

**Newton Planning Board  
December 17, 2014 Regular Meeting  
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.

**OATH OF OFFICE:** David Soloway administered to Helen Le Frois – Alternate #2

**FLAG SALUTE:** was recited

**MEMBERS PRESENT:** Mr. Flaherty, Mr. Marion, Mr. Tharp, Mr. Elvidge, Mr. Flynn, Mr. Russo, Mr. Hardmeyer, Mr. Steinberg, Mrs. Le Frois and Chairman Le Frois

**ABSENT:** Ms. Logan

**PROFESSIONALS PRESENT:** David Soloway, Esq. of Vogel, Chait, Collins & Schneider, Cory Stoner, Engineer of Harold Pellow & Associates and Jessica Caldwell, Planner of J. Caldwell & Associates

**BOARD SECRETARY:** Katherine Citterbart

**CONSIDERATION OF MINUTES**

**October 22, 2014**

**Mr. Elvidge made a motion to approve the October 22, 2014 minutes. Mr. Marion seconded the motion.**

**AYE:** Mr. Flaherty, Mr. Tharp, Mr. Elvidge, Mr. Flynn, Mr. Russo, Mr. Hardmeyer, Mr. Marion

**November 13, 2014**

Mr. Marion made a motion to approve the November 13, 2014 minutes. Mr. Elvidge seconded the motion.

**AYE:** Mr. Marion, Mr. Elvidge, Mr. Russo, Chairman Le Frois

**HISTORIC RESOLUTIONS**

None

**RESOLUTIONS**

**Julie Richard, LLC/Loyal Order of Moose (#FSP-08-2014)  
Block 18.02, Lots 2, 3, & 18  
4 Diller Avenue  
Resolution granting final major site plan approval.**

Mr. Tharp questioned the wording on pg. 8.

Discussion ensued on the wording.

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Mr. Soloway questioned what if I changed it to read that lot will be planted with grass and regularly maintained by the owner or the occupant to the satisfaction of the Town Engineer, the Town Planner, and/or the Department of Code Enforcement?

**Mr. Flaherty made a motion to adopt the resolution as modified by Mr. Soloway. Mr. Russo seconded the motion.**

**AYE:** Mr. Flaherty, Mr. Marion, Mr. Tharp, Mr. Elvidge, Mr. Flynn, Mr. Russo, Mr. Hardmeyer

**OLD BUSINESS**

None

**NEW BUSINESS**

**Newton Town Centre Urban Renewal, LP (#FSP-07-2014)  
Block 8.05, Lots 4, 7, 8 & 9  
5 Union Street, 50 Trinity Street, & 58 Trinity Street.**

Applicant seeking final site plan approval as well as any and all other variances to construct a mixed-use residential building.

Mr. Flynn and Mr. Elvidge dismissed themselves.

Frank Casciano, Esq, represented the applicant.

Mr. Casciano stated: This is an application for final site plan approval for construction of 4-story mixed use structure consisting of 65 age-restricted dwelling units of affordable housing, ground floor retail space, a community room and ground level parking to be located on Lots 4, 7, 8 & 9 and Block 8.05. The site is bordered by Trinity Street, Union Place and Spring Street. The applicant is the owner of Lot 4 and the contract purchaser of Lot 7. Lots 8 & 9 are owned by the Town of Newton Parking Authority which has agreed to enter into a 65-year ground lease with the applicant allowing the incorporation of those two lots into the project. On June 13, 2013, the Board granted preliminary site plan approval for the project along with our required use and bulk variances and waivers subject to submission of additional testimony regarding the parking buffer variance, the tree replacement and landscaping waivers. The preliminary site plan approval was memorialized in a resolution approved by the Board on July 17, 2013. The resolution enumerated those elements of the project receiving additional approval subject to this submission and approval of revised plans. Specifically approval was conditioned upon plan revisions related to the delineation of parking spaces, reserved for the Parking Authority use, regulation of the parking use by the Parking Authority and building residents, submission of signage plans for traffic and pedestrian circulation, submission of signage details, a description of external colors and materials choices. Landscaping, parking buffer and tree replacement details, trash dumpster, generator and transformer screening details, certain construction and grading modifications, compliance with recommendations of the Board Engineer and Board Planner. Maintenance Plan for the Storm Water Management System and delivery of a Construction Phasing Plan for approval by the Board Engineer and Town Planner.

Following that approval, our professionals have continued to work with and coordinate the revisions of the project and plans with the Town Planner, Jessica Caldwell and the Planning

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Board Engineer, Cory Stoner. (Ms. Caldwell and Mr. Stoner have reported on the progress of those discussions, revisions and letters to the Board dated November 6, 2014 with a revision to Ms. Caldwell's letter dated December 9, 2014.) The expert testimony we will present tonight will address those conditions set forth in the resolution granting preliminary site plan approval as well as the project and planner revisions that are the subject of Mr. Stoner and Ms. Caldwell's letters. Tonight's testimony will be offered by Joaquin Bouzas, Licensed Architect in the State of New Jersey, Gerard Giosa, Parking Consultant, Elizabeth Leheny, Licensed Professional Planner, State of New Jersey. Also with us tonight is a member of the in-house staff of RPM Development, the developer of the project, Susannah Henschel will be able to respond to operational questions that may be posed by the Board or the public.

**SWORN:** Elizabeth Leheny, Gerard Giosa, Susannah Henschel, Joaquin Bouzas, Cory Stoner, and Jessica Caldwell

Mr. Bouzas gave his qualifications and the Board accepted them.

Mr. Casciano asked Mr. Bouzas if he was familiar with the site plan application exhibits for consideration tonight and had the opportunity to review the reports of Jessica Caldwell, Planner dated November 6, 2014, amended December 9, 2014 and Cory Stoner, Planning Board Engineer dated November 6, 2014 and December 11, 2014?

Mr. Bouzas stated: I am familiar with these plans and I have reviewed both reports. He referred to Sheet C 120 with a revision date of 11/25/14. The biggest change was we switched the parking area on Lot 4. The parking area on Lot 4 was mirrored as originally proposed where the driveway was on the left side instead of the right as it is right now. This was done to try and save some on-street parking spaces. We were requested to provide a K-turn turning area underneath the building. We lost one parking space which allowed us to have a back-out area if somebody came in and there were not any public parking spaces available they have a way to turn around and come back out rather than back out. There will be 52 parking spaces and 27 parking spaces for the Parking Authority for a total of 79 parking spaces. We originally had 53 but because of the K-turn area at the end of the parking area, we lost one spot.

Mr. Casciano asked Mr. Bouzas to address the materials to be used in the exterior of the building.

Mr. Bouzas stated: Referred to **Exhibit A-1, December 17, 2014, Colored Architectural Rendering of Proposed Building. Exhibit A-2, December 17, 2014, Color and Material Board. Exhibit A-3 dated December 17, 2014, 3-foot aluminum fence, picture of black iron fence.** As you can see we are proposing fiber cement siding on the building. We have a variety of siding which will be horizontal siding shake and vertical siding above. There will be a metal roof and then in the back there will be brick on the building and the brick will be a caramel iron spot brick. It is Hardy siding. It will be a bay blue with artic white and as I mentioned the brick is an iron spot. We chose it because the iron spot has a little blue in it so it will play off the colors that are in within the building and then a matte black metal roof at the top.

Mr. Hardmeyer asked: Did the Board have a choice on colors?

Mr. Bouzas stated: We were asked to present our idea of color and materials.

Mr. Hardmeyer stated: There was a rendering with a very nice tan color and I think with all the brick that is in that area the tan would complement the brick buildings in the area.

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Mr. Bouzas stated: If you like browns, I can make it look just as nice.

Mr. Bouzas referred to Exhibit A-3 which shows the black iron fence, how it would look and how you can visibly see through a black iron fence. We were asked to put up a fence splitting up the area between the generator and the trash recycling area and add a little landscaping to hide the generator. We also have a pad mounted transformer from JCP&L. Up at the front we were asked to put a 3-foot high aluminum fence. We lowered the fence to 3-ft. so you will be able to look through it and see the cars as you are coming out onto Trinity Street and see down the street for cars coming down the road because behind that fence we have a 6-ft. board-on-board privacy fence.

Mr. Marion asked: What was the reason for the 6-ft. fence?

Mr. Bouzas stated: For privacy to buffer and hide the parking areas.

Mr. Bouzas referred to Sheet C170 and stated: The line from JCP&L moved from the right side of Union Place to across the street.

Mr. Bouzas reviewed the Lighting Plan. He stated: We have three light poles in the parking area. They will be a New London style light fixture. The L-4 became L-6 and the height on the pole is 12 feet.

Mr. Marion asked: Referring to Sheet C120, what is the item next to the generator?

Mr. Bouzas stated: It is a pad transformer from JCP&L. It is a high power line coming in to be able to feed the building off of it. We need about 800 amps for the building.

Mr. Marion asked: Will you have any testimony about the testing of the generator since it is right on the property line.

Mr. Bouzas stated: It is only for emergency use if the power goes out. It will not be used at any other time. They self-test once a week to make sure it is running.

Mr. Marion asked: Is there any other place to relocate it on the property? Does it need to be next to the pad transformer? I was looking at spot 25 on the corner of the building away from any other residents.

Mr. Bouzas stated: Spot 25 is in question. Mr. Stoner can probably speak to this why we have to do something to the corner that may lose that corner spot. If you want to move it and we have to lose a parking space, I am not opposed to it. We would lose a spot to gain a spot.

Discussion ensued on the generator.

Mr. Bouzas stated: You do bring up a good point about moving the generator. I personally do not have a problem moving to another corner.

Mr. Stoner stated: The Town will be making Spring Street a One-Way Street. In doing this we have issues with truck traffic and the issue would be making a right turn on Trinity and Union. We want to see the radius increased and improved and that would eliminate one parking space at that corner.

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Mr. Soloway asked: Is it feasible to put the generator on the roof?

Mr. Bouzas stated: It is a wood structure, weighing a few thousand pounds, plus vibration. I would be concerned about it on the roof.

Mr. Tharp stated: I recommend you check with the gas company to make sure there is enough pressure. We had an experience where they were powered by a big gas boiler and still did not have enough gas pressure to run the generator.

Mr. Bouzas stated: We will do our due diligence and figure the utilities out.

Mr. Casciano asked about the size of buffer strips.

Mr. Bouzas stated: On Lot 4 we have a 10- inch landscape buffer and a 2'8" landscape buffer. On the main property we have a 12- inch landscape buffer between us and that is where the 3- ft. fence is.

Mr. Casciano asked about the tree situation on the property?

Mr. Bouzas stated: The developer is going to work with a tree bank. We can't provide as many trees that we are removing so those would go into a tree bank and the developer will work that out.

Mr. Soloway stated: For the Board's information, although the ordinance does call for contribution to the tree bank in the event they can't replace the trees on site however there is no tree bank at this point in time. My suggestion would be and Ms. Caldwell has in her report as well that the applicant agree in good faith to work with the Council to provide plantings elsewhere in Town or a payment and the Board would have to grant a waiver because you cannot require a contribution to something that does not exist. Is that acceptable to the applicant?

Mr. Casciano stated: Yes, it is.

Mr. Bouzas stated: We need to replace 66 DBH and we are proposing 24 ½ DBH and we need to make up 41 ½ and that would be through the tree bank that will be set up.

Mr. Stoner stated: Or plantings somewhere else in Town.

Mr. Marion asked: Do you propose to complete the secondary lot prior to construction if approved so we could use that for public parking?

Mr. Bouzas stated: Absolutely. Lot 4 would be completed. Eighteen spaces on Lot 4 will be able to be used while the main site is being developed. We have a letter from the developer that no work will be started on the main site until Lot 4 is completed.

Mr. Stoner stated: That was a condition on the preliminary resolution, item 23.

Discussion ensued.

Mr. Soloway stated: Condition 23 states: "The applicant shall provide a Construction Phasing Plan to the satisfaction of the Board Engineer. The Phasing Plan will include a provision requiring

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that the parking lot on Lot 4 be constructed and completed before the proposed building so that Lot 4 can be utilized for parking while the existing parking lot area on Lots 7, 8, and 9 is shut down during construction."

Mr. Casciano stated: We did make a commitment at our meeting with the Parking Authority to that effect that we would make that lot available for the Parking Authority after it is completed while construction proceeds on the other three lots.

Mr. Stoner stated: I stand corrected. So the way condition 23 reads is it will be open for parking to the general public.

Mr. Bouzas stated: We did commit to meet with Town Officials with respects to staging to minimize disruptions to the vehicular pedestrian traffic while construction takes place on the three contiguous lots.

Mr. Casciano asked about the storm water treatment management.

Mr. Bouzas stated: It still has to be satisfied by Mr. Stoner.

Mr. Stoner stated he had not reviewed the plan.

Mr. Stoner asked: Can you talk about the flip flopping of Lot 4 parking lot.

Mr. Bouzas stated: Originally the parking spaces were on the north side of that property. When we were looking and measuring the on-street parking spaces that currently exists, if we would have kept it we would have lost a spot on the street so by mirroring it you will gain a spot on the street.

Mr. Stoner stated: I want the Board to be aware that by switching that, I do agree that the two driveways, for the most part, are in the same location but by putting the spaces on the eastern side of the property, the spaces and the lights for the parking spaces are pretty close to the attorney's office building where before the parking was close to a driveway. As long as they have shields against the lighting and the buffering it should be good. I wanted to point that out because it is a significant change from the original plan.

Mr. Stoner asked about the maintenance.

Mr. Bouzas stated: If it is icy or snow they clean the snow, they put salt on the sidewalks. He showed on the map exactly where the sidewalks are and would be cleaned.

Chairman Le Frois asked: Did we talk about the spaces being assigned to units or is it park where you can.

Ms. Henschel stated: We did speak last time about assigning the spaces to residents so it would be very clear and no confusion since there is a lot going on at the site.

Mr. Soloway stated: There was a condition in the resolution that spaces reserved for residents and commercial tenants should be numbered, specific numbered spaces being assigned in the lease for residential unit or for the commercial tenant and where no parking space is allocated to a particular unit or commercial tenant that fact is to be set forth in the lease.

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Mr. Casciano called Mr. Giosa.

Mr. Gerard Giosa, Principal owner of Level G Associates, LLC gave his qualifications and the Board accepted him as an expert witness.

Mr. Casciano asked Mr. Giosa to address the parking lot traffic flow, signage, the traffic flow for pedestrians, and the way finding signage as addressed by Ms. Caldwell and Mr. Stoner in their letters.

Mr. Giosa marked **Exhibit A-4, Proposed Signs and Pavement Markings, Newton Town Center Senior apartments, dated December, 2014**. Mr. Giosa stated: This plan was updated based on comments from the professionals. The biggest comment was that the previous plan did not include the K-turn area and it also did not have the parking spaces flipped to the other side on Lot 4. This plan has been updated to include the most current site plan conditions. The Lot 4 area will be dedicated to Newton Town Center residents and the signs that face the parking stalls reflect that. They will say "NTC Senior Apartments Only" with various arrows and it will also say "Tow Away Zone" on those signs. The spaces under the building will be protected from the elements. The spaces that will be listed as public parking will be listed as P1 through P27. The "P" stands for public. The main entrance for the public parking is on Union Place in a location that is fairly close to where the existing entrance and exit is for that Parking Authority parking lot. There will be signs out here designated as public parking Lot #5 and viewed from the street there will be headache bars saying maximum clearance 8'2". The 8'2" is required for being accessible for handicap spaces because you will be driving under the building we need to limit the height of the vehicles. Upon entering this area people who are seeking to use the public parking will see a large sign that says "G" Public Parking Area with arrows pointing to the left. As they are entering the building, there are a line of columns along either side of the driveway and at the backs of the stalls. In general you have three parking stalls between each column. Each one of these columns has a sign on it with arrows designating that the three spaces in between those columns are either public parking or private parking. Once you head in, you will know based on these signs that are on the columns what the designated use is for those spaces. Those signs will be placed at the driver's vision height. There will be signs directing people to the walkways stairs up to Spring Street. There are signs designating parking for "Happy Wok Customers Only." There will be plenty of signs directing where car and pedestrian traffic will go.

Mr. Stoner asked: Will your way finding signs match the ones we have put up a few years ago?

Mr. Giosa stated: When you look on the schedule we have said that the final design and graphics will be per the Town of Newton. We will be recreating the existing look of the Town's D.O.T. signs. The signs will be reflective and will meet all the recommendations based on my experience and will have very low travel speeds throughout the travel deck. The signs that are on the columns have been narrowed down to 10" wide so they match the width of the columns. They typically are 12" x 18".

Mr. Tharp stated: My concern was and we had a conversation that we needed to make sure an ambulance could get under the deck. I think we talked about changing the depth of the entrance and the grade.

Mr. Marion asked: On some of the blue prints it showed the side height at 10'7" depending on the grade. Are you proposing a sign hanging below that like restricting the height to 8'2" but you could go higher?

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Mr. Bouzas stated: Yes, you could go higher.

Mr. Marion stated: The thing we are thinking is a) ambulances and b) since it is a senior building the shuttle bus which is a small mini bus. As long as they can clear underneath, that is what our concern was. If 10 feet or 9 feet is it then you are fine.

Mr. Bouzas stated: Because the parking lot will be sprinklered, we usually keep the sprinkler lines running parallel with the drive aisles so no vehicles can damage those pipes and burst the lines so we are mindful of that. The pipe will be hanging down to prevent oversized vehicles from coming in and damaging the structure. If the local shuttle is 9' we can make it 9'.

Mr. Marion stated: The clearance can be worked on we just need to know the heights.

Mr. Soloway asked: Do you want a condition that the clearance entering the parking lot under the building be sufficient to allow access by an ambulance and the senior citizen bus?

The Board answered: Yes.

Mr. Casciano stated he was fine with that.

Mrs. Le Fois asked: Since it is a combination of private and public spots who is responsible for parking enforcement?

Ms. Henschel stated: RPM Management will be responsible for parking enforcement. Our on-site superintendent will be the primary enforcer and then we will have a towing company that we work with if it comes to that. He will do a walk through and we will coordinate with the Town and the Newton Parking Authority how they want to handle it. We talked about having permits for all the spaces.

Mr. Soloway stated: I think the applicant is saying that the applicant is responsible for policing its spaces and the Parking Authority is responsible for policing its spaces. The Parking Authority has not decided exactly what it wants to do yet but when it decides the applicant will work with it in good faith.

Mr. Giosa stated: We have posted signage that is required by statute so if people park illegally, they know they are subject to towing.

Mr. Soloway stated: I do not have a problem with that because I don't think the Parking Authority should be responsible for enforcing but essentially there will be a lease obligation, nor do I think the applicant should be put in the position where it is an enforcement agent for public parking lots. I am not sure what else you can do.

Mr. Russo asked about the signage regarding the Community Center.

Mr. Bouzas showed the different signs for the Community Center.

Mrs. Le Fois asked: Is there an elevator access.

Ms. Henschel stated: We discussed having some public access to the front elevator on days that the Community Center will be used by a senior group and that access would be controlled by key fobs and they would only get you from the garage level to the first floor. Maybe one or

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two people will have access and if someone else needs help getting upstairs they can facilitate that and they will have the access just to get the elevator one level up.

Mr. Casciano asked Mr. Giosa: Based upon your analysis, is it your professional opinion as a parking expert that the proposed parking signage and traffic flow meet and recognize the industry standards?

Mr. Giosa stated: Yes.

Mr. Russo asked: Will the elevator accommodate a 6-ft. stretcher?

Mr. Bouzas stated: Yes. ADA.

Mr. Casciano called Elizabeth Lehney.

Ms. Lehney gave her credentials and the Board accepted her as an expert licensed planner.

Mr. Casciano asked: Ms. Lehney how did you prepare for your testimony?

Ms. Lehney stated: I reviewed the application, I reviewed the Zoning Ordinance and your Master Plan and I spoke with the other consultants working on the application. I also visited the site.

Mr. Casciano stated: Mr. Bouzas has testified that we are now looking at 52 spaces for 65 apartments. In your view, is that adequate?

Ms. Lehney stated: Yes, it is. The ratio that was approved was for 53 spaces. We are now going down to 52 spaces so it is a reduction from .82 spaces per unit to .8 spaces per unit. I am going to reiterate some of the points that are in the memorialized resolution as the testimony was put on record and it is explicitly stated in the resolution from John Jarr the Traffic Engineer who submitted a report that is an exhibit that is in the resolution and he indicated that he has done parking surveys and the parking demand at similar projects that RPM has done and in their experience the observed parking demand did not exceed .7 spaces per unit and actually could go as low as .6. In his estimation the proposed which was at the time .82 was actually more than sufficient. He indicated that of the 53 spaces you could designate five for commercial and you would still be providing more parking than he had observed at other developments. Also to reiterate what was testified last time was that there is senior transportation provided in the Town and its RMP's experience that lower income senior residents particularly as they age at times will give up car ownership especially when there is a development such as this in the downtown area and is more walkable and easily accessible to more places for them to walk to. As it was agreed to as a condition of the approval, the applicant agreed as it has already been indicated tonight that the spaces would be numbered and assigned per unit per the lease. In addition it has been testified to tonight the entire parking area will be policed by an onsite manager. With a potential tenant, they will as a condition of their lease have this space but if the parking space is not available and they have a car they could potentially try to find parking on the street every day or more than likely they will try to find housing elsewhere. We believe the variance for the loss of the one space from 53 to 52 can be granted under the c (2) which is the flexible "c" bulk variance criteria. There are substantial benefits to allowing this development. It is for an inherently beneficial use. It is affordable senior housing. We also think that due to all the parking controls that the applicant has agreed to that they are intended to mitigate the impacts on the surroundings properties. We don't believe there will be any substantial impact

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on the neighboring properties. The granting of the variance will not substantially impair the intent and purposes of the Zoning Ordinance and its own plan partly because we believe them sufficient and partly because it promotes the Master Plan goal of encouraging the construction of senior housing with Newton. The purposes of the Municipal Land Use Law will be advanced. Purpose A to encourage municipal action for appropriate use of lands to promote public health, safety and welfare, Purpose G to allow for sufficient space per appropriate locations for a variety of residential uses and Purpose L to encourage senior citizen housing. The benefits of granting this variance outweigh any of the detriments. On a related note we also seek the diminimus exception from the Residential Site Improvement Standards as we sought with the preliminary approval. The literal enforcement of the RSIS standards would be impracticable. These peculiar conditions of this property, the unusual configuration, the need for the additional circulation area for the emergency vehicles and honesty there is just no more space available within these lots. The granting of the 27 spaces to be public to whatever the extent the Parking Authority decides.

Mr. Casciano asked: Are you able also to comment on the justification for the requested variance for the 10-ft. planning strip between the surface parking and adjacent property lines?

Ms. Lehney stated: Yes. Because the memorialized resolution which explicitly states that we are dictated by the physical constraints of the site and the need to provide parking within a limited space. As a practical matter it really is not possible to have the 10-ft. landscape buffer between Lots 4 and 7 to shield the parking areas. As an alternative we are proposing the 6-ft. board-on-board fence which is intended to shield the neighboring properties from headlights. On Lot 7 currently there is parking along the property line and there is fencing along that property line. What we are providing is a significant improvement over what is there currently. On Lot 4 the width is only about 45-46 feet with the row of parking and the 24-ft. access isle, it is very limited and you do not have room for the 10-ft. landscape buffer.

Mr. Soloway stated: Just so I am clear, in preliminary we said we needed to define exactly what the variance would be. What is the variance to be in actual feet? What I got from Mr. Bouzas was on Lot 4, 10" and 2'8" for the landscape buffer and what you called the main property 12 inches?

Mr. Soloway asked: What is the main property?

Mr. Bouzas stated: Lot 7, 8 & 9.

Mr. Lehney stated: Assuming the variance will be granted, we would seek a c (1) hardship variance just given the space constraints and we believe the fencing will screen the headlight glare and will mitigate any of the substantial negative impacts on neighboring properties. Again, it could be under a c (2) variance and it would promote the same purposes of the MLUL A, G, &L that the benefits outweigh the detriments.

Mr. Casciano stated: Could you please address the issue of the waivers requested for the landscaping and tree replacement requirements?

Ms. Lehney stated: It is a very similar arguments why we can't meet the buffer requirements for the shielding of parking. We have essentially maximized the number of trees and landscaping on a very small site as possible. Instead of seeking a waiver completely for the tree replacement, we are asking as to what has already been testified that we would work with Council to provide payment for plantings that could go elsewhere or payment that would

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eventually go into some sort of tree bank. We are willing to work with the Council given the fact that we do not have any room on our site to replant the trees. With regard to landscaping, we have maximized the landscaping as we can. We have a terrace that could function as a green roof. Where we could, we have tried to provide landscaping. In short, we have had some difficulty meeting some of the requirements given the size, the shape of the lot and the desire. You have a terrific form-based code which is unusual but you do have these requirements which we generally as planners like for the building on the street wall with adequate parking but it limits us to a certain point. We hope that by mitigating and by providing the trees elsewhere, by providing landscaping where we can, and this green roof that we are meeting the intent and the general purpose of the requirement.

Mr. Casciano asked: Is it your professional opinion that the grant being requested for a buffer variance and the landscaping and tree replacement waivers is justified under statute and applicable authorities?

Ms. Lehney stated: Yes.

Mr. Casciano asked: Is it also your professional opinion that the granting of variances and waivers will not impair the intent and purpose of the municipal zoning plan and will advance the purposes of the Municipal Land Use Laws.

Ms. Lehney stated: Yes.

Mr. Marion asked: We had talked tonight about losing spot 25 so we would be going down to 51 spots?

Mr. Casciano stated: There is no commitment to what will be down at the corner.

Ms. Caldwell stated: I think it makes sense to go with the 51 because of the testimony tonight.

Mr. Soloway stated: I would point out that if you go to 51 that would be in affect a Board directed deviation.

Mr. Stoner stated: That corner will definitely need to be widened.

Ms. Lehney stated: If that is the case we will be going to 51 spaces which goes from .8 to .79. It is still in excess of the .7 that we say is the bottom of what we need. We would be satisfied with the parking demand with 51 spaces.

Mr. Marion asked: In regards to the parking, it is a 65 unit building. Does that include the unit for the superintendent?

Discussion ensued.

Mr. Soloway stated: The testimony of the applicant last year based upon their experience managing these types of developments was what was reasonably required.

Mrs. Le Frois stated: The 65 units at the .7 is actually 45.5 spaces.

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Mr. Soloway stated: They would have more than that based on the testimony. I don't think the .7 was specifically accepted by the Board. But the Board did accept and grant a variance to allow 53 spaces. That variance has already been granted and what the applicant is asking for tonight is to eliminate one of those spaces and the discussion now is there possibly a 2<sup>nd</sup> one that needs to be eliminated because of future road construction plans for the Town.

Mr. Marion asked: I don't think we talked about the proposed businesses in the front on Spring Street where these people running the establishments are going to park? Would they park in the public parking and gets permits?

Mr. Soloway stated: I don't think that was ever resolved. The resolution allowed the applicant in assigning spaces to assign them to commercial and residential users in effect the 53, 52, or 51 spaces are all going to be contractual because each lease for each unit including the commercial units is going to define exactly what parking a unit is entitled to. There is a limit of one per residential. I don't recall if there is a limit for commercial. The lease is required to provide in it a circumstance where there isn't a reserved space. It is a form of control where the people going in know what they are getting into. One of the witnesses made a comment earlier that if you are trying to rent a unit and you are told you have nowhere to park maybe you will go elsewhere.

Mr. Soloway stated: The way the resolution is written it says no unit shall be allocated more than one parking space so I think that applies to the commercial units as well as the residential units.

Mr. Russo stated: We have two senior shuttles. The old one needs 9-ft. clearance and the new one needs 10-ft. clearance so to accommodate the new senior shuttle we would need a 10ft. clearance.

Mr. Bouzas said they can do that.

Ms. Caldwell stated: I submitted a report dated November 6, 2014 and we did take the opportunity to work with the applicant because the hearing was postponed for a month and they submitted a revised plan so I revised my report dated December 9, 2014. Some of the outstanding comments were some deed restrictions required by the applicant for age restriction, income restriction and the restricting of the parking areas. They did submit deeds and it will be in the conditions of approval but they were working on them and have since submitted them for review by the Town Attorney. The Planner addressed the parking variance which needs to be reiterated and reapproved for the new number. There is a waiver for the tree replacement and they are working in good faith with the Town Council about the tree bank that we do not have in place yet. We have variances for the parking buffer, 10 inches on Lot 9 and 12 inches on Lot 4. The applicant submitted material colors for the Planning Board to approve. The wall on the outside of the parking area on the bottom is going to be a maximum of 4-ft. in height so there is no variance required. I had one note about a grass strip along Union Place which is really a brick paver strip so that needs to be changed.

Mr. Marion asked: Do you know if the colors or other materials will have to go through the Historical Board?

Ms. Caldwell stated: No. It does not because it is not an existing structure. They only give recommendations on existing historic structures.

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Mr. Stoner stated: My report updated December 11, 2014; they talked about the satellite parking area. I would like a designated label that says "Parking Authority Spaces" in lieu of "P" so if someone picks up the site plans not knowing what "P" stands for they can understand what it is. Updated way-finding signs will be included in the final set on a new map. The fencing was talked about. The heights and sizes of fences have all been corrected. There was some PVC white fencing to be replaced with board-on-board fencing at all locations other than out front with that 3-ft. fence. The Board will discuss the building colors. They will have to submit a final design plan of the wall, before construction but that is a condition of the resolution. I made my comment about Trinity Street that you will have to have the one space in the corner moved. The generator location will need to be discussed.

Mr. Marion asked: Could we put a wall up to bounce the noise off of the generator?

Mr. Stoner stated: I do not know. I have seen enclosures for a transformer but I don't know if there is anything to make a generator quieter.

Mr. Stoner asked: Will the generator match the building?

Mr. Bouzas stated: It will be beige.

Mr. Bouzas stated: We did one in the Township of Franklin and they were requiring a certain decibel sound and we accommodated them. We will do the same here.

Mr. Soloway asked: Does the applicant have any objections to keeping the generator testing to normal business house?

Mr. Bouzas stated: No objection to that.

Mr. Stoner stated: I do have a question about lighting. The L4 Lighting Plan, did you say the modern style light will go away?

Mr. Bouzas stated: After reviewing your plans, I took it out.

Mr. Stoner questioned if the utilities along Union Place will be offset to the other side of the street?

Mr. Bouzas stated: yes.

Mr. Stoner stated: There are a few trees along Union Place that will need to be trimmed drastically or removed for the power lines. This was condition 20 and I think that should stay. If you take out a tree, you need to get permission from the property owner to put another tree back.

Mr. Bouzas stated: Whatever we lose we will make up in the tree bank that is created.

Mr. Stoner stated: The other conditions in my report will be carried in the final agreement and the developer's agreement.

Mr. Soloway confirmed. He said it is a condition of the preliminary resolution.

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Mr. Stoner stated: On Trinity Street, they moved the driveway by Lot 4 to minimize the amount of impact they would have on the parking spaces. There may be a need to remove two spots by Trinity where they come out of the main parking lot. When you come out and look to the left you are looking directly through two parked cars. This would be for site distance. I think they will need to address that with the Council to remove those spaces on Trinity Street.

Mr. Russo stated: The Parking Authority will address this because they are metered spots.

Mr. Stoner stated: I think it needs to be listed that the impact of parking on Trinity Street needs to be addressed with the Parking Authority. I think this could be an issue down the road.

Mr. Tharp asked: Do we want to leave the generator issue open or decide on it tonight?

Mr. Soloway stated: If you are moving a generator, taking a parking space, potentially creating another parking space somewhere else, I think it is preferable to define it as part of this approval because the alternative is to leave it to the discretion of the professionals.

Mr. Bouzas stated: I like the buffer idea to shield it.

Mr. Tharp stated: I really think you need to move it away from someone's house.

Mr. Soloway stated: Typically they are exercised for 30 to 45 minutes. In terms of the location near a house like anything else the generator would be subject to any legal noise requirements there are when being exercised. They are exempt when they are running for an emergency.

Discussion ensued on the generator.

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

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

Chairman Le Frois stated: To summarize, we are left with an unknown generator location, an undetermined amount of spaces that we may be reducing as a result of the corner clip on Trinity and the generator we don't know a lot about.

Discussion ensued again on the location of the generator.

Chairman Le Frois stated: Are we comfortable saying, relocate the generator, lose space 25 for the corner clip, add one space back where the generator is coming from and we are at 51 spaces, go through the process with 51 spaces, with the caveat that the 2<sup>nd</sup> space can be added if possible. I would ask our professionals if they feel that it is workable?

Mr. Stoner stated: I think that will work. My other concern with the generator is the aesthetics and what it will look like in that corner.

Chairman Le Frois asked: With putting the generator in the corner, what is preventing someone from stepping up and stepping on top of the wall while it is being exercised and causing a possible accident. I am thinking something should screen the generator near the wall to prevent anything from happening.

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Mr. Soloway questioned if everyone and I am including Mr. Stoner and Ms. Caldwell would be comfortable with the condition that you relocate the generator to space 24. In the area where the generator is currently depicted you put in at least one and try for two parking spaces, screening around the generator to the satisfaction of the Board Engineer and Board Planner.

Mr. Stoner stated: I think you can work something out as long as everyone is happy with putting it in that corner.

Mr. Casciano stated: I think we can commit to the concepts expressed here tonight. The specifics will need to be worked out as we move along with the construction.

Mrs. Le Frois asked: So are we saying this is a definite move?

Mr. Soloway stated: You can do that or you can tell them to come back next month with more specifics or you can leave it totally to their discretion. I don't think they will want to do that.

The Board had a discussion regarding the colors.

Chairman Le Frois stated: My question is what if we decide it to be a certain color and it doesn't look that well once it is out there?

Mr. Soloway stated: There are two caveats here. The first one is, there are variances that can give you a little latitude but these are not those types of variances, the other thing is you have an ordinance that is very tuned in to aesthetics. If you want to play around with a couple of ideas, I think the applicant is amenable to that. The way I would write up a resolution would be I would reference the exhibit if that is what we are going with as part of the definition of the approved plans and require the applicant to construct the building substantially in accordance with that.

Mr. Russo stated: It is a very beautiful looking building and it is probably great quality. I have been to your other facilities but a brown would blend in and look better with the Theatre, PB&J, Maxwell and Molly's. I think a brown or a tannish brown would look better.

Chairman Le Frois stated: We are ok with the brown.

Mrs. Caldwell stated: Everything proposed meets the ordinance.

Chairman Le Frois reopened the application up to the public for comment.

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

**SWORN:** Michael Malone, 59 Trinity Street and 12 Union Place. I have had about 50 years of experience with Hackettstown Road Department and snow plowing. One of the provisions you have is that supervisor who is in charge of the building will be responsible for the snow removal. With all of the other jobs he is going to have when the snow comes, he is going to have a difficult time removing 1/3 at least of the snow on Union Place from the sidewalk in addition to the amount of snow that is on the sidewalk. I happen to be on the lower side of Union Plan, and I get 2/3 of Union Place plowed into my parking lot and I think this is putting quite a burden on these people when you say it will have to be removed and they will have to have a truck to remove the snow because there is no place to put that snow so what will suggest other than you have to remove it. Is there any alternative?

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Mr. Casciano stated: We hire third party contractors to do our plowing and snow removals. The superintendent does the sidewalks. We understand any complaints the property owners might have in Town.

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

Mr. Soloway stated: We will be granting a resolution granting final site plan approval, granting variance relief for landscape buffers as specifically described in terms of the dimensions we have discussed, granting the related landscape waiver, granting a partial waiver from the tree replacement requirement on various conditions. All the conditions from preliminary will stay in place except for the extent specifically modified. They would be required to construct the project substantiated and in accordance with the approved plans. The approved plans would include the latest set that was submitted and revised November 25, 2014. It would also include the architectural rendering that stills need to be decided. It would also include Exhibit A-4 which is the proposed signs and pavement markings. That is something they would have to comply with. They would have to provide clearance under the building of at least 10-ft. to accommodate the senior bus and the ambulance. The on-site property manager will be responsible for enforcement in terms of the use of the applicant's parking spaces, the Parking Authority would be responsible for enforcement on theirs and the applicant would work with good faith with the Parking Authority to coordinate. Applicant should comply with Item 12 in Ms. Caldwell's report which is to replace the existing brick pavers if damaged during construction. Change the plan to better delineate which spaces are the Parking Authority spaces to the satisfaction of Mr. Stoner, limit the generator testing to normal business hours, all lights to be the Town's historic style with shields. Also from Mr. Stoner's report, I noted item M in his report with the relocation plan on the utilities, relocate the generator to space 24 in the area that would be vacated, provide for at least one and if you can get two replacement spaces, screening to the satisfaction of the Board Engineer and Planner, generator to be tan, to do something to the wall to at least preclude skateboarding. Regarding the color, you can go with A1 or A5 with the historic earth tone pallets. You will be granting a variance to reduce the number of parking spaces to 51. The applicant has proposed 52. It looks like through no fault of their own they are going to lose a second one. You might be able to regain it when you relocate the generator.

**Mr. Marion made the motion to approve the resolution as described by Mr. Soloway. Mr. Flaherty seconded the motion.**

**AYE:** Mr. Flaherty, Mr. Marion, Mr. Tharp, Mr. Russo, Mr. Hardmeyer, Mr. Steinberg, Mrs. Le Frois, Chairman Le Frois

The Board broke for a break at 10:51 PM.

The Board reconvened at 10:53 PM.

**PUBLIC HEARING:**

**Master Plan Reexamination Report and Master Plan Update – Reexamination of the Town of Newton Master Plan Pursuant to N.J.S.A. 40:55D-89 specifically with respect to Plan Endorsement by the State Planning Commission with respect to the Planning Act (N.J.S.A. 13:20-1 et seq.) and Municipal Conformance with the State Development and Redevelopment Plan"**

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Ms. Caldwell stated: What we have before us is a Master Plan reexamination that was prepared pursuant from an ongoing plan endorsement process that you can see from the resolution that I have attached. It started in 2008, and we submitted all our planning documents at that time for review by the State. Through the review, we were already complete with our Master Plan and all of our ordinances but the State had some recommendations in terms as to what is included in our Master Plan. Whenever we reexamine our Master Plan we are required to do a reexamination of our Storm Water Management Plan which was adopted on September 1, 2005 and also the Storm Water Regulations which was adopted on August 9, 2010 which I did in conjunction with Mr. Simmons from the Town Engineer's office. The recommendations were as follows: The NJDEP recommended we incorporate the Sussex County Natural Resources Inventory into our Master Plan and reference it for anyone who is looking for information on Natural Resources within the Town and they also recommend we add mapping for threatened endangered species and natural heritage priority sites. Mr. Simmons recommended we review subdivision site plan applications and mitigate any increase in storm water run-off in drainage area that contribute storm water runoff to the following areas in Town: Dam Site #2 between Glen Terrace and Sussex County Rte. 622 Swartswood Road, Sussex County Rte. 519 West End Avenue, and NJ State Highway Rt. 206 south end near Merriam Avenue. We should also research and verify easements around storm drainage infrastructure, sewer/water and other utilities locations and easement should be identified, mapped and easements secured where necessary. Through this process, there have been some ongoing efforts through the State to adopt new third round regulations for affordable housing and if that does actually occur that we should drop the revised Housing Element and Fair Share Plan. Master Plan reexamination also looks to incorporate redevelopment that is going on in the Town. There is a list of our redevelopment plans and amendments as well as designations that would be incorporated into the Master Plan. Through the review process, we recommended an ordinance change which will incorporate school uses into the T-3, T-4 and T-5 zones to allow expansion of existing schools within the school district. I have attached the recommendations from the Master Plan Reexamination and attached is a Master Plan Amendment which incorporates those items.

Chairman Le Frois opened the public hearing portion of the meeting up to the public. With no public coming forward, Chairman Le Frois closed the public portion.

Chairman Le Frois asked: How often are we required to reexamine the Master Plan.

Ms. Caldwell stated: We are required by statute to examine every ten years.

Chairman Le Frois asked: So in between the reexaminations there is the opportunity to change things?

Ms. Caldwell stated: We can reexamine anytime the Board wishes to but we are required to do it at least every ten years. This is an instance that some items came up and the Board decided to do a reexamination. Some specific ordinance changes don't trigger changes with the Master Plan because the Master Plan is more general and overarching. The State Planning Commission asked us to make specific changes to the Master Plan with respect to some environmental issues. I think it is still in line with our ordinances because we did not have any environmental impact statement requirements and they were happier to see that additional information in the plan. I don't think any of the ordinance changes that we are looking at would trigger changes to the Master Plan.

Mrs. Le Frois asked: When does the clock start. Is it ten years from the submission when we worked on this in 2008 or ten years from when the State accepts and that would be 2013?

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Ms. Caldwell stated: Now that we have reexamined, technically we would not have to reexamine it for another ten years from this reexamination and it would have been from our prior adoption in 2008 so it would have been 2018 by statute.

**Matthew & Maria Parsons  
24 Lawnwood Avenue  
Block 13.05, Lot 13  
T-3 Zone**

Applicant requesting a temporary use permit for mobile home on lot until they are able to rebuild/restore their home after fire.

**SWORN:** Matthew Parsons, 24 Lawnwood Avenue, Newton.

Mr. Parsons stated: He had a major fire on April 12, 2014 at his home. The insurance company came out to look at the house. I didn't get my check from the insurance company till the end of August. My insurance company does not pay for extra living expenses. We have been living in the mobile home since July 1<sup>st</sup>.

Chairman Le Frois reiterated: Basically the reconstruction of your home is taking longer as a result of a mix up with your mortgage company and now the contractor is a little concerned with the cost for him to complete the job and for you to stay in the mobile home there needs to be Planning Board approval to grant a temporary use permit for the erection and maintenance of temporary structures or buildings for the conduct of permitted uses where such permitted uses have been interrupted by fire or other casualty. Such temporary use shall expire at the time the necessary repair or reconstruction of the permanent structure or building has been accomplished or within one year or whichever occurs first. The intent here is not to put you out on the street. We will try to do something. I think this statement that the temporary use would be until the house is repaired or a year whichever comes first I think all of the Board members would want to have some time constraint otherwise this could go on indefinitely. I understand your situation.

Mr. Elvidge asked: When will the repair start?

Mr. Parson stated: Since Mother Nature is not in my favor right now, it would have to be early spring when they can start. Unless we have a mild winter and the contractor says he can start. It is all weather based right now. The repairs will take place in the rear of the house and upstairs.

Ms. Citterbart stated: The Construction Office has asked that a condition be made that the construction office receives an application to bring it back to habitability. Mr. Buto has said he will perform a courtesy inspection to go onsite to see what permits are required for the permanent structure.

Mr. Tharp stated: You still do not have a definite ok from the constructor. You still have a discrepancy between the insurance check and the estimate to do the job.

Mr. Parsons stated: Yes, because the house was not properly covered.

Mr. Tharp asked: What is your plan to make up for the discrepancy?

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Mr. Parsons stated: The insurance company was going to send someone out to look at the house and subsequent to this second inspection see how much it is. They will come to an agreement on the amount for the repairs.

Mr. Hardmeyer asked: Has your contractor told you if the house can be repaired or will it have to be removed and start over?

Mr. Parsons stated: He wasn't sure yet. It is up to the insurance company.

Mr. Hardmeyer stated: You said you have mold?

Mr. Parsons stated: Yes, black mold in the basement. He said I will have to have a company come out and they have to encapsulate it and do everything to get rid of it. It is not cheap. You need to have them come out and look at it because if it is in the basement it probably is in the walls in the main part of the house.

Chairman Le Frois stated: It sounds like there are a lot of things up in the air. As it stands right now we do not have a solid schedule on the reconstruction.

Mr. Russo stated: We need to pick a start date and he has one year from that date.

Mr. Soloway stated: I do not believe the Board has the authority to extend it beyond a year. If it is not done after a year, the Parsons will have to find other living arrangements.

Discussion ensued with what could happen if the year expires.

**Mr. Marion made the motion to grant a temporary use permit as stated in the ordinance and based on the ordinance for the reconstruction to a habitable condition for one year or whichever comes first. The Board Secretary to write the letters that will take effect as of December 17, 2014 and end on December 17, 2015 to get the necessary permit issued. Mr. Elvidge seconded the motion.**

**AYE:** Mr. Flaherty, Mr. Marion, Mr. Tharp, Mr. Russo; Mr. Hardmeyer Mr. Steinberg, Mrs. Le Frois, Chairman Le Frois

**2015 Meeting Dates:**

January 21, 2015

February 18, 2015

March 18, 2015

April 15, 2015

May 20, 2015

June 17, 2015

July 15, 2015

August 19, 2015

September 23, 2015\*

October 21, 2015

November 18, 2015

December 16, 2015

January 20, 2016

**\*Falls after a Legal Holiday or following a Town Council meeting**

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Mr. Soloway stated: We will adopt a formal schedule in January at the reorganization meeting.

**DISCUSSION:**

**Martorana (#FPS-02-2013)**

**Block 22.05, Lot 13**

Relating to driveway design.

Mr. Soloway stated: I would like to give the Board some background. It was complicated. It had a lot of conditions and essentially the pre-construction conditions were fulfilled and the applicant was ready to go. It was discovered at the last minute that they still did not have final approval from the County Planning Board. They went to the County Planning Board and the County Planning Staff and I think this Board ultimately adopted this as well determined that they wanted to make a change to one of the driveways. If the Board recalls there were two driveways. As part of the approval that will provide ingress and egress to the site. The northerly one is on the Newton side and the southerly one is on the Sparta side. The southerly driveway under the plan approved by the Board was two ways and it also had two exit lanes, a right turn lane and a left turn lane and the County Planning Staff thought that a better planning alternative would be to eliminate one of those lanes, have it one lane in and one lane out and wanted to propose that as a condition on the approval it was granting to the application. The applicant objected because they did not want to put in the time, expense and delay of potentially coming back to this Board to amend the plan because they are very anxious to proceed with construction. I was asked as the Board attorney whether I would write a letter that essentially authorized the Board Engineer, which in this case is Mr. Ferriero, to approve that change as a field change so that it did not have to come back to the Board at all but I did not agree to write that letter. I did agree that I would ask the Board whether the Board would in effect approve it as a field change without requiring a hearing. As I understand it the County Planning Board has approved the application as it was approved by the Board but if the Board does decide to authorize that field change that change would be made and it will be constructed one lane in and one lane out on the southerly side and it will ultimately be reflected in the as built plans. I don't know if Mr. Ferriero would want an intermediate plan. The County is here, Mr. Martarano is here. This is not a public hearing but I think the County will want to hear from the Board.

Mr. Eric Synder from the Sussex County Planning Board stated: Everything that Mr. Soloway said is correct. We are here because we think we have a solution that will provide safety for both pedestrians and motorists. We are not interested in putting any additional time constraints or expense. Mr. Soloway is correct. The County Planning Board has approved the plans subject to us making this presentation. We are here at their request.

Mr. John Risko, Assistant Sussex County Planning Board Engineer went over the plan. The approved plans apposed a left out and right out as well as a turn in. It serves no great function because a tractor trailer would go past the access any way. The other problem you have when you have a left out and a right out is that person who is turning left in the right hand lane and the person turning to the right has to look this way and he is blocked by vehicle in the left hand lane. The plan was sent back to shorten the driveway length but when you shorten the driveway, it shortens the site distance. It is bad for pedestrians because motor vehicles can't see the pedestrians and vice versa so we make a worst condition for both pedestrians and motor vehicles. What we are proposing is eliminating a double lane from the egress. You still have the functionality of the driveway, and it makes it better for pedestrians to cross. As a practical matter and a safer condition for all is to keep the single ingress and egress just like the other driveway.

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Mr. Soloway stated: I spoke with Gary Dean, Newton's Traffic Consultant. Mr. Dean agrees with the County and favors the change. I think it is fair to say that Mr. Ferriero would defer to Mr. Dean because it is more of his specific area of expertise.

Mr. Le Frois stated: That input is critical because we all know that during that application internal site circulation and especially ingress and egress was a big issue that we needed to deal with so as long as Mr. Dean feels it is an appropriate solution.

Mr. Soloway stated: When I spoke with Mr. Dean he expressed concern on the site distance issues with vehicles turning out at times of traffic.

Mr. Le Frois addressed Mr. Martarano and asked him if he wanted to make a statement. Mr. Martarano concurred with the new plan.

Mr. Soloway stated: The Board has to decide if they like this as a field change or not or that it is important enough to make it an amendment and they need to come back where the public would have a right to be heard. The County has jurisdiction over the driveway opening on the County Road, the Board has jurisdiction over the on-site traffic circulation. The one thing you do not want to do is put the applicant in a position where one says one thing and the other says another.

Mr. Synder stated: I point out that the County has granted approval for the site plan as the Newton Planning Board approved it subject to us making this presentation and asking that you look at it as a field change.

Mr. Tharp questioned about the queuing up.

Mr. Elvidge stated: I think the queuing up will still be an issue. This application goes back a long way and it has always been a discussion.

Mr. Tharp stated: That is why I question it, because there was a lot of discussion on it. I think the County has valid points.

Mr. Elvidge stated: I agree that the County has valid points as well but there are a lot of cars in there.

Mr. Le Frois stated: Would there be an opportunity to add a lane in the future?

Mr. Soloway stated: Only if who owned it at the time decided they wanted to and filed an application to do so.

Mr. Elvidge brought up an example of Dunkin Donuts. If they didn't have that relief valve in the back for people to get out, then I think you would have a jammed up situation on that site. This location has substantially more vehicles. My only concern is that after the fact the disappointment with residents just to get out of their own home site. The concern as far as the site vision, could you restate how that changes the site distance?

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Mr. Risko stated: In order to shorten the length of the crossing we moved the crosswalk back and move the stop marks back. Vegetation here obstructs the vision. We started at 497 feet and went down to 370 feet.

Mr. Tharp asked: Who would be the one to initiate a traffic light?

Mr. Risko stated: They would have been established when the development first went in and they were not established for the approved plans.

Mr. Flaherty stated: Living in the area and having children who walked down there, the expanse was always a concern for me. Putting it back to two lanes is safer than having three lanes to cross.

Discussion ensued between the Planning Board and Mr. Risko.

Chairman Le Frois asked the Board what they are in favor for.

As Mr. Soloway stated: We have three options, it is ok as a field change, we don't like the idea at all or we want to hear more testimony and they need to come back in.

Mr. Soloway stated: If you go with the third option that means it stays the way it is because the County the approved it and they would not put the applicant through that expense.

Mr. Marion stated: I don't see a problem with a field change if it is going to improve the intersection safety.

**Mr. Russo made a motion to approve the field change. Mr. Flaherty seconded the motion.**

**AYE:** Mr. Flaherty, Mr. Marion, Mr. Tharp, Mr. Elvidge, Mr. Russo, Mr. Steinberg, Mrs. Le Frois, Chairman Le Frois

**Abstained:** Mr. Flynn, Mr. Hardmeyer

Mr. Soloway stated: The motion is to authorize the Board Engineer to approve this as a field change and to authorize me to advise him and tell him to write a letter.

**DISCUSSION**

Jessica Caldwell brought to the Board's attention the increased interest in vapor stores, residential emergency stand-a-lone generators & retail operators wanting to increase signage for their stores.

Ms. Caldwell stated: Kathy has gotten more and more requests for permanent home generators. They currently are not listed in the setback exceptions where air conditioners can go in. They have not been approved under that but there have been requests for them to be approved under that. We wanted to alert the Planning Board and we have talked with the Town Manager who has worked with the Council and they are going to work on an ordinance to address and do some research and see what the best way to handle is. We do not want to make policy decision out of step or leave it on Kathy to try and figure these things out. A lot of

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Towns in New Jersey since Hurricane Sandy have enacted specific generator ordinances so we will be looking at those to try and get some guidance.

In terms of the vapor stores, that is another item that has come up over and over again over the last year. The stance for our ordinance because we have a very specific list of permitted uses for Kathy as a Zoning Officer is usually anything that is not listed in that list is prohibited. But it has come up enough that we think we may need to address it. While working on these ordinances we will be looking into that. Currently they are prohibited but maybe there is a way they can be permitted in some locations because it is becoming a popular use. But it will come before the Board for your input.

Mr. Soloway asked: Does everyone know what a vapor store is?

Ms. Caldwell stated: They are becoming more and more popular. They are an advanced version of an electronic cigarette.

Mr. Steinberg asked: Do people go and use them there or do they sell them there?

Ms. Caldwell stated: Both, that will be one of things I will research. I will see how they are used and which part or all of if we want to permit that.

Mr. Soloway stated: It is a little trickier than the generators. Clearly, these are not dealt with as a separate item in your ordinance. E-cigarettes are tricky because they are already being sold in town at convenience stores.

Ms. Le Frois stated: Earlier this year at the Senate Budget Committee meetings and at the State Assembly Budget Committee, this was a hot topic because the tax structure for these vapor stores and the products they sell is changing in the State. The proponents are saying these are a smoking sensation tool and should not be taxed like cigarettes. The opposition is saying they should be taxed by cigarettes and the limitations on where the products can be sold are changing. So Jessica on your research there are two separate things to address, sale plus permitted use within a structure and the other thing we are going to see in terms of legislature coming from the State is the vapor materials themselves and the components are subject to manipulation for other illegal substances to be used. This is going to be tricky for the Council to consider.

Ms. Caldwell stated: The first view that came in were associated with drug paraphernalia sales which are specifically prohibited so I wasn't uncomfortable advising Kathy not to permit those but if they are not associated with those types of sales it becomes a little more difficult to say is it retail so that is why we are looking at it.

Ms. Le Frois stated: The other things is the State of New Jersey is considered a manufacturing hub for e-cigarettes and vapor mechanisms and they are a distribution center for neighboring states.

Mr. Steinberg asked: Has anyone inquired about having a place where you consume the vapors in the Town or has it just been about sells?

Ms. Citterbart stated: It has been both.

Chairman Le Frois asked: Do we have anything like cigar shops?

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Ms. Caldwell stated: That is another thing I was going to put into this, but no we don't. I think if we address e-cigarettes, we should also address cigar and tobacco shops.

Mr. Soloway stated: You could have an anomalous situation with the ordinance where there is not a specific authorization for a retail tobacco store that only sells tobacco products and e-cigarettes nicotine based. But I don't think anybody would take a position that you cannot sell anywhere in Town. I agree it is something that is complicated and needs to be straightened out by ordinance.

Ms. Caldwell stated: We do get a lot of crazy use requests and sometimes that is why we have the specific permitted and prohibited use. We did get a request a few years ago for a hookah store. It was denied. We try to keep things out but I think what Dave is trying to say is that we are on a little shaky ground with the e-cigarettes that they can be sold in convenience stores but not alone and if we can address where they can go in Town that would be palatable to everyone.

Ms. Caldwell stated: So we will be looking at this within the next 3-6 months along with the signage that was requested by Town Council most directly related to temporary signs. The ordinance before the new ordinance in 2012 did not allow any temporary signs but we did allow some and it opened it enough that some of the businesses really want more so we are looking into that. They are looking for more temporary signs. But we will look at the whole ordinance and get some feedback from the Town Council and the business community to make sure they are getting the signage they need to attract people to their businesses.

Mr. Russo stated: Ms. Caldwell will be coming to the Council meeting on January 26 to discuss the signage and these issues.

**CORRESPONDENCE**

Chairman Le Frois went over the Correspondence that was in the Board member's packets.

**EXECUTIVE SESSION**

NONE

**PUBLIC PORTION**

NONE

**ADJOURNMENT**

**Mr. Marion made a motion to adjourn the meeting. Mr. Flaherty seconded the motion. The meeting was adjourned at 11:03 PM with a unanimous "aye" vote.** The next regularly scheduled meeting will be held on January 21, 2015 at 7:00 PM in the Council Chambers of the Municipal Building.

Respectfully submitted,



Katherine Citterbart  
Planning Board Secretary

**Newton Planning Board  
December 17, 2014 Regular Meeting  
7:00 PM**

**Exhibit Page**

Exhibit A-1, December 17, 2014, Colored Architectural Rendering of Proposed Building.  
Exhibit A-2, December 17, 2014, Color and Material Board.  
Exhibit A-3 dated December 17, 2014, 3-foot aluminum fence, picture of black iron fence.  
Exhibit A-4, Proposed Signs and Pavement Markings, Newton Town Center Senior apartments,  
dated December, 2014.