

**Newton Planning Board**

**March 20, 2013**

**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. Citterbart to call the roll. Katherine Citterbart, Board Secretary, stated there was a quorum.

**FLAG SALUTE**

**MEMBERS PRESENT:** Mrs. Mattingly, Mr. Flaherty, Mr. Marion, Mr. Tharp, Mr. Russo, Ms. Logan, Mr. Hardmeyer, Mr. Steinberg

**ABSENT:** Mr. Torre

**EXCUSED:** Mrs. Digilio and Mr. Ricciardo, Chairman Le Frois

**PROFESSIONALS PRESENT:** David Soloway, Esq., Board Attorney, of Vogel, Chait, Collins & Schneider, and Jessica Caldwell, PP. of J. Caldwell & Associates and Joe Kosinski, of Ferriero Engineering, Inc.

**BOARD SECRETARY:** Katherine Citterbart

**CONSIDERATION OF MINUTES**

February 20, 2013

**Mr. Russo made a motion to approve the minutes from the February 20, 2013 meeting with the correction. Mrs. Mattingly seconded the motion.**

**AYE:** Mrs. Mattingly, Mr. Marion, Mr. Tharp, Mr. Russo, Ms. Logan, Mr. Hardmeyer, Mr. Steinberg

**HISTORIC RESOLUTIONS**

None

**RESOLUTIONS**

**Newton Medical Center (#SP1-2013)  
Block 2.02, Lot 4-175 High Street**

Resolution granting preliminary & final site plan approval for construction of an oxygen tank and pad.

**Mr. Russo made a motion to accept the resolution. Mrs. Mattingly seconded the motion.**

**AYE:** Mrs. Mattingly, Mr. Marion, Mr. Tharp, Mr. Russo, Ms. Logan, Mr. Hardmeyer, Mr. Steinberg

**EXTENSION REQUEST**

**E.J.B. Real Estate Associates, LT. (#PB-09-2009)  
Block 21.01, Lot 1 1 Brooks Plaza**

Amended Preliminary Site Plan Extension Request

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Mr. Peter Donnelly, Esq. with Graham and Curtain, Morristown, NJ represented E.J. Brooks and stated: This is an application to extend preliminary site plan approval that was granted in April, 2010 relating to 1 Brooks Plaza, Newton, NJ in the SD4 Industrial Manufacturing district. In 2010, you granted preliminary site plan approval for two additions to the existing building and a new building at 50,000 sq. feet; the lot is approximately 70 acres. You may be wondering why I am here since we have Legislative. We have the Permanent Extension Act and the Legislative of New Jersey has acknowledged the down turn in the economy and the difficulty in building these projects which has prompted a lot of discussion among the professionals and myself because there is a carve-out in the Permanent Extension Act which says if you are in an environmentally sensitive area you are not entitled to the automatic extension which would extend this approval through December 2014. After much discussion and looking at various maps with the help of Ms. Caldwell, we identified the map but it left some uncertainty on whether this property was in an environmentally sensitive area or not.

Mr. Donnelly pointed to the map to show the Board where the environmentally sensitive area is.

Mr. Soloway stated: We are not going to mark this as an exhibit but it is relative to the application.

Mr. Donnelly stated: I am here tonight to protect my client against that uncertainty. I am not admitting that the Permanent Extension Act does not apply to me but I am being cautious and making sure we do have an extension. I would ask the Board to consider our extension given the economic down turn. The only environmentally related permit that I have is a wetland's permit and that continues to May, 2016. The Board has a couple of choices but I would request they extend my approvals to match up to May 31, 2016. If the Board feels that is too long, I would ask you to go to December 31, 2014 to match up with the permanent extension. The Board has the power to extend it up to five years.

Vice Chairman Marion opened up the meeting to the public. With no public stepping forward, Mr. Marion closed the public portion.

**Mr. Flaherty made a motion to extend the approvals to May 31, 2016. Mr. Russo seconded the motion.**

**AYE:** Mrs. Mattingly, Mr. Flaherty, Mr. Sharp, Mr. Russo, Ms. Logan, Mr. Hardmeyer, Mr. Steinberg, Vice Chairman Marion

**OLD BUSINESS**

None

**NEW BUSINESS**

**Martorana Enterprises, LLC (#SPV-07-2012)  
Block 22.05, Lot 13  
104 Sparta Avenue**

Anthony Fiorella Esq, representing the applicant.

Reopening and reconsideration of Use Variance Application.

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Mr. Hardmeyer recused himself from the application.

Mr. Soloway stated: Those of you that are here, I assume you are wondering why we are here tonight and what the purpose of this proceeding is. I assume you recall the applications for Martorana Enterprises, LLC for separate use variance and site plan with subdivision approval to construct 54 new townhomes along with 6 low and moderate income apartments in the existing office building on 22.05, Lot 13. Those applications were approved by the Board last year. Specifically at the hearings on April 18, 2012 and May 16, 2012, the Board voted to grant use variance approval and density variance approval to allow 7.66 units per acre in lieu of the permitted 4.84 units. That approval was memorialized in a resolution that was adopted on June 20, 2012. Subsequently at the hearings on August 15, September 19 and October 3, 2012 the Board voted to grant preliminary major site plan and preliminary major subdivision approval for the same project along with a number of bulk variance and design waivers and all of that was detailed in a resolution that was adopted by the Board on December 19, 2012.

In late January, I received a telephone call from a board member from the Sussex Bank. I was informed in that call that one of the members of this Board specifically, Mr. Torre, was an employee of the bank and he was involved with the bank in obtaining the loan approval for Martorana Enterprises and the property that is the subject of these applications as part of a loan transaction. I spoke with Mr. Torre about it as well. As I understand the time line, the loan application was dated and filed right around the time that the June 20, 2012 resolution memorializing the use variance was adopted. Apparently the bank issued a loan commitment to the applicant in late September. The loan closed in late December after the Board adopted its resolution memorializing the grant of the preliminary site plan and subdivision approval. Mr. Torre was involved in facilitating the loan transaction. It is clear to me that based upon these facts and dates that he had a potential conflict of interest at a minimum and that should have required his recusal on the hearing of the site plan and subdivision approval. The bank had already issued a loan commitment while the hearing on the application was still in process. It is less clear as to whether there was a conflict on the initial use variance application. The loan application may not have been filed until after the resolution was adopted and clearly was not filed until after the Board had voted one month earlier than that to approve the application.

In all my years of practicing this kind of work, I have never had a situation like this. There are a number of published cases in the courts where court approvals of applications have been challenged based on an allegation that a Board member had a conflict that should of precluded his/her participation in the hearing process on the application. In any case, where a court finds that there was in fact a conflict, the court vacates the approval, sends the matter back to the Board for rehearing and reconsideration to eliminate any perception of participation by the Board member who had the conflict and may have tainted the approval that the Board had previously granted. I notified the full Board at its regular meeting on February 20, 2013. After discussing it, the Board decided because of the conflict it was clear that the preliminary site plan and subdivision approval with all of the associated variance and design waivers should be vacated and there should be a vote for reconsideration for a new hearing at a public meeting. Although it is not clear if there was a conflict in regards to the use variance, the Board was extremely concerned that the integrity of the entire application process should be protected and that this application should be dealt with in a manner free of a potential conflict. To eliminate any doubt, the Board also decided it would be appropriate to vacate the initial use and density variance approval and to require reconsideration and a new hearing for that as well. The Board adopted a written resolution on February 20, 2013 making these findings and after the meeting that resolution was provided to the applicant's attorney. Having made that determination, the next question for the Board was what kind of rehearing and

reconsideration would be appropriate? The February 20, 2013 resolution spells that out. The Board decided on the following process: 1. the applicant was not present at the February 20, 2013 meeting; the resolution does not formally vacate the prior approvals. It is the Board's intention to do that tonight subject to the applicant's right to be heard on that issue. 2. The applicant has not been required to re-file the application. They already filed them last year, paid the application fees and the application is worthy and complete. The package has been distributed to each Board member for tonight's meeting which contained the plans filed by the applicant along with copies of reports that the Board's professionals previously issued when it went before the Board last year. If a Board member wants additional information, he/she will put their request to the applicant this evening. 3. Each of the two applications will be dealt with separately as in the same manner they were last year. There will be a hearing on the application for a use variance and density variance first and if the Board votes to approve it again, we will proceed to rehear and reconsider the second, the application for site plan, subdivision, and variance and waiver approval. The hearings to reconsider the application require the same public notice as the original applications. That is why those of you who are here tonight did receive notice by certified mail and there was also notice published in the Town's official newspaper. As you may recall, Town completely redid its zoning and land use ordinances last year and the use variance based upon the timing of its filing was subject to the old ordinance while the site plan and subdivision which were bifurcated were subject to the new ordinance and will be accessed in the same manner on the reconsideration. All the current Board members, other than the member with the conflict, who voted on May 16, 2012 to grant the use and density variance was subject to the June 20, 2012 resolution are eligible to participate and vote on the reconsideration of the application. That includes Mr. Flaherty, Mr. Tharp, Mr. Russo, and Mrs. Mattingly. Five affirmative votes are required in order to grant a use variance and although the entire board can hear the rehearing no one else besides the four members I just mentioned can vote unless they listen to the tapes of the April 18, 2012 and May 16, 2012 hearings and file the certification. Ms. Logan has listened to the tapes and filed the certification so there is a fifth member eligible to vote this evening on the use variance.

Mr. Soloway continued: If the Board votes again to approve the use and density variance application, it will then precede to reconsider the site plan and subdivision application. To be eligible to vote on that application, the Board member must have been present at the August 15, 2012, September 19, 2012 and October 3, 2012 hearings on the application and voted on it. The Board members eligible to vote are: Mrs. Mattingly, Mr. Flaherty, Mr. Russo and Mr. Steinberg. Only four affirmative votes are required to approve that application. Ms. Logan and Mr. Tharp have signed the required certification that they have listened to the tapes; therefore, they are eligible to vote as well. The Board members not eligible other than those who cannot participate because they are governing body member on the use variance application or in the case of Mr. Hardmeyer who was disqualified because they are on the 200 ft. list, any other member even if they are not eligible to vote can participate in the hearing process and ask any questions, they just can't vote.

Mr. Soloway stated: The Board is not requiring the applicant attend multiple hearing dates, representing and redoing all of the evidence in testimony that already was done recently. The applicant can, if it wishes, rely on the evidence submitted at the original hearings as the record is made in support of the applications. Board members are entitled to ask any questions and request any information they may wish that may be relative to the applications. In terms of the public, the Board decided the public should be permitted to participate both in terms of asking questions and presenting evidence in the same manner as it was at the hearings last year. At the conclusion of any testimony by a witness, if there is any testimony, members of the public can ask any questions they may wish provided they are relevant and appropriate and of the

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conclusion of the testimony again being relevant and appropriate, members of the public have the right to give testimony, make comments and present evidence the same way they did at the original hearing.

The Board will start with the use and density variance and if the Board again votes to approve it, we will then proceed to the second application. If the Board does reapprove; it may but, it won't be required to reaffirm the resolution that was already adopted. Needless to say, when Board members do reconsider these applications they are required to do so free of any consideration of any statements or comments that the disqualified Board member made during the prior hearings. They are to be completely disregarded. I should also note that this whole situation is very upsetting to the Board members. They work very hard at their jobs and while you don't always agree with every decision they make, they do want the public to be confident in the decisions they make and the actions that they take are made fairly and done in good faith. None of the Board members had any idea there was a potential conflict with the one Board member and they do not want this perceived in any way in the undermining and the integrity of the process of the application and the integrity of anything else they do. There was no debate from any of the Board members as to whether the hearing process should be reopened on this application. They all felt it was the right thing to do. I would like to give the applicant, his attorney and their engineer an opportunity to comment on anything that I have said.

Mr. Fiorello, stated: Mr. Soloway did an excellent job of summarizing what has been done here. I represented public bodies for 48 years of my practice both mayors and councils, boards of adjustments, planning boards and other public bodies. There is always sensitivity to conflicts. There is nothing wrong with conflicts. Conflicts exist in life and many spheres in business and law. Of course conflicts should be avoided and the appearance of conflicts as they are more important as conflicts themselves. However to acquit my client's involvement per say, they have also spent eight years in this municipality, starting with the Board of Adjustment, with an application that was similar. We went before the redevelopment committee. We came back to the Board again for approval of two commercial buildings on the back portion of the site, received that approval and then, as you recall through the interest of many property owners in the area, came back again for townhouse approvals. The Martaranas brought the property in 2004. It is a matter of public record. When they bought the property they used the services of Mike Gullifer. He was their loan officer. At that time, he worked for Newton Trust. You can appreciate for a piece of property this size; my clients had to submit financials and a lot of personal data to receive that approval. Newton Trust, as you may recall, was acquired by Lakeland Bank. Mr. Gullifer followed Newton Trust to Lakeland Bank. In 2010, my clients went to Mr. Gullifer in an effort to refinance and an effort to adjust their mortgage rates. For the six years that intervened, my clients had to submit to Mr. Gullifer yearly financials, income tax statements, and insurance information and as early as 2005, Mr. Gullifer was a consultant with respect to what you see here today namely the proposals for an application to construct townhouses, two commercial buildings and then back to townhouses. He has been a part of the financial dealings.

They were not able to successfully refinance at Lakeland in 2010 because there was a pre-payment clause in the original mortgage that would have required my clients to pay a substantial amount of money to refinance. They would wait for the finance clause in the mortgage to stop. Somewhere in 2012, Mr. Gullifer transferred from Lakeland to Sussex Bank and there was constant communication between the two with respect to refinancing the loan, getting a better mortgage rate and also consideration for what you saw here the last several months, an application for approval for a subdivision and use variance. Before my clients went with Sussex Bank, they met with people from New Hope Bank and Lakeland Bank and they

electd to continue with Mr. Gullifer and place the mortgage through Sussex Bank. You have heard from council that an application was filed in September of 2012 that was after the Board heard testimony and made this decision on May 16, 2012 in respect to the variance and after the June 20, 2012 resolution so the actual application was through Mr. Gullifer at Sussex Bank and approved. The closing was December 31, 2012 after the resolution. Obviously what council has revealed to me was that Mr. Torre worked at Sussex Bank. I don't know what position he had but our dealings were with Mr. Gullifer. It is not to say that at the closing, Mr. Torre did not appear. He was there. Mr. Gullifer is Vice President of Loans and that is who we dealt with, who has all our papers and who we have been dealing with for several years. I would maintain because the application was submitted in September that anything that happened in May or June in that year certainly were not tainted. I appreciate and I am sensitive to the fact that perhaps there is a perception of conflict at that time. I can't recall if Mr. Torre voted in the use variance, I suspect he did. But again, that was before the application was submitted. So we take the position with the use variance although we are prepared to readdress the very same things we addressed at the time the matter was decided in May based upon hearings that were heard in April and May. For the site plan, it is clear at that point in time, my clients were doing business with Sussex Bank. Mr. Torre has a position of some supervisory capacity and therefore he had a conflict and should not have voted. That being said, we are here again today to address both the use variance, although we maintain our position that it was granted free of any taint, conflict or appearance of conflict and proceed to the site plan and subdivision. I want to make it clear for the record that any suggestion that there was contrivance or improper liaison between my clients and Mr. Torre simply does not exist. We have followed Mr. Gullifer through three banks. He has been our Loan Officer and he knows this project and he has all of our financials. With that being said and putting it onto the record perhaps puts into perspective my client's role in utilizing Sussex Bank as their bank for mortgage financing. We are prepared to proceed in any manner the Board would like.

Mr. Soloway stated: At a minimum, even if you agree with everything Mr. Fiorello says, you have to reconsider the site plan. When the Board adopted the resolution last month they found no conflict for the use variance but there could be a perception so the Board felt it was appropriate to reopen it as well. It is up to the Board on how to proceed but before the Board decides to do that, I would suggest in this situation that you open it up to the public for questions and comments of what and why we are here as to opposed to the substance of the applications.

Vice Chairman Marion opened up this portion of the meeting to the public. With no public coming forward, he closed this portion of the meeting.

Mr. Marion stated: We will start discussing the use variance application for Martaranga Enterprises, LLC.

Mr. Fiorello stated: We are going to rely on the record in that respect. Our architect/planner is Montreal so he could not be here. He would reconfirm what he has testified to namely that he was an appropriate application for a use variance. This was a particular circumstance that he reviewed with you for the purposes of zoning which were A through H matters and it is in the resolution as well. Ms. Caldwell, the Board Planner, also indicated in a report which she shared with the Board that this proposal was well suited for the site and it was not inconsistent with the Master Plan goals for Newton which was to provide sufficient space and appropriate locations for a variety of residential, recreational, commercial, and industrial uses and open space for the public and private according to the respective environmental requirements in order to meet the needs of all the citizens of Newton and provide a desirable environmental and visual

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appearance through creative development techniques and good civic design and arrangement, to encourage planning developments which incorporate the best features of design, to encourage the development of affordable housing within the Town of Newton and to balance market rates and affordable housing in the neighborhoods. The Sussex County Planning Board had endorsed this application and this use and it was much preferred as to what was here before. We had Greg Martarana, Mr. Donohue, and Mr. Rybech testify as the suitability of the site for this particular use, that it did not do injustice to the Master Plan and zoning ordinance nor did it cause any concern for their neighbors. Mrs. Fairclough also testified as to the need and the propriety of the use variance. So without having to repeat all of that which was spread on the record over two long meetings, we would submit on the basis of the testimony already adduced unless there are some other aspects that the Board would want us to consider.

Mr. Soloway stated: The application proposed includes 54 Townhomes some with one car garages, some with two. They are going to convert the office building to the six low and moderate income apartments with a club house on the ground floor. The existing building on the property with the Quick Check and Krave is proposed to remain and continue to be promoted as commercial use. There will be two access driveways with a looped access road subject to the site plan. They sought a density variance which was under the ordinance at that time. The permitted density would have been 4.84 units per acre and their proposal was 7.66 so the application as it was voted on last May was to grant them a density variance as well as the use variance subject to a number of conditions. The most prominent being it was subject to the subsequent approval by the Board on the site plan and subdivision application. The subdivision application is to grant two lots. One was for the commercial use with the strip mall and the second much larger lot for the townhome development. Variances are required even though it only creates new lots; it did not qualify as a minor subdivision under the Town's new ordinance. Any subdivision even if it is only to create one new lot that requires variances automatically is deemed to be a major subdivision. That is why this was approved contingent on subsequently obtaining major subdivision approval and major site plan approval.

Mr. Fiorello stated: I should also point out there were some residents present. We had submitted a petition signed by 29 of the residents approving the use for the townhouses and many of those residents appeared here and endorsed that use as opposed to what had already been approved by this Board in terms of commercial zoning.

Mr. Tharp stated: We have a do over, and in going back, I was never really happy with the density of the proposed project. I agree townhomes is a better project to do with that property then the commercial, but I was never comfortable with the 7.66 percent density and went along with it but I am having second thoughts about it. I think it is a very big project for that piece of property and I am not quite sure if I want to change my vote originally. I never voted on the site plan, because I missed those meetings. I am wondering if any other Board members have an issue with the density.

Mr. Flaherty stated: I am not in the 200 feet area but I do live in the area. I did not find that the density proposed was going to create a burden or have an ill effect on the neighborhood there. When you look at the economics, it really is not that substantial. I am just expressing my feelings. I would love to have fewer. There were other areas, before I was on the Board, that they had approved higher densities in the redevelopment plans so this one was less dense than some of those.

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Ms. Logan stated: I did not have a problem with the density as stated. It doesn't seem burdensome in terms of density.

Mr. Steinberg stated: I don't think it is an obscene amount either. I am not living right on top of it either but we are not talking about hundreds or thousands of units. The percentage increase does not take it to five hundred to eleven hundred units so I don't feel it is too excessive.

With no more questions or comments from the Board, Vice Chairman Marion opened up the meeting to public for any comments on the use variance.

**1<sup>st</sup> Public**

**SWORN:** Mr. Kent Hardmeyer, 70 Pine Street, Newton, New Jersey stated: When we went through the Redevelopment Plan we had some discussion on what would be the best use for this and we rezoned it as light industrial. There was a lot of discussion on what that meant and how that would work on the site and if we could get the light industrial to be compatible with residential. I agree with Mr. Tharp. I always felt the density was too high and I felt there was a lot of confusion as to what the density was. I think some of us who thought it was too high felt that when we go back and go through the site plan we can adjust it. When we got to the site plan and we were told no, we could not adjust it. As we found out, by allowing the density that we did allow, required 5 or 6 variances and several waivers. I would think if we took a closer look at that, we should be more true to our ordinance and we should require a density that supports our plan. There should be very few if any variances other than allowing them to go with that use as opposed to what is in the zoning ordinance. I don't see a good reason to go with 16 variances and waivers.

Secondly, I would like to point out the Newton Commons has 77 units, on 15 acres and that works out to around 4 or 5 units per acre. I think that is a very well done condo unit and I think if you drive through it, you would probably agree that number seems to fit in there pretty nicely and it seems like a good number for density. I would ask the Board to reconsider the density per units and do a better job with the site waivers. I was under the impression there were two lots. I will take everyone's word there was only one.

Mr. Fiorello stated: Looking at the resolution and as you remember there were two lots that were proposed. There were five variances given to the front lot and they related to side yard setbacks, lot coverage and landscaping in the front. With respect to the townhomes there were two variances. One was the use itself and the second one was for the office building required to be setback 30 ft. from roadway and it is 26.4 feet. Those were the two variances in connection to the use of the townhouse portion. The remainders were design waivers and design waivers came up in the subdivision in the site plan. But the 18 variances were not part of the application for use variance.

**2<sup>nd</sup> Public**

**SWORN:** Charles Briggs, 73 Pine Street, Newton, NJ stated: This has nothing to do with the integrity of this Board; it has to do with the integrity of this project. There have been numerous violations on this between cutting into Phase II of the trees, the sill fence that wasn't put up before the start of the projects and we are now into this use variance of adding 4 or 5 extra condos and letting them do whatever they want to do. I think you need to start listening to us. Cut it back a little bit. Mr. Hardmeyer had great words. I am on board with what he is saying.

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From the start of this project it has been 10 pounds of crap in a 5 pound bag and it still is that. Here we are again and all it is is that you are looking at the dollars. We heard testimony that there is going to be a thousand Thorlabs' employees coming in to buy them and we heard the hearing right before it and we did not hear those kinds of numbers. It is very upsetting. I have a retention pond that was made and now I have standing water. No one is supervising the construction that is going on. It has all been graded out, it looks great, it is nice and flat but nothing has been taken away. If that is the same grading that is going to be there permanently then there is a situation with that too. That is all I have to say, because a lot of the Board members do not know what is going on back there. You are just up here listening to everybody. Nobody has ever walked that site. One person on the Board did. Thank you.

Mr. Fiorello stated: My client tried to do some site work on the property. It was wrong. Your Code Official stopped it. We had a meeting with the Technical Review Committee, we had a meeting with the Town's engineer and we cannot do anything on that property until authorized by the engineers. I would also like to extend my comments to the professionals. None of your professionals had any comments to say on the density of the project. The project was well laid out; the internal roadway was well laid out. We respected and increased the buffer between the townhouse and the contiguous property owners. Per Ms. Caldwell's report of May 7, 2012, it summarizes the good aspects of this townhouse proposal. The site plan is something different but in terms of the use for this it is a well-considered use by the Board. Someone may have a question with respect to density. The professionals did not necessarily endorse that. They did not have so much to say about that. It is a 9.45 acre of land. It is laid out well. We are providing six low and middle income housing units. This meets part of the low and moderate income house requirement in COAH. The testimony was complete with why a use variance should be granted for this property.

### 3<sup>rd</sup> Public

**SWORN:** Nanette Thomas, 7 Orchard Street, Newton, New Jersey, stated: I have been coming to these meetings about this property since I lived here since 1995. I just want to say that I also serve on the Board of Education. One of the things we talk about is that this Town is not a rich town. We are not Sparta. 50% rent and 50% own. We all know who care about their properties and that will be the people who own. We need money. This Town needs money. Anybody who lives here, walks down Spring Street, in the school system knows how many children is low income and what we are dealing with. I see this development as a positive thing. Right now I am sure if you got a realtor here they could tell you at any one point how many houses are on the market or abandoned in Newton. Nobody is going to want to buy from Thorlabs old houses. We can talk about what we want all night. Anybody who drives around this town will see a lot of people who even take care of what they have. I see garbage, I see bagged roots, and I see mattresses. I see all kinds of stuff out there. I think to myself people want new, they want clean, they want neat and they want property and pride in ownership. I take care of my property. Not all of my neighbors do. I have seen houses on the market for over two years selling for ridiculous amounts of money. My house will not be worth anything. I want this project to happen because it is going to improve my property value. No matter how great our schools are, and they are, and the fact that I am two blocks from the Kindergarten all day, they are going to look around.

I also want to say that I am not a developer but there is no way I would be. What we have put these people through and I don't know how much money they have left in terms of attorney, meetings, etc. It is ridiculous. I understand what you said and I am glad that you did explain the conflict of interest because quite frankly I was little bit upset about the whole thing after having gone to all these meetings. But having said that, this was approved and I know a lot of you

were not on the board and have been coming here a long time and if you had to listen to all the meetings and all the things that everybody had to say. The people who signed that petition was the consensus of the people. Not everybody agreed but it was the consensus of the people who live in that area of what we wanted and to complete it and as long as he is stopped from developing there is going to be mud and dirt and no trees, and I am sick of looking at it. I want something to happen too. I want us to move forward on this. In regards to density, I have to keep my dining room curtains down because we are so close to one another. This whole town is close density. You can't sneeze without your neighbor knowing about it. If our intention is to be like Sparta and Green, then people would live in Sparta and Green. We are not like that. This is supposed to be a close knit town where everybody works together. I think it is ludicrous and this is a personal opinion to say maybe we should change the whole thing again. If it was good enough before after all those meetings, and consensus and a petition then they should say yes to this site plan. It is good enough for me. I want to see something back there. I think they had a lot of good plans. They were more than accommodating. You know why they are more than accommodating because the last three town managers said that every street was going to have a sidewalk because we are a walking district. I am never going to see that sidewalk. My kids are going to college. Their kids are never going to see that sidewalk. That is never going to happen. So if you want to talk about the perfect development maybe we should start going around the Town and I will show you all the people that I think could at the very least clean up their front lawns, take out their garage, and stop me from looking at their tires. I am taking pictures all the time. If you want to start enforcing your ordinance then start looking around and I think this whole town could use a real spruce up in cleaning so whatever they are doing is going to be ten times better than what you are seeing around Spring Street. If I was coming here, I would be buying new because nobody is taking care of the old. Everything is looking very shabby. It doesn't speak very well of this town.

I am mostly here tonight, because I am very upset. I am upset there was this conflict because we wouldn't be here. He would be building and things would be happening and people would be moving in and I wouldn't be paying more in my property taxes, for what? As long as there are renters they don't care and the landlords don't care. I realize this, but I care. I am out there all the time cleaning up my property. My house is going to look nicer than anyone else's because they don't care. When you live on a street with 50% rent and 50% own that is what you are left with. I want the people, the people who are not sure about the density to think about what has been developed in the past, Abbeour and some other things and think about what here. I also want to bring to your attention, I don't know if it is true or not, but the developer was asked to put up a million dollars to connect water and sewer because we got burned twice before. I am not a developer but I don't that is fair. It is unprecedented and I hope he did not put the money up because I would be asking for it back. I have got to tell you, I am very upset about the way this whole thing has been done. I don't know if we have ever been this hard on any kind of development before. I hope none of you are considering building a business here because we are not being seen as friendly. Do you see all those stores on Rt. 206? All those towns have money. We just have the traffic. It is not good. We need this income. We need this money. We need new people coming in here. As far as what Thortads is doing, they are expanding and they are building. They have been very good to this town. I think if you gave Mr. Martarano a chance he would be very good for this town too. I think you should think about that.

Mr. Fiorello stated: We did produce a realtor and the realtor opined that the development as proposed would maintain and if not increase the value of contiguous property owners and boost up the property value ownership of the town. I remember in her testimony was the fact

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that the people with Thorlabs will be looking for homes and 50% of these homes in this Town were rental homes and they are going to be looking for something capable with their incomes and their trades and the idea was to keep those people in Newton where they could shop and send their kids to school. If you remember, townhouses are not a producer of children. It is not like there won't be kids there but it is not like single family homes. In the low and moderate income there are two bedrooms. There is one three bedroom. If you remember the size of the units are really small. People are not going to want to live where there are no amenities for children. They are right on Sparta Avenue.

Ms. Logan stated: I think it bears noting that construction can't begin until final approval is given and that hearing has not occurred yet and it not set to occur. It was one of the reasons why we wanted to expedite this rehearing to make sure if wrong or perceived wrong was righted in kind for not upholding any future hearings that need to happen on this approval should it be approved again. We are very sensitive that this has been a long process. We want to make sure it is done with respect for the process, it is done correctly and it is done with future hearings in mind and this is done with integrity so people can trust the system and it is honest and it works and we are making the best decisions that we can. We understand that this is not the ideal situation but it is the best we can do given the cards we have been dealt. It was not a decision of our making; we are making a decision to rectify it. It is not holding anything up. Nothing can go forward without a final site plan approval.

Mr. Fiorello stated: Your observations are well taken. My clients have moved forward and have met with DEP, met with the Utility Board; they were doing that as a good faith effort to advance their project. Let me address this, it really is unfortunate that we had a conflict. It is nothing my clients want. You know they have been here for eight years. We told you they have spent ¾ of a million dollars on professionals and plans. Mr. Donohue has an office full of plans. Redesign plans, refit, redo this, change a street, push it back, move it forward. We don't blame you for it. We are trying to accommodate your wishes. While this may be a do over, nothing has changed. There is no amount of wisdom that you generated on your last deliberations that have changed. The predicates are all the same. The bases are all the same. The arguments are all the same. Nothing has changed. Just because we have this glitch or unfortunate circumstance of appearance of conflict with respect to the site plan shouldn't cause you to rethink that wisdom that you brought to our last meeting. We do not want to go back and start all over. Eight years is a long time. We want to see this project completed. You saw the subdivision plans; you saw that this is going to be beautiful project. You heard about the values of the homes and what was intended. It is a shame that the conflict has come to be. The conflict does give you an opportunity to review what you did the last time when you voted. I endorse what you say and we would like to go forward.

With no more public coming forward, Vice Chairman Marion closed this portion.

Mr. Soloway stated: Before the Board votes, you can ask the applicant whether he wants the opportunity to bring in its planning witness to address the density variance. They should be given the opportunity under the circumstances if they want to. I would like to mention again, this is a use variance and you have to have five affirmative votes. There are five eligible board members here tonight. There is a sixth board member who is eligible but is not here this evening.

Mr. Fiorello stated: With respect to your suggestion that we bring our planner back, he is not going to say anything different than he said a few months ago. His testimony stands. There is no need to bring them back because they would just reiterate what was already said. We would

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decline that opportunity with respect to having a sixth member. I would like to talk to my clients regarding the sixth member.

After a brief break, Mr. Fiorello stated: My client would like to have all the people who are eligible to vote so we will come back again to take advantage of the six members on the Board.

Mr. Marion asked members of the Board who could vote what their thoughts were.

Mr. Tharp stated: I am not comfortable with the project they presented but I also don't want to go through another five months of this.

Mr. Flaherty stated: As I expressed before although it is not a perfect project, I am not offended by the density. I think the testimony I heard the last time is a positive step for the town and I would be for it.

Mrs. Mattingly stated: I voted yes before and I would vote yes this time.

Ms. Logan stated: I am not bothered by the density issue. What I am hearing from the public is not going to be resolved by a lower density. The use to me makes sense. It seems to make sense before based on everything I have reviewed. I don't think anything has changed. I think I would be in favor of it.

Mr. Russo stated: I agree with the comments made by the school board member from Orchard Street. It is a good project for the town. We have 51% rental in the community. We have almost 40% tax exempt properties in the community and we need quality rental and based on the interest I have heard from the public not just from who came here tonight but people who have approached me or have come to my office about this there is a significant interest from Thordabs because I have spoken to their HR people and we need better quality housing to attract new residents to attract better businesses and more businesses and it is a good project. I am sure there are issues but I think we have addressed them through the multitude of hearings we have had. They are good quality townhomes, priced to sell and as I respect Mr. Tharp's opinion and appreciate his service, I think if it weren't for the actions of one of our Board members we would not be having this conversation and I think the use variance is appropriate and I would ask Mr. Tharp and the rest of us to approve it this evening so we can proceed to the next application.

Mr. Marion stated: While I can't vote, I would like to say at this hour of the game I don't think changing or discussing density is going to make a difference.

Mr. Fiorello stated: Being assuaged by the wisdom of your comments, I would ask that we proceed and have a vote.

Mr. Flaherty made a motion that we approve the use variance to allow the 54 townhomes units and the six low and moderate income apartment units to allow the density of 7.66 units per acre and the conditions of prior resolution.

Mr. Fiorello stated: I consulted with my client again and they would like to wait until the sixth member is present.

Mr. Flaherty withdrew his motion.

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Mr. Steinberg asked if he could listen to the cd's from the prior meetings and then he could be eligible to vote.

Mr. Marion stated: We will carry this to the April 17, 2013 meeting at 7:00 PM with no further notice.

**PUBLIC PORTION**

None

**ADJOURNMENT**

**Mr. Flaherty made a motion to adjourn the meeting. Mr. Steinberg seconded the motion. The meeting was adjourned at 9:03 PM with a unanimous "aye" vote.** The next regularly scheduled meeting will be held on April 17, 2013, at 7:00 PM in the Council Chambers of the Municipal Building.

Respectfully submitted,



Katherine Citterbart  
Planning Board Secretary