

Newton Planning Board

May 21, 2014

7:00 PM

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

FLAG SALUTE

MEMBERS PRESENT: Mrs. Mattingly, Mr. Flaherty, Mr. Marion, Mr. Tharp, Ms. Logan, Mr. Hardmeyer, Mr. Steinberg, Ms. Gill, Chairman Le Frois

EXCUSED: Mr. Elvidge, Mr. Russo

ABSENT: Mr. Ricciardo

PROFESSIONALS PRESENT: David Soloway, Esq. of Vogel, Chait, Collins & Schneider, Jessica Caldwell, PP, of J. Caldwell & Associates.

BOARD SECRETARY: Katherine Citterbart

CONSIDERATION OF MINUTES

Regular Meeting April 16, 2014

Mr. Tharp made a motion to approve the minutes. Mr. Flaherty seconded the motion.

AYE: Mrs. Mattingly, Mr. Flaherty, Mr. Marion, Mr. Tharp, Ms. Logan, Mr. Hardmeyer, Mr. Steinberg, Chairman Le Frois

HISTORIC RESOLUTIONS

None

RESOLUTIONS

Newton DMV (#PBWSP-01-2014)
Block 18.02 Lots 2 & 18
Sparta Avenue & Spring Street

Resolution granting waiver of site plan for 16 temporary parking spaces.

Mr. Marion made a motion to accept the Resolution. Ms. Logan seconded the motion.

AYE: Mrs. Mattingly, Mr. Flaherty, Mr. Marion, Mr. Tharp, Ms. Logan, Mr. Hardmeyer, Mr. Steinberg, Chairman Le Frois

OLD BUSINESS

None

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NEW BUSINESS

Ordinance 2014-9- Amending Chapter 240 entitled "Land Subdivision and Site Plan Review" and Chapter 320 entitled "Zoning: Form-Based Code" of the Code of the Town of Newton to revise and establish certain definitions.

Ms. Caldwell stated: The definitions were too restrictive. More people were going into major subdivisions instead of minor subdivisions. If it is a minor subdivision, then it will get a minor subdivision approval. Another issue was with people parking in front yards. We are hoping this change in definition will make it easier to determine if someone is parking in the front yard.

Mr. Soloway stated: As the Board, your obligation is to review these ordinances for consistency within the Master Plan but you also have the right to make any comments or recommendations that you wish to pass onto the Council.

Ms. Caldwell stated: It is not inconsistent with the Master Plan.

Ms. Logan made the motion that we find the proposed ordinance is not inconsistent with the Master Plan but Board members had a number of questions on the definition of a driveway more specifically what a field entrance is, a path from the driveway to a structure, whether a residential dwelling is permitted to have more than one driveway and suggest to the Council that some clarification might be necessary. Mr. Flaherty seconded the motion.

AYE: Mrs. Mattingly, Mr. Flaherty, Mr. Marion, Mr. Tharp, Ms. Logan, Mr. Hardmeyer, Mr. Steinberg, Ms. Gill and Chairman Le Frois.

Ordinance 2014-10- To amend the Code of the Town of Newton by revising Section 166-20 regarding expiration of Planning Board approvals.

Mr. Soloway stated: This is intended to decline the life of approvals. The existing ordinance Sunsets Variance approvals after 9 months basically says that if you are granted a variance approval and you haven't started to construct whatever it is within nine months of the day of approval, the variance is going to expire. Those types of ordinances have been upheld at least in isolation by the courts. The rationale is if you don't have that kind of ordinance by law the variances can last forever and runs with the land. Once this ordinance is implemented it will have an expiration date and prevent a mix up if someone comes in for a variance and forgets about it and then a new owner comes in and wants to build a deck there could be different standards and different ordinances. They want an expiration date to prevent this from happening. For this ordinance the nine months is being expanded to twelve months and the ordinance will also have an expiration date for subdivision and site plan approvals as well. This is a subject that is dealt with specifically by the Municipal Land Use Law and the periods of time provided for this ordinance is essentially three years for preliminary, two years for final and tracks what is the Municipal Land Use Law. The reason we put in this kind of provision is under the Municipal Land Use Law if you get a site plan or subdivision approval the statute gives you a period of protection against any intervening changes in the zoning ordinance. If the ordinance changes during the period of protection the Municipality can't make you conform with the new ordinance unless it is a compelling health and safety reason. Under the case law if there is no change in the zoning ordinance those also could last forever and your site plan or subdivision approval could be suddenly be revived twelve years later after no one did anything on it and if there is no change in the zoning ordinance it is still good. My assumption is that if what the

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Council wanted to hear is put a sunset on that as well and say look if you haven't starting building it by the time your statutory period of protection under the Land Use Law has run out then it lapses. You have the right to apply for extensions. There are certain stances on the statute where you automatically extend it. This is basically consistent with that.

Mr. Soloway continued: I have a concern with this ordinance. If you read it literally, a variance expires within one year no matter what. It would make a lot more sense and be less vulnerable for legal challenge if it were changed to provide that the one year expiration only applies to a variance in isolation as my example with the deck variance I mentioned previously. But a lot of variances are coupled with subdivisions and site plans and if you read this literally it is telling you we gave you an approval for this project whatever the project is and under the Land Use Law you get preliminary and then final you might have five years but if you don't start building it in one year your variance is gone. I don't think that would survive a legal challenge. It will create a lot of headaches. Another example would be the Newton Town Center. They came in here and they got a use variance and they got preliminary site plan. Under this ordinance, if they did not start building the building next month the variance is gone. They have not even come in for final yet and under a big project you need County approval. You are forcing a project to come back to get extensions for something that is tied into to something else that is still protected. This wording that states each and every structure might not be a good idea. Another example would be Martorana Enterprises; there is no way they would come back in for each and every structure. It should be written so that the entire project is running on the same timeline.

Discussion ensued with Board members.

Mr. Flaherty stated: I think we should refer to Town Council and ask them to consider changing B to include any variances within preliminary and major site plans subdivisions.

Mr. Soloway stated: There is a provision in the Land Use Law for the use variances that allows applicants for use variances to bifurcate the application. If you get the use variance first then you don't have to spend all the money on the site plan if you don't get the variance. I would recommend dealing with this is if you were to change this, I have added in subsection A, number 3, variances granted as part of a subdivision or site plan approval in which case the variance approval shall expire unless the construction shall commence before the expiration of the of protection period for the site plan or subdivision approval pursuant to sub paragraph B & C.

Ms. Logan asked: Will that apply to the bifurcated applications as well?

Mr. Soloway stated: When you bifurcate the application once you get the site plan they roll over automatically.

Ms. Logan stated: I would move to say that it is not inconsistent with the Master Plan with the qualifications that we recommend that they change the language to accommodate variances that are associated with site plans or subdivisions and phased construction projects. Mr. Flaherty seconded the motion.

AYE: Mrs. Mattingly, Mr. Flaherty, Mr. Marion, Mr. Tharp, Ms. Logan, Mr. Hardmeyer, Mr. Steinberg, Ms. Gill and Chairman Le Frois

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Ms. Caldwell stated: We had a few items between Mr. Simmons, Kathy and me. One of them is the NJ Herald sign. I have reviewed the sign and it meets the sign ordinance. I spoke with Mr. Simmons and I would be ok with it along as they put it on the site plan and Mr. Simmons made sure the site distances are ok. One sign will be when you come off of Water Street and one at the entrance when you go into the Herald lot off of Mill Street.

The Board discussed and they want to make sure it is not blocking anything.

Mr. Soloway stated: The question for the Board is whether the Board is willing to allow this as a field modification with the approval of the Town Engineer as opposed to do you want the applicant to come before you.

Mr. Soloway stated: Under your ordinances, if there had not been a previous site plan approval and the NJ Herald wanted to put up a sign and the sign complied with all the requirements of the sign ordinance and they were doing nothing else, it wouldn't come before the Board. It would be signed off by Kathy as the Zoning Officer. The only difference here is the sign is different from what the Board approved.

Ms. Logan stated: I don't see a problem with it if it conforms to the ordinance.

Ms. Caldwell stated: I think Mr. Simmons felt he did not want to say it is ok when it might not be.

Mr. Flaherty asked: So it really is just our opinion. We don't have to have a motion on this?

Mr. Soloway stated: There should be something in the file that you discussed it and signed off on it. Because what Mr. Simmons does not want to happen is for someone to drive by there and wonder who approved it.

Ms. Logan made a motion that we authorize the Town Engineer to approve this sign design as a field modification provided it complies with all aspects with the sign ordinance and subject to confirming there are not issues with site distance as well. Mr. Flaherty seconded the motion.

AYE: Mrs. Mattingly, Mr. Flaherty, Mr. Marion, Mr. Tharp, Ms. Logan, Mr. Hardmeyer, Mr. Steinberg, Ms. Gill, Chairman Le Frois

Ms. Caldwell stated: The other item has to do with Camp liff. The sign they put in is different than what was approved. They are different in shape size. This one is a lot smaller than what was approved.

Ms. Caldwell stated: The concern is more are we going to allow this as a field change.

The Board agreed.

Ms. Logan made a motion to approve the Camp liff sign presented by Ms. Caldwell and Mr. Flaherty seconded the motion.

AYE: Mrs. Mattingly, Mr. Flaherty, Mr. Marion, Mr. Tharp, Ms. Logan, Mr. Hardmeyer, Mr. Steinberg, Ms. Gill, Chairman Le Frois

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CORRESPONDENCE

NONE

EXECUTIVE SESSION

NONE

PUBLIC PORTION

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

ADJOURNMENT

Mr. Flaherty made a motion to adjourn the meeting. Ms. Logan seconded the motion. The meeting was adjourned at 8:10 PM with a unanimous "aye" vote. The next regularly scheduled meeting will be held on June 18, 2014 at 7:00 PM in the Council Chambers of the Municipal Building.

Respectfully submitted,



Katherine Citterbart
Planning Board Secretary