Abelour as a good example and have the Gateway Apartments. It was originally supposed to be age restricted and then when they were not able to be filled, it then became sprinkle assistance. Thank you.

2nd Public

Previously Sworn: Kent Hardmeyer, 70 Pine Street asked: How many square feet will be in each of these units? And are they going to have basements?

Mr. Rybek stated: About 2,000. No basements.

Mr. Hardmeyer asked: How come no basements?

Mr. Rybek stated: Because you have a garage area and it is built on a slab. It will be less of an impact.

Mr. Hardmeyer stated: I think most of the other condos in Town have basements. Do you feel not having a basement will be a detriment to selling them?

Mr. Rybek stated: I don't really know. It could go either way. I have seen them go either way.

Mr. Hardmeyer asked Mr. Rybek to show him exactly where it is on the site plan.

Mr. Rybek pointed to the existing building in the front.

Mr. Hardmeyer asked: Is that going to see a lot of traffic as people go in and out of the site and into the commercial development?

Mr. Rybek stated: The building fronts onto the street. The side elevation has limited window space and limited unit exposure so it has frontage to the street so whatever the street traffic is that is what the exposure will be, not the traffic of going in and out of the development. Most of the units are facing the street.

Mr. Hardmeyer asked: What is the back side of the building going to be made of?

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Mr. Rybek stated: There will be siding to match the units.

Mr. Hardmeyer asked: Why don't you have windows in the back? You have a nice club house and a nice South West exposure; it seems to me it would be nice to get the afternoon sun in the club house.

Mr. Rybek stated: In the club house, you have an elevator and a stair case that will block the view. There is also a corridor system that is used for egress for all the units that are there.

Mr. Hardmeyer stated: It looks like the left half is not blocked by anything?

Mr. Rybek stated: The club house itself is going to be a game room and a floor of gathering of units. You are not going to have people sitting there reading the paper.

Mr. Hardmeyer stated: You don't know that. You can't say it wouldn't be used for that. It depends on how they structure it.

Mr. Hardmeyer asked: Why are there no windows in the stairs going up?

Mr. Rybek stated: That defeats the situation of the staircase. We could possibly do it but there are codes that limit that scenario.

Mr. Hardmeyer asked: What codes say you cannot have windows in the stairwell.

Mr. Rybek stated: There are International Codes that say you need to have a certain amount of fire separation between the stair tower and everything else.

Mr. Hardmeyer stated: The point I am trying to make is that the back of the building is going to be very plain Jane. I think it will look a lot better if you put a window or two in. I think the people in the club house might appreciate it. I am sure there will a lot of weekend activity and it would be nice to have some windows in there.

Mr. Rybek stated: We will take it into consideration.

Mr. Hardmeyer stated: Thank you. The other thing I want to point out is who is going to maintain it. There is an elevator and they need maintenance too. I think some thought needs to be given on who is going to maintain the club house and what it will cost and how are we going to put the burden on the low and moderate income families.

Mr. Soloway stated: It is going to be maintained by all of the homeowners of the project including the regular units.

Mr. Hardmeyer stated: It just sounds like a lot of pieces floating in the air and I don't know how it is all going to work. It needs to be given some good thought. One other thing I would like to follow up on what Mr. Tharp said about looping the pipe. I know it will be an added expense but there are some water quality issues. I think you will get better water quality with a loop.

With no public stepping forward, Chairman Le Frois closed the public portion.

Discussion ensued on having a special meeting.

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Chairman Le Frois stated due to the time, we will carry this meeting to a special meeting on October 3, 2012 at 7 PM no further notice.

ADJOURNMENT

Chairman Le Frois made a motion to adjourn the meeting. The meeting was adjourned at 12:22 AM. with a unanimous "aye" vote. The next regularly scheduled meeting will be held on October 17, 2012, at 7:00 PM in the Council Chambers of the Municipal Building.

Respectfully submitted,



Katherine Citterbart
Planning Board Secretary

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Exhibit Page

13-19 Woodside Avenue & Thorlabs Urban Renewal

Exhibit A-1, Ariel photograph of the proposed development site, dated 9/19/2012.

Exhibit A-2, Rendering of proposed development, 9/19/2012.

Exhibit A-3, material report.

Exhibit A-4, Front Landscape Plan

Martorana Enterprises, LLC

Exhibit A-1, revised site plan, dated September 19, 2012 revision of sheet 3/10.

Exhibit A-2, NJDEP/DOI, dated February 3, 2010.

Exhibit A-3, NJ Fresh Water Wetlands Permit, Dated August 23, 2010.

Exhibit A-4, Report from the County stating this project is more appropriate than what was previously approved.

Exhibit A-5, colorized front rear yard elevations, dated September 19, 2012.

Exhibit A-6, Perspective of Typical Cluster of Units, dated September 19, 2012.

Exhibit A-7, Rear perspective of a typical cluster.