

**Newton Planning Board
January 15, 2014
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.

OATH OF OFFICE

SWORN: Kent Hardmeyer as Alternate Member #2
Greg Le Frois – Regular member

FLAG SALUTE

MEMBERS PRESENT: Mrs. Mattingly, Mr. Flaherty, Mr. Marion, Mr. Elvidge, Mr. Ricciardo, Mr. Russo, Ms. Logan, Mr. Hardmeyer, Ms. Gill, Chairman Le Frois arrived (8:05)

EXCUSED: Mr. Tharp, Mr. Steinberg

ABSENT: Mr. Le Fois

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

BOARD SECRETARY: Katherine Citterbart

REORGANIZATION FOR 2014

Mr. Ricciardo made a motion to nominate Mr. Le Frois as Chairman. Mr. Elvidge seconded the motion. The floor was open for discussion and then closed. Mr. Le Frois was approved by a unanimous "aye" vote.

AYE: Mrs. Mattingly, Mr. Flaherty, Mr. Marion, Mr. Elvidge, Mr. Ricciardo, Mr. Russo, Ms. Logan, Mr. Hardmeyer, Vice-Chairman Marion

Mr. Riccicarro made a motion to nominate Mr. Marion as Vice-Chairman. Mr. Russo seconded the motion. The floor was open for discussion and then closed. Mr. Marion was approved by a unanimous "aye" vote.

AYE: Mrs. Mattingly, Mr. Flaherty, Mr. Elvidge, Mr. Ricciardo, Mrs. Russo, Ms. Logan, Mr. Hardmeyer, Ms. Gill

Mr. Russo made a motion to nominate Ms. Citterbart as Board Secretary. Mr. Elvidge seconded the motion. The floor was open for discussion and then closed. Ms. Citterbart was approved by a unanimous "aye" vote.

AYE: Mrs. Mattingly, Mrs. Flaherty, Mr. Elvidge, Mr. Ricciardo, Mr. Russo, Ms. Logan, Mr. Hardmeyer, Ms. Gill, Vice-Chairman Marion

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PROFESSIONAL APPOINTMENTS FOR 2014

Mr. Ricciardo made a motion to nominate Mr. David Soloway, Esq. of Vogel, Chait, Collins, & Schneider as Board Attorney. Mr. Flaherty seconded the motion. The floor was open for discussion and then closed. Mr. Soloway was approved by a unanimous "aye" vote.

AYE: Mrs. Mattingly, Mr. Flaherty, Mr. Elvidge, Mr. Ricciardo, Mr. Russo, Ms. Logan, Mr. Hardmeyer, Ms. Gill, Vice-Chairman Marion.

Mr. Flaherty made a motion to nominate Mr. David B. Simmons of Harold E. Pellow & Associates, Inc. as Board Engineer. Ms. Gill seconded the motion. The floor was open for discussion and then closed. Mr. Simmons was approved by a unanimous "aye" vote.

AYE: Mrs. Mattingly, Mr. Flaherty, Mr. Elvidge, Mr. Ricciardo, Mr. Russo, Ms. Logan, Mr. Hardmeyer, Ms. Gill, Vice-Chairman Marion

Mr. Ricciardo made a motion to nominate Ms. Jessica Caldwell of J. Caldwell & Associates as Town Planner. Ms. Logan seconded the motion. The floor was open for discussion and then closed. Ms. Caldwell was approved by a unanimous "aye" vote.

AYE: Mrs. Mattingly, Mr. Flaherty, Mr. Elvidge, Mr. Ricciardo, Mr. Russo, Mrs. Logan, Mr. Hardmeyer, Ms. Gill, Vice-Chairman Marion

Vice-Chairman Marion made a motion to designate the New Jersey Herald and the New Jersey Sunday Herald as the Board Newspaper of Record. Mr. Russo seconded the motion. The floor was open for discussion and then closed. The New Jersey Herald and the New Jersey Sunday Herald were approved by a unanimous "aye" vote.

AYE: Mrs. Mattingly, Mr. Flaherty, Mr. Elvidge, Mr. Ricciardo, Mr. Russo, Ms. Logan, Mr. Hardmeyer, Ms. Gill, Vice-Chairman Marion

2014 TECHNICAL REVIEW COMMITTEE APPOINTMENTS

Mr. Le Frois arrived at 8:05 PM and appointed Mrs. Mattingly, Mr. Russo and himself to the TRC.

CONSIDERATION OF MINUTES

None

HISTORIC RESOLUTIONS

None

RESOLUTIONS

2013 Zoning Summary

Mr. Soloway stated: The Zoning Board of Adjustment is required to make an annual report to the governing body regarding their applications within its jurisdiction. They can also make any recommendations about changes in the ordinance. If anyone has any changes to the ordinance that they want to suggest the Council look at now would be the time to do so.

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Mr. Russo made a motion to approve the resolution as presented. Mr. Ricciardo seconded the motion.

AYE: Mrs. Mattingly, Mr. Flaherty, Mr. Elvidge, Mr. Ricciardo, Mr. Russo, Ms. Logan, Mr. Hardmeyer, Ms. Gill, Vice-Chairman Marion

Mr. Hardmeyer asked about the Newton Town Center.

Discussion ensued on Sunsetting Development.

Planning Board recommends that Town Council put the Sunset Ordinance in place.

Mr. Elvidge made a motion that we refer to the Council to investigate. Ms. Logan seconded the motion.

AYE: Mrs. Mattingly, Mr. Flaherty, Mr. Elvidge, Mr. Ricciardo, Mr. Russo, Ms. Logan, Mr. Hardmeyer, Ms. Gill, Vice-Chairman Marion

**Cellco Partnership d.b.a. Verizon Wireless # (HPC-2-2013)
Block 7.03 Lot 8
32 Liberty Street**

Resolution approving amended site plan to authorize placement of a 50 KW diesel generator placed on a 8' x 5' (40 sq. ft.) concrete pad in connection with an existing cellular telecommunications facility.

Mr. Soloway recused himself.

Mr. Simmons stated he has not received an amended site plan. The Board agreed to carry this to February 19, 2013 without notice.

**Thorlabs Urban Renewal, LLC (#AFMSP-5-2013)
Block 18.03 Lot 11
56 Sparta Avenue**

Resolution approving amended preliminary and final site plan approval to permit an increase in size of a previously authorized exterior nitrogen tank with related improvements.

Mr. Ricciardo made a motion to approve the resolution. Vice-Chairman Marion seconded the motion.

AYE: Mrs. Mattingly, Mr. Elvidge, Mr. Ricciardo, Mr. Russo, Ms. Gill, Vice-Chairman Marion

Recused: Mr. Flaherty

OLD BUSINESS

None

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NEW BUSINESS

**Catherine Huff & Katherine Member (#PBSD-02-2103)
Block 14.04 Lot 30 T3 Zone
65 & 67 Madison Street**

Applicants are requesting to subdivide the property into two lots.

Richard P. Saunders, Esq. representing the applicant stated the proposed subdivision. It is a single lot that contains two houses. Over time, the lot line between these two houses has disappeared. Both properties are owned by Katherine Member. We are asking to reinstitute the lot line between the two houses. We are not proposing any type of construction whatsoever. The reason why we are classifying it as a major subdivision is because it requires variances. We are asking for five variances. There is an already existing non-conformity that deals with side-yard and rear-yard setbacks that involves the existing boundary lines that make up the perimeter of the entire lot. Those will not be impacted at all by this application. The new variances are the ones being created by putting a lot line in where we are proposing. 65 Madison Street has a lot area of 8,072.62 sq. feet and the ordinance requires 9,000 sq. feet. It has a lot width of 49.5 feet and the ordinance requires a minimum of 72 sq. feet. 67 Madison Street requires three variances. The lot area we are proposing is 8,834.43, the ordinance requires 9,000 sq. feet. The width we are proposing 66.7 feet where the ordinance requires 72 feet. A minimum side yard of 11.17 feet and the ordinance require 12 feet.

SWORN: Katherine Member, 305 Squaw Trail, Andover, NJ, Gary Worley, 21 Ashford Street, Newton, Wayne McCabe, Licensed Professional Planner license number 2009, 125 High Street, Newton.

Mr. Saunders asked Ms. Member to describe the two properties.

Ms. Member stated: There are two houses on this property. 65 Madison Street is a two family with a shared driveway. 67 Madison Street is a single family home. There has always been a shared driveway. I am looking to separate them out into two separate lots and put the lot line in that was there years ago. On 65 Madison Street, there is a two car garage down in the back and there is another garage that stores the oil tank. It is used for storage. You cannot put a car into it. On 65 Madison Street, there is an old outhouse, just the structure. I do not intend to make any changes to the property. I would like to put the lot line back in to make them two separate properties so in the event I want to sell them, I will not have any additional complications.

Mr. Saunders presented **Exhibit A-1, dated January 15, 2014, Map prepared G. Worley** regarding properties on Madison Street.

Mr. Saunders asked: As part of this application, we are proposing a parking layout that will service both of these dwellings and that parking is contained on the parcel we are talking about. Ms. Member stated: Correct.

Mr. Saunders stated: 65 Madison Street will have four designated parking spaces. 67 Madison Street will have two parking spaces designated for its use.

Mr. Saunders stated: The Planner/Engineer's reports stated we needed to have a common driveway easement and maintenance agreement between the two properties. I drafted that

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agreement and have circulated it to your professionals. There were some minor comments that I have made though revisions.

Mr. Soloway stated: The board will not be approving any agreements tonight.

Mr. Saunders stated: I just want your professionals to know that the revisions were made.

Mr. Soloway stated: If the board does approve the application it will impose a condition of that type of agreement satisfactory to the Board professionals on it. It would be a good idea to discuss the subject matter in that agreement so that the Board knows.

Mr. Saunders stated: The agreement drafted identifies the property, identifies that this will be part and parcel of an approval that this Board grants in anticipating that some kind of easement and maintenance agreement would be a condition of an approval and that you would grant and describes the layout of the driveway. There will be a legal description that Mr. Worley will draft outlining where the driveway is and will also discuss the rights of each house and property owners with respect to the driveway in terms of use and maintenance. It says the two properties will get together and agree what needs to be done and if things need to be done how to share the cost of those things. If one side decides not to pay, it includes rights for one against the other.

Mr. Soloway stated: I assume it is the applicant's intent in the event this is approved to record that agreement?

Mr. Saunders stated: Yes.

Mr. Soloway stated: A suggestion was made by Mr. Simmons that as part of the recording you attach to the document being recorded a reduced copy of this diagram which shows where the four outdoor parking spaces are because we can see the potential for some confusion down the line.

Mr. Saunders stated that he did not have a problem with that.

Mr. Simmons stated: It would be better than being concerned with the painted stripes out in the field from the standpoint that it would be perpetual in the chain of title.

Ms. Logan asked: What is in front of us is to approve the lot line. Do we need to look at the proposed gravel parking spot area as something separate?

Ms. Caldwell stated: It comes into play in terms as it is a subdivision. Once you separate the two properties instead of having shared parking, they will each have their own parking and have to meet the parking requirements. They are required to provide some space where people can park on each property. In terms of reviewing it as a site plan, you have some say over it. It is not a typical thing the Board reviews.

Mr. Ricciardo asked: You are saying we have some say over it, but if we don't agree with having the gravel parking spaces and we want to have it paved, we don't have any say in that matter?

Mr. Soloway stated: You are allow to impose reasonable conditions on any approval.

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Mr. Saunders stated: As a technical matter, the driveway in the back that is behind 65 Madison Street probably has room for two additional cars outside of the garage and you can stack them like other people might stack in their own driveways. We decided we don't want to deal with people blocking people in. We also tried to avoid adding additional pavement because we don't want to add additional impervious surface and have to worry about water runoff and things like that.

Mr. Saunders called Mr. Worley. Mr. Worley stated his qualifications and the Board accepted them.

Mr. Worley stated: I prepared the plans and have surveyed the properties. It is laid out with two structures sitting fairly close to the street. We have located all the physical improvements that are out there and the lot line that we proposed is to put where the original line was many years ago that was erased. It does not follow the middle of the driveway; it does not follow where it was before. Mr. Worley described the two properties and stated we have created a driveway easement to follow the existing driveway pavement that is there. We also put approximately a 3-5 foot area on the outside of the driveway. We have some buffer on the existing driveway, and we have shown a utility easement. As part of the checklist, it is showing the underground utilities and we are not sure where the sewer lines are for 67 Madison Street. Without digging up the entire driveway to see, we have provided an easement to be in its place. The two parking spots are being used by the tenants now. We have identified the spots as 67(1), 67(2) and 65(1), 65(2), 65(3), 65(4). They can be clearly designated for specific tenants.

Mr. Sanders asked: The utility easement is not submitted to the Board but will be a condition of approval that we will agree to. Is that correct? Mr. Worley stated: Yes.

Mr. Ricciardo asked: Why don't we address the sewer line with the separation? Is it a matter of economics?

Ms. Member stated: Absolutely.

Mr. Saunders stated: Economics and inconvenience. In order to do that, we would have to dig up the driveway. This would give the residents no access to the back garage. It seemed a bit much for a situation that can be easily corrected by this easement.

Mr. Hardmeyer asked: If there is a problem in the sewer main, wouldn't both homes be affected by it?

Mr. Saunders stated: We honestly don't know for sure. There could be two sewer lines running side by side. There could be a junction somewhere in the area. We just don't know. We are trying to protect the property owners and the residents there by creating this easement. It will protect both owners.

Mr. Ricciardo asked: What does our ordinance say about individual building lots with dwelling units on them connecting to the sewer? They are connected to the sewer presently because it is one owner and it is considered one lot. If it divided into two lots and she sells one, there are two separate owners. Once it is in the easement, it is on 65 Madison's property. If the break comes from 67 and it is on 65's property how do they fight over the cost of it. Once it is in the easement it is on 65's property.

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Mr. Saunders stated: That is what the easement is for to determine who has to maintain what and who has to repair what.

Mr. Soloway stated: The easement won't be prepared until the Board approved the application. It will be a condition of approval.

Mr. Ricciardo stated: I think they should be individually connected to the sewer.

Mr. Soloway stated: You indicated that the subdivision line you are proposing is the same boundary line that existed back when there were two lines. How did it go away?

Mr. Worley stated: At some point in time, they were merged together on the tax maps.

Ms. Member stated: The town lumped them together and was asked in 1971 to fix this.

Mr. Ricciardo stated: To avoid any problems, it is best to put it on two separate sewer lines. You can run it right down the driveway.

Mr. Marion asked: Did you go back into the tax records to see when this line disappeared?

Mr. Saunders stated: No, I have not. It has been quite some time that this lot line has been erased.

Ms. Caldwell asked: Did you find the lot line in one of the deeds.

Mr. Saunders stated: It is a tract line.

Mr. Saunders asked Mr. Worley asked: Does the line make sense where it is located?

Mr. Worley stated: Yes, I think so. No matter what we do we are going to need variances for side yards. It was sort of a balancing of the lot area against side yard offsets. We choose the larger lot because that is where the line seems to be.

Mr. Soloway stated: If the Board approves this application, I will put something in the resolution specifically that the Board is not doing anything to ratify or recognize any of the multiple encroachments that we see on these plans.

Mr. Saunders called Mr. Wayne McCabe to describe the variances. The Board accepted his qualifications.

Mr. McCabe stated: The Council has already identified all five variances needed for the two properties. What I would like to address is the issue raised in item 6 of Ms. Caldwell's report dated December 12, 2013 which talks about the granting of the "C" variance. He continued to describe **Exhibit A2 dated 1/15/2014**.

Mr. McCabe stated: You are looking at three different maps and they were taken from the Sanborne Fire and Insurance Underwriting maps for the Town of Newton. The first one is dated in 1903; the next one is 1911 and then followed by 1913. These show that the proposed subdivision existed at that time. What you are seeing is the buildings were in use for different purposes over

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time. You basically had the same footprints that are there today. Basically the positioning of the buildings in relation to themselves in relationship to adjoining properties, and to the street has

remained intact for well over 100 years. This is part of the development pattern we have seen on Madison Street, starting from Spring Street, coming south on Madison.

Mr. McCabe continued: The development pattern of this particular neighborhood is one where it was created and established in the 19th century, it was very common in our area at that time. This type of housing was very typical during that time period. With the subdivision of the property, the property itself, based upon the definition from the State's Land Use Law, that there is a certain exceptional, practical difficulty created because of the narrowness, the shape and configuration of the property also in terms of the location of the buildings which lawfully existed at the time the ordinance was adopted. Obviously, these buildings predate the concept of planning in our Town. They are preexisting although non-conforming. In the maps that you are looking at, there are no lot lines separating these properties which would lend the thought that they were built by the same person roughly at the same time. What we are looking for is to create a single family house on its own lot, not on a common lot. Based upon the information and the testimony given to you by Mr. Worley that the proposed outline is a reflection of the outline that was there 40 or 50 years ago that was put in there sometime after 1913. I suggest that the hardship that would be created by not permitting this would be countered by what the intent of planning is and it is to have one principal use on a single lot. I think that you can grant the variance simply because the buildings on the lots that are there now meet the current ordinance for the T3 zone, implements good neighborhood planning, and there is no detrimental impact on the Master Plan because it calls for a residential zone. There would be no adverse effect on the owner, on the adjacent owners or the neighborhood at all.

Mr. Riccardio stated: When you are looking at the maps, going back to 1903 there was no lot line there.

Mr. McCabe stated: Correct. If you heard my testimony, I stated up to 1913 there was no lot line when there were lot lines on other properties. Sometime after 1913, I said a lot line was placed on there and then somewhere more than 40 years ago it was removed.

Mr. Ricciardo stated: I do not doubt your word but I would love to see proof that this is the original lot line.

Mr. Soloway asked: Is it possible that they were never separate lots and there was never a lot line that appeared on a survey.

Mr. McCabe stated: Historically no. My experience in this would lead me to believe if we had two tract lines and definitions and described as such then it existed.

Mr. Ricciardo asked: Have you pulled the original deed? Now that it is being testified to, I would love to see proof of it.

Ms. Caldwell asked Mr. McCabe: Does it change your planning if the line was never there?

Mr. McCabe stated: If the line was there it has been testified to by Gary Worley, I would say that it reinforces my testimony.

Ms. Caldwell stated: Let's say it was never there.

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Mr. McCabe stated: Then my testimony would stand also because you are creating a separation of the two properties. You are establishing an independent lot for each independent permitted use. It is reflective of the neighborhood pattern.

Mr. Soloway asked: Assuming there was no lot line in support of a subdivision, is this the best place to draw the line?

Mr. McCabe stated: Given the location of the driveway, the location of the houses and where it is, one way or another you will still need a variance.

Vice-Chairman Marion stated: Mr. McCabe is correct. It won't matter one way or another. Everything we have talked about tonight it seems the Board is a little concerned with the sewer line but we have an easement in there if we need to address it if need be.

Mr. McCabe stated: But in terms of the lot line itself, if this is the tract line that was there before, it makes sense to use the same one again. If you move it one foot closer to number 67 or half a foot closer to 65, what difference is it going to make?

Mr. Soloway stated: It will not eliminate the use of a variance.

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

Mr. Ricciardo asked what the rest of the Board thought about the sewer hookup?

Ms. Logan stated: I find it as a matter of concern and I don't have a problem with the easement if there are two pipes; I have more of an issue if there is one pipe.

Mr. Ricciardo stated: I raised the question initially, because my neighbor had a problem. When he bought his house they told him he was connected to the sewer and he wasn't. He had to pay for the hookup, he had to pay for the road opening, he had to put the bond up and then he had to put the sewer line in which he thought was already in.

Mr. Marion stated: You also have to take into consideration that the neighborhood is over 100 years old and you don't know what they did back then.

Mr. Hardmeyer stated: I express the same opinion as Ms. Logan. It is a concern. I guess to do it right could cost thousands, but if I was in that home and my sewer backed up that would be something else.

Mr. Flaherty stated: The question of dividing the property doesn't change what exists there. We don't know what exist there. If you find out its one line are you going to allow this? The easement will take care of who is responsible.

Mr. Soloway stated: The easement that they are agreeing to will be recorded and will fix the responsibility so there will not be an issue to who is responsible. There may be a problem if the responsible party doesn't respond. It will be all spelled out as to whose responsibility it will be.

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Mr. Saunders stated: This document will be recorded and the buyer will be made aware of it prior to closing. When the title search is done the easement will show up.

Mr. Ricciardo asked: When are they made aware of fact there is an easement?

Mr. Saunders stated: Prior to closing on the property.

Mr. Ricciardo stated: So if I was the buyer of this property and I went through all the steps to buying the property and prior to the closing you mention to me that there is this easement. I don't think that is a fair way to do it.

Mr. Saunders stated: Prior to the closing a title search is done and both easements will show up.

Mr. Soloway stated: That is correct. That is the whole point of recording it.

Mr. Simmons stated: There is the possibility from the testimony I heard tonight that it could still be two separate sewer lines. I would like to suggest that if the applicant could get in touch with the Town's Water and Sewer Department, they put a camera down the sewer line with dye in the line to see where the die comes out. Then go into the other house and do the same thing. This will tell you if it is a separate line or a double line.

Mr. Ricciardo stated: I think that should be done.

Vice-Chairman Marion asked: How much would that cost the Town?

Mr. Russo asked: We can work something out. If it occurs during normal business hours I won't charge for it.

Mr. Soloway stated: The suggestion is that as a condition of approval they do a dye test with a camera with the Town's Water and Sewer department to determine if it is one or two lines. If it happens to be one line then it should be noted in the utility easement agreement and put on file map.

Mr. Soloway crafted the motion: The conditions are that the driveway access and maintenance agreement be to the satisfaction of the Board's professionals. The utility agreement to the satisfaction of the Board's professionals which will indicate if there is one sewer line, performing a dye test with a camera through the Town's Water and Sewer Department to determine whether the lot is served by one sewer line, file map to the approval of Mr. Simmons that would include showing the location of the sewer line.

Mr. Ricciardo made a motion with the conditions that we have discussed and what Mr. Soloway indicated can be done and with the preparation on an easement as necessary. Mr. Flaherty seconded the motion.

AYE: Mrs. Mattingly, Mr. Flaherty, Mr. Elvidge, Mr. Ricciardo, Mr. Russo, Ms. Logan, Mr. Hardmeyer, Ms. Gill, Vice-Chairman Marion

CORRESPONDENCE

Four resolutions and one ordinance were on the agenda for information purposes for the Board.

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EXECUTIVE SESSION

NONE

PUBLIC PORTION

No public stepping forward, this portion of the meeting is closed.

ADJOURNMENT

Mr. Hardmeyer made a motion to adjourn the meeting. Ms. Logan seconded the motion. The meeting was adjourned at 8:45 PM with a unanimous "aye" vote. The next regularly scheduled meeting will be held on February 19, 2014 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

Exhibit A-1, dated January 15, 2014, Map prepared G. Worley
Exhibit A-2, Sanborn Fire & Insurance maps from 1903, 1911, 1913