

**Newton Planning Board  
October 17, 2012  
7:00 PM**

The regular meeting of the Newton Planning Board took place on the above date. Vice Chairman Marion read the Open Public Meetings Act and requested Mrs. Millikin to call the roll. Debra Millikin, Acting Board Secretary, stated there was a quorum.

**FLAG SALUTE**

**MEMBERS PRESENT:** Mr. Torre (arrived at 7:40 PM), Mr. Flaherty, Mr. Ricciardo, Mrs. Logan, Mr. Hardmeyer, Mr. Steinberg and Vice Chairman Marion

**EXCUSED:** Mrs. Mattingly, Mr. Tharp, Mrs. Diglio, Mr. Russo, and Chairman Le Frois

**PROFESSIONALS PRESENT:** David Soloway, Esq., Board Attorney, of Vogel, Chait, Collins & Schneider

**BOARD SECRETARY** – Debra Millikin, Acting Board Secretary

**CONSIDERATION OF MINUTES**

September 19, 2012 Regular Meeting

**Mr. Hardmeyer made a motion to approve the September 19, 2012 minutes. Mr. Flaherty seconded the motion.**

**AYE:** Mr. Flaherty, Mr. Ricciardo, Ms. Logan, Mr. Hardmeyer, Mr. Steinberg

**Abstained:** Vice Chairman Marion

October 3, 2012, Special Meeting

**Mr. Flaherty made a motion to approve the October 3, 2012 minutes. Mr. Steinberg seconded the motion.**

**AYE:** Mr. Flaherty, Mr. Steinberg

**INFORMAL**

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

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

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Mr. Soloway stated: There is a pending appeal by SAK Associates from the Historic Preservation Commission referred to as refusal of demolition of the building in discussion. That appeal was previously scheduled and carried to tonight. It is my understanding that SAK Associates wishes to carry that appeal beyond tonight but would like to have an informal discussion with the Board about what it might like to do with the property that is subject to the appeal and pending any feedback from the Board may or may not have an impact on where they decide to go if they go through with the appeal.

Vice Chairman Marion stated: The appeal will be carried to next month.

Mr. Soloway stated: There is no meeting in November. We will carry it to December 19, 2012 at 7 PM.

Robert B. Campbell, McConnell, Leonard and Campbell represented SAK Associates, LLC.

Mr. Campbell stated: Mr. Copcutt could not be here due to another obligation and he asked me to show up because I am following the Historic Commission's action on my client's request to demolish the existing building at 24-24 ½ Church Street. I spoke with Mr. Soloway and Kathy Citterbart a few times and as Mr. Soloway and I have discussed for what my client wants to do at 24 Church Street they are going to require a use variance. At this point, they are just looking for some feedback from this Board as to what you are thinking. This is a matter of record before the Historic Commission so I don't feel uncomfortable in testifying. SAK Associates is a Limited Liability Company. They own 18 Church Street which is where SAK has its own offices and there is a surgical center and some additional office space. They recently bought 24 - 24 ½ Church Street. The property itself has been investigated and they have gotten their own engineering feedback and my client has elected not to put any money into renovating or restoring what they consider a dilapidated building. They have 35 parking spaces currently at 18 Church Street which they lease from the County. They were looking to demolish the 24 - 24 ½ Church Street building and use it for parking. They were looking to gain 10 parking spaces. They would put in the parking in conjunction with the Historic Commission and the Board's input to make it as conforming as possible and with that maintain any historic characteristics on the property. They have entered into an informal agreement with the church on the corner and the funeral home to allow them to utilize parking during off hours so they see it has a benefit to the area in general. It would also be an impervious surface so they expect some type of drainage would have to go in. All these would be subject to proof and if there should be a formal application after this, we would have to present the positive and negative criteria. I am not a planner but the primary positive aspects would be to improve traffic flow, provide area parking, and to remove an eye sore substandard structure. It is in the Historic District but it has not been designated as a historically significant structure. Before they go down that road and hire the planner and do the expensive work, they asked me to come tonight even in their absence, since the next hearing isn't until December, to put this forward in an informal context. I am here to bring back to them what your feelings are.

Mr. Soloway stated: The board can review something like that and provide input. Nothing the Board says in regards to input is in anyway binding. Similarly anything that is said by the applicant is not in any way binding. The purpose of this proceeding is to bounce it off the Board to see if there is a reaction or feedback namely to decide whether they want to invest the money in what can be a very expensive application. Under the new ordinance use of a lot as a stand-alone parking lot in this zone is not permitted so it would require a use variance, which is a pretty tough burden of proof. No one has looked at it in detail, but there will need to be a bulk variance because the proposal is to use the entire lot as a parking lot and under the ordinance

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there is probably a prohibition against parking. Whether the applicant can overcome the use variance by merging the lot with an adjoining lot under the ownership so that it would no longer be a principal use and then it would be ancillary use, I don't know, but it is something that somebody can consider. It would obviously require demolition of the structure.

Mr. Campbell stated: Mr. Soloway is correct; I haven't seen the new ordinance yet. I am thinking it would be a use variance. I am not sure about the bulk variances because I have not seen a plot map. I would throw out that my client would be amenable to utilize less than the entire lot if part of what the Board or Historic Commission thought would make it more historically conforming to have enhanced buffering or landscaping at the street side or a park bench, etc. I know they would like to get 10 spots. They have told me they are very flexible about this. The parking they have is grandfathered but it is just not enough. They see that utilizing this lot would help. It would be for zoning purposes a stand-alone lot but it would be an accessory to that. They are looking to get the number spots closer to what the ordinance requirements would be.

Mr. Marion asked: How long ago did your client purchase the house and did he know he was in the Historic District?

Mr. Campbell stated: Within the past two years and I think he knew he was in the Historic District.

Mr. Marion asked: Do you know his initial purpose for purchasing it?

Mr. Campbell stated: I do not know.

Mr. Marion stated: To be honest with you, I cannot think of any house that has been purchased in the Historic District that has been torn down to put a parking lot in.

Mr. Flaherty stated: I think it would be a tough row to hoe.

Mr. Ricciardo stated: There is a lot to be considered here. First, does this piece of property adjoin another piece of property that the applicant owns?

Mr. Campbell stated: I believe it does.

Mr. Ricciardo stated: That would alleviate one of the variances required. The second thing is, is the building habitable in its present condition or it is not. Whether it was gutted by the present owner or before is something that needs to be answered. Thirdly, what kind of investment would have to be put into this building to rehabilitate it so it is structurally sound, because presently it is not and would there be any kind of return on that investment? Would the investment be economical? The preliminary estimate that I saw was in the neighborhood of \$170,000 to rehabilitate this very small, very old, unsound structure. The next factor is, should it be demolished or should it be rehabilitated and where is he going to get the financial aid. Is it a building in the Historic District that is a contributing building or is it to the point that it is in such a condition that it does not contribute to the Historic District any more. Who over turns the Historic Committee's denial if it is going to be considered overturned?

Mr. Soloway stated: That is the appeal that is sitting out there. It is a complicated matter legally. Another factor to add is if they don't secure the use variance by a merger, then there is an additional question, if you are going to tear it down, what are you going to replace it with? The parking lot is a non-conforming use, a new structure is a conforming use. It is zoned as T6.

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Mr. Marion stated: When I was on the Historic Commission, a car dealership in town came to the Historic Board, next to their dealership is an old house, they wanted to do the exact same thing as you want to do. They wanted to tear it down to expand their parking. The only difference between the buildings is that building, at one time, was the Newton Academy and the Board denied it. Now here we are 15 years plus later, similar situation, we want to tear down a building and expand parking. 15 years prior we would not allow it for a dealership who wanted to expand in Town. So, I would have a conflict. Personally, I was in favor of it. If you look now that building has been boarded up, it is worth nothing, the building is falling down. How do we say yes now when we didn't say yes 15 plus years ago? What are the ramifications if we say yes to that dealership?

Mr. Steinberg stated: I think another consideration is the restoration work that goes into Church Street's property. I have seen that house. By the time that restoration work is done, it will not have any of its original structures. It will be a completely different house with none of its original material and no historic values what so ever.

Mr. Marion stated: Someone needs to be held accountable for these old homes. The answer is not to every time put a parking lot in, tear it down, or put in a new home.

Mr. Ricciardo stated: I firmly agree. I think every case needs to be judged individually. The case that you put up about the dealership and the building next to it is a prime example of forcing somebody to keep a building in place instead of letting it get some real use that is really needed.

Mr. Soloway stated: Every case rises and falls on its own merits. This Board would not be bound by what a Board did 15 or 20 years nor would anything this Board does on an application necessarily create precedent; technically it doesn't. You shouldn't feel obligated as a Board to turn something down because 20 years ago the Board did on a similar case.

Mr. Marion stated: I am not talking about what the Planning Board did, I am talking about the Historic Commission and it stopped it dead in its tracks.

Mr. Soloway stated: There are two issues here. There is the issue of the appeal that has been carried which is whether you demolish the building but there is separate issue once you get past that. Then what are you going to do.

Mr. Ricciardo stated: I think they are both related. You can't make a decision on tearing it down unless you come to an agreement as to what will be done with it. Just to tear it down, fill it and leave it like that if they cannot get a parking lot is ridiculous. But to let it sit there and let it further deteriorate is also ridiculous.

Mr. Soloway stated: I understand what you are saying but there is a separate set of issues relating to the demolition appeal. From a lawyer's prospective, if this proceeds as a use variance and there is opposition, it is a tough burden that the applicant would have to satisfy.

Mr. Campbell stated: I don't disagree that it is two separate issues and I also strongly agree that it is all one issue. Your ordinance talks about demolition of landmarks and when an applicant wishes to demolish a landmark within the historic district, the commission should negotiate with the applicant to see if an alternative to demolition can be found. I think you could distinguish in this particular case between the car dealership and this building in that the building next to the car dealership is a historically significant structure whereas this building is not, there has been a

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20 year passage of time and that application would benefit only the car dealership whereas what we are looking to do here would from the onset not only benefit my client but also the church, the funeral home and, hence, the circulation flow in the off street parking and the entire neighborhood. I agree with Mr. Soloway in that you are not bound. I think that you raise a very good point. I think there is plenty of basis to enhance the neighborhood and provide parking and to do in a way that is not intrusive to the historic character. The question is whether or not you are willing to entertain that because my client is not going to put the money in it without hearing some positive feedback.

Mr. Ricciardo stated: There are standards set on what you can do on a historic building. We recently gave them some alternate materials that they could use all of which is still expensive. When a building reaches a condition as this one or the one next to the car dealership is in, it becomes very questionable whether the economics work or not, and whether the owner is going to get a return on his investment. If he puts \$170,000 into it and can only sell it for \$220,000, there is no return on his investment.

Mr. Soloway stated: That is a very compelling argument on the appeal that has been carried. They have to demonstrate that this lot is particularly suitable for use as a parking lot. That is the positive criteria and that is a tough burden.

Mr. Marion stated: The argument about the economical ability to rehabilitate a building, if we start making our decisions based on something like what is to prevent ten more people coming in and saying my building is in disrepair and I need to tear it down in order to build a new home or to put in a parking lot, I don't feel comfortable basing a decision to tear down a structure because how much it will cost to rehabilitate.

Mr. Hardmeyer stated: Especially if we are only hearing from the applicant, if we are going to hear about economics then we need to hear from another independent person. We need someone on our side that is versed in this.

Mr. Steinberg asked: What are the primary permitted uses?

Mr. Soloway stated: The purpose of the zoning is a higher density mixed and multiple use down town area. The area provides the majority of retail and commercial use and should be identified as the central business district of the Town. It has residential and office uses over the commercial uses to support day and evening uses in the Town. The primary permitted uses would be any retail you can think of. General or professional offices are permitted.

Mr. Campbell stated: How are the parking lots defined that would kick this into a use variance because sitting here it sounds odd to me that in a primarily commercial business area that a parking lot would be so out of whack.

Ms. Millikin read from the Ordinance page 320:9, it states surface parking as a principal use is not permitted in the T6 zone.

Mr. Flaherty stated: We don't want to create an unforeseen consequence where we are actually providing an incentive to people to allow their properties to deteriorate. I believe the Town Council passed an ordinance last year to give them powers to compel property owners to rehabilitate or to do necessary maintenance on their building and not to allow people to let these things become dilapidated. These things work against each other.

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Mr. Ricciardo stated: We also provided a tax abatement plan for buildings in the Historic District. The applicant can come in and apply for a 5-year tax abatement program provided they spent certain percentage on the exterior to rehabilitate the exterior of the building. We have not had an applicant take advantage of that yet.

Mr. Steinberg stated: SAK Associates may move onto a different part of the world if we do not allow this but then again they are not signing a 50 year lease to stay in Newton so there is no guarantee either way. But in this case, this building is not only dilapidated, it is gutted. It has no insides. There is nothing there.

Mr. Flaherty stated: I do not feel there is enough information to make an informed decision.

Ms. Logan stated: There is some significant disagreement about the condition of the building and how sound the structure is.

Mr. Hardmeyer asked: If this was in fact a two-family, I don't know if it was or not, could they rehab it and would it be grandfathered in if they choose to do that?

Mr. Soloway stated: If that is its most recent use, it would be pre-existing, non-conforming use. It would not require variance approval. If it is a residential structure it probably would not require site plan approval.

Mr. Campbell stated: The conversation you are having is on whether my client can demolish the building and whether or not he can do what he wants.

Mr. Soloway stated: My recommendation would be if your client does elect to do that that you couple the appeal on the demolition with the use variance application. Your client also has the option of bifurcating the site plan approval from the use variance. It might make sense because on a parking lot it probably is not a complicated site plan where the Board might be able to make a decision on a use variance with less than all the detail on a site plan.

Mr. Campbell stated: I am happy to hear your thoughts on this.

Mr. Marion stated: I do not like going against what our ordinance says and trying to fit something in just for the time. Your client five years from now can move out. Now we have an empty lot that we will sell to a developer. I have to go see it before I say I am in favor of it.

Ms. Logan stated: I have to say there is a need for parking in that area.

Mr. Torre stated: I have looked at this building, in my opinion this is a piece of junk. It needs to be knocked down. Thirty years from now, what are we looking at? Do we see a nice row of historical architecture or something that has redeeming value? If this ever had historical value it

is best kept in a photo. In respects to turning it into a parking lot, what we are looking at is filling a direct need. The direct need for this business is an expanded driveway. We are not talking about a big parking lot. I don't understand what the big deal is in letting a business owner expand his property into a use that makes sense.

Mr. Marion stated: But it is not connected. I appreciate your comments; I am just trying to look out for the people on the street, what our ordinance should be and going off prior history.

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Mr. Torre stated: You also look at what is on the street. There are some buildings with significant historic value but we are not talking about same thing. If it has some historical value I wouldn't be saying this but you can't do anything with this.

Mr. Steinberg stated: The amount of work that needs to go into this building will make it not historic anymore.

Mr. Torre stated: The thing with a parking lot is it is not a permanent use. You can develop it into something else.

Mr. Marion stated: Does a parking lot really fit there when you have a 10 foot row, 8 - 10 foot spots, if you are using the entire width for the lot that means no shrubs, fences down, etc.

Mr. Ricciardo stated: The applicant has to prove the need to knock it down, and he can provide a parking lot that meets all of the requirements and provide buffering.

Mr. Marion stated: I am in favor of tearing it down. No one in this town is going to try and fix it. The questions is, is this lot suitable for a parking lot?

Mr. Campbell stated: They are getting by on their current situation. My client said he would love to have an additional 10 spaces.

Mr. Campbell stated: During this informal presentation, I am hearing there is not a line in the sand that this is a historic building. I am not hearing a whole lot of opposition to a parking lot. I have heard some comments that a parking lot might not be a bad idea. I understand that you will not make the decision until you know more about the parking lot such as safety issues, turning around issues, the ability for buffering, whether it is limited to employees only, hours of operation and these are all things my client will be prepared to demonstrate or to be able to answer your questions if they decide to go forward.

Mr. Hardmeyer stated: I will have to hear a lot of good reasons to overturn our Historic Commission. There are some good citizens that work on this and if they said no, someone has to convince me why we should overturn.

Mr. Flaherty stated: I would have to agree. I haven't heard anything that is convincing me to overturn the Historic Commission. They have had two hearings, they have heard evidence on it and they made what they felt was an informed decision. I don't have enough information that I feel comfortable overturning them. I take that very seriously.

Mr. Campbell asked: Procedurally how does an appeal of the Historic's Commission recommendation go? Is it the no votes, is it on the minutes?

Mr. Soloway stated: I think it would be the no vote. The no vote would be testimony and witnesses as opposed to reading the file and making a decision.

Mr. Marion stated to Mr. Campbell: You have enough information to take back to your client and see what they want to do. I think the Board is inclined to tear it down but what is going there is the question.

Mr. Campbell stated: Thank you very much. I appreciate the insight and the caliber of the discussion. Thank you for your time.

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**APPEAL**

**#HPC-03-2012- SAK Associates LLC  
Block 7.05, Lot 11  
24-24 ½**

HPC 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 of traffic to patronized premises, and provide overflow parking to church functions.

**Carried to December 19, 2012 7 PM**

**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 of traffic to patronized premises, and provide overflow parking to church functions.

**Carried to December 19, 2012 7 PM**

**#HPC 04-2012-First Baptist Church of Newton  
Block 7.08 Lot 13  
110 Main Street**

Recommendation to approve the application to construct a canopy for the front entrance of the Church.

**Mr. Torre made a motion to have this tabled until December 19, 2012. Mr. Ricciardo seconded the motion. Someone from the Baptist Church needs to be present on 12/19/2012.**

**AYE:** Mr. Flaherty, Mr. Hardmeyer, Mr. Steinberg, Ms. Logan, Mr. Torre, Mr. Ricciardo and Vice Chairman Marion

**RESOLUTIONS**

**13-19 Woodside Avenue & Thorlabs Urban Renewal, LLC (#PFSPV-80-2012)  
Block 18.03, Lots, 3, 5 & 11  
Location: 13-15 & 19 Woodside Avenue/56 Sparta Avenue**

Resolution to approve preliminary & final site plan, variance relief to construct a parking lot on Block 18.03, Lots 3,5 and 11 and to construct two ground signs on Block 18.03, Lot 11.

**Mr. Ricciardo made a motion to accept the Resolution. Mr. Torre seconded the motion.**

**AYE:** Mr. Torre, Mr. Ricciardo, Vice Chairman Marion

**Robert Occhifinito (#PSPV-05-2012)  
Block 20.02 Lot 1  
42 Hicks Avenue**

Resolution to approve preliminary site plan and variances for the construction of two warehouse structures with loading docks and on-site parking lot.

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Mr. Soloway addressed the changes to the Resolution. I think the biggest concerns would be the adequacy of the water supply and the adequacy of the fire fighting vehicle access.

**Mr. Ricciardo made a motion to approve the Resolution with changes based off the revised Resolution that Mr. Soloway read. Mr. Torre seconded the motion.**

**AYE:** Mr. Flaherty, Mr. Torre, Mr. Ricciardo

**OLD BUSINESS**

None

**NEW BUSINESS**

None

**CORRESPONDENCE**

David Soloway letter dated October 3, 2012. Mr. Soloway stated: This was the letter where the one law suit was dismissed.

Approved HPC July 16, 2012 Minutes

Approved HPC August 20, 2012 Minutes

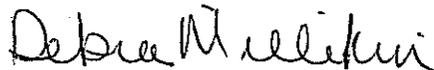
**PUBLIC PORTION**

NONE

**ADJOURNMENT**

**Mr. Ricciardo made a motion to adjourn the meeting. Mr. Flaherty seconded the motion. The meeting was adjourned at 9:00 PM with a unanimous "aye" vote. The next regularly scheduled meeting will be held on December 19, 2012, at 7:00 PM in the Council Chambers of the Municipal Building.**

Respectfully submitted,



Debra Millikin  
Acting Planning Board  
Secretary