

TOWN OF NEWTON
PLANNING BOARD
APRIL 15, 2015
MINUTES

The Town of Newton Planning Board met in a regular session on Wednesday, April 15, 2015, at 7 p.m. at the Town of Newton Municipal Building, 39 Trinity Street, Newton, N.J. The following members were present: Neil Flaherty, Gary Marion, Kent Hardmeyer, Helen Le Frois, Ernest Hemschot, Thomas Russo, and Greg Le Frois. Joseph Ricciardo, Dan Flynn and Kevin Elvidge were excused. Also present were: David H. Soloway, Esq., Board Attorney, Jessica Caldwell, Board Planner, David Simmons, Board Engineer and Board Secretary, Katherine Citterbart.

SALUTE TO THE FLAG: was recited.

ADMINISTRATION OF OATHS: Given to Ernest Hemschot as Planning Board Alternate #1 Member.

PROFESSIONALS SWORN IN:

Mr. Soloway stated there has been discussion whether we should swear in the Board professional's to the extent that they give testimony and did the Board want to do it at every application or for the full 2015 year as this is the first hearing we have had this year. The Board agreed to the full 2015 year. Sworn in were: Jessica Caldwell, P.P., A.I.C.P., Planning Board Planner of J. Caldwell & Associates and David B. Simmons, Jr., P.E, L.S., C.M.E., of Harold E. Pellow & Associates.

ROLL CALL: was taken

THE SUNSHINE STATEMENT: was read.

CONSIDERATION OF MINUTES

February 18, 2015

A motion was made by Mr. Marion and seconded by Mrs. Le Frois to approve the minutes from the February 18, 2015 meeting. Roll Call: Mr. Marion - yes, Mr. Russo - yes, Mr. Hardmeyer - yes and Mrs. Le Frois - yes. The motion was carried.

RESOLUTIONS:

None

OLD BUSINESS:

None

NEW BUSINESS:

Richard Lance - #LUVWSP-01-2015

128 Sparta Avenue

Block: 24.01, Lot 1, T-3 Zone

Applicant is requesting waiver of site plan and a use variance for an office use in the T-3 Zone.

Chris Colabella, Esq. of the firm Gruber, Colabella & Liuzza represented the applicant.

Sworn in: Richard Lance.

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Mr. Colabella stated Mr. Lance is seeking a use variance and a waiver of site plan as indicated and wanted to offer Mr. Lance's testimony regarding the application. The Planner has outlined a report that outlines the history of the property and the prior approvals relating to the property; specifically a prior use variance connected to the property.

Mr. Colabella asked Mr. Lance to describe his profession. Mr. Lance stated that he is a tax professional, has an office at 7 Main Street that is just under 1,000 square feet and has no parking. I am the contract purchaser for the 128 Sparta Avenue property contingent on getting these approvals and would like to put my tax preparation business there.

Mr. Colabella asked Mr. Lance to tell the Board what he intends to do with that building as there is a tenant upstairs and a dog grooming business downstairs. Mr. Lance stated that he will put his tax preparation and financial services business on the main floor and keep the tenant upstairs. I will have two part-time employees; one full year part-timer and one seasonal part-timer. The seasonal part-timer will be from January 15th to April 15th. The hours of operation during non-tax season would be Monday through Friday either from 8 a.m. – 5 p.m. or 9 a.m. – 5 p.m. During tax season it would be from 9 a.m. – 9 p.m., Saturday to Sunday. I will not be changing anything structurally to the building, maybe just paint to make it look nicer. Not changing anything on the lot.

Mr. Colabella questioned Mr. Lance that pursuant to the contract you have with Ms. Shotwell, the seller, she has agreed to do some landscaping, correct? Mr. Lance answered: Yes. Mr. Colabella stated that there was a site plan approval many years ago and she has agreed to do plantings according to that site plan and stripe the parking lot. Mr. Lance answered: Yes. Mr. Colabella questioned the number of parking spots to which Mr. Lance stated he read there were 7 spots; they are faded now. Mr. Colabella question will the 7 spots be adequate with the tenant upstairs? Mr. Lance stated: Yes. The employee, the tenant and myself would have 3 spots leaving 4 spots open. The business consists of dropping-off and appointments only; two – three clients at a time. One working, maybe two waiting during tax season. It is open to the general public.

Mr. Colabella asked about signage on the building and if there was a sign on the building currently. Mr. Lance stated: Yes. Mr. Colabella (showed the Board) asked to have the proposed sign marked as Exhibit A-1 and dated 4/15/2015 to which he then asked Mr. Lance if that was the building and was that the sign he intended to put on the building. Mr. Lance answered yes, but not the color. The sign will probably be white and black. In the lower left corner of the photo marked as Exhibit A-1, you see the sign that is presently on the building. Mr. Lance stated, after being questioned by Mr. Colabella on the façade, that he would not be changing anything.

Mr. Colabella asked Mr. Lance if there were other businesses along Sparta Avenue and how many people in a year did he service? Mr. Lance stated: Yes, and about 1200 people and 90% of my clients are from Newton. I have been operating 1040 Tax Service for 15 years and plan on expanding outside of Newton, not at this particular site though.

Mr. Colabella asked Mr. Lance with regard to the site itself was he familiar with the fact that there is a little roadway going through there, an easement? Mr. Lance stated: Yes. There were some wetlands to the side there.

Mr. Colabella stated that is all he had at this point unless the Board has questions for Mr. Lance. The Board did not and Chairman Le Frois asked Ms. Caldwell to start with her review of the application.

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Ms. Caldwell stated she submitted a report on April 6, 2015 and had outlined the prior use variances; two that were approved on the site along with the site plan; the most recent was in 2005. The site plan referenced we did not get a copy of but they did agree to bring the site back in conformance as some of the landscaping has died and some of the striping has faded so restriping the parking lot would provide clear demarcation where people are parking. The parking meets the requirements of the ordinance and it sounds like from the use with 2-3 clients, 2 employees and 2 for the apartment you are at 6-7 spaces. In terms of the site it is in the T-3 Residential Zone and a d(1) variance is required because they are changing the use on this site. Taking into consideration the commercial building as existing you should have some discussion on the positive/negative required for a "d" variance as part of what you are submitting.

Ms. Caldwell continued: The sign they are proposing is slightly different from the one on the building. I would recommend the Board consider a "c" variance for the sign because it is in a residential zone and signs such as this are not permitted. They are not utilizing the existing sign they are replacing it.

Ms. Caldwell stated that they are also asking for a waiver of site plan and as I have said they meet the requirements the only real change is the signage. They would be bringing the site back up to standard for the site plan that was approved prior. In terms of the use, an office use is less intensive than a retail type of use that was there before with the dog grooming service.

Mr. Simmons reviewed his report of April 7, 2015 and stated the applicant and Ms. Caldwell touched on many of the items he had. A couple of items for the record, under Item # 3, page 1 – Section 320.7.C, where parking under the new ordinance is allowed in the second and third layer not the first layer which is in the front of the building and the right-of-way, subject to the discretion of the Board, this is an existing situation that has been there for many years and does not meet that requirement.

Mr. Simmons continued with page 2, item #5 – the existing parking lot lighting should be evaluated in the field to determine if it complies with the Town's latest lighting ordinance. When we had the Technical Review Committee (hereinafter "TRC") meeting it was discussed and Ms. Shotwell had mentioned there was some lighting on the building and perhaps the best way to handle that would be to evaluate it in the field just to see if any additional lighting was needed. I suggest to the Board that if you decide to act on this it be made a condition of approval.

Mr. Simmons stated under item #6 – in addition to the items discussed as far as upgrades in accordance with the previously approved site plan I just want to mention the ADA handicap space to be restriped as well plus the signage that goes with that.

Mr. Simmons stated that finally the one thing that came up during the TRC on item #8, was an existing garage structure behind the principal building on the site. The applicant to advise if this garage will be used by the proposed tax preparation tenant, the second floor tenant, or a separate third party. Mr. Lance stated he would be using it to store his convertible in it.

Mr. Colabella wanted to elicit more testimony from Mr. Lance based on the Planner's comments about the purposes of the zoning. To some degree he testified to it but then Mr. Colabella asked Mr. Lance, since he has been here for 15 years, had that area always been mixed use and Mr. Lance answered yes. Mr. Colabella asked if Mr. Lance was familiar with the purposes of the zoning to which Mr. Lance stated no. Mr. Colabella questioned that in regard to the positive issue was Mr. Lance offering services to the

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general public. Mr. Lance answered, yes, as there is a need for a tax service. I will also be offering financial services consisting of but not limited to mortgages or IRA's, also opened to the general public. Mr. Colabella asked if Mr. Lance could see any substantial detriment to the area, the use of the property or this zoning plan? Mr. Lance stated: None.

Mr. Colabella summarized by saying it meets the criteria based on not only the prior use and the prior approvals but also by what Mr. Lance is intending to do. It appears that the use is less intense than the dog grooming business or the prior florist business. It looks like the property has been used in this fashion for about 35 years now so Mr. Lance is going to buy the property and continue the use in a less intense fashion and to do that he needs the use variance and we are asking for a waiver. He is willing to comply with any of these requirements that Mr. Simmons brought up with regard to the lighting, to whatever is required, to the upgrades in regard to the parking spot. There are going to be lines put down and a sign to designate a handicap parking spot and he tackled the garage use issue.

Mr. Hardmeyer asked who owns that easement. Mr. Flaherty said it was an old milk road. Discussion ensued on who owns the easement. Mr. Hardmeyer asked if the applicant would be required to keep that easement open? Mr. Colabella stated: Yes. It is an easement and the easement runs with the land. It is perpetual.

No more questions from the Board, Chairman Le Frois opened this portion to the public. No public stepping forward, this portion of the meeting was closed.

Mr. Marion made a motion to approve a use variance to allow use of the first and main floor of this building for a tax preparation and financial service office use, to allow parking in the first layer and to allow this commercial sign in the residential zone with the conditions that the landscaping as required by the last variance approval be installed to the satisfaction of the Board Engineer and Planner, the parking lot be striped, also as required by that approval to the satisfaction of the same two professionals, that there be compliance with item #5 in Mr. Simmons report, subject to an evaluation in the field to determine whether there is compliance with the Town's lighting ordinance and if not to bring it into compliance; compliance with condition #6 of Mr. Simmons report to sweep and repair any damages to the pavement, restriping, ADA handicap space to be restriped and properly signed, landscaping, and finally a waiver of the requirement of obtaining formal site plan approval. Mrs. Le Frois seconded. Roll Call: Mr. Flaherty – yes, Mr. Marion – yes, Mr. Russo – yes, Mr. Hardmeyer – yes, Mr. Hemschot – yes, Mrs. Le Frois – yes, and Chairman Le Frois – yes. The motion was carried.

Ordinance #2015-11 – Emergency Standby Generators

Jessica Caldwell stated that after the emergency situations that we have had there has been more requests for residential generators on residential properties that are permanent vs. the portable type you pull out. Using our accessory structure setbacks became difficult for some property owners. The variance scenario to put in a generator did not seem reasonable so a lot of municipalities in this State have adopted generator ordinances so we used some of those as models. Essentially it provides setbacks, sound requirements, size requirements for residential and a process in which they can apply to the Zoning Officer to avoid a site plan. Commercial properties will use a minor site plan if they are not applying for a major. Setbacks for residential are 10 feet from a secondary front yard and 5 feet to a side or rear yard and not permitted in the front yard. The maximum size is a 20 K W and the generator cannot be on a larger footprint then 25 square feet or higher than 5 feet. The commercial standby generators can be in the secondary front yard, side or rear yard. They have to be within 20 feet of the structure they are

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serving and the minimum setbacks are 10 feet to any property line or 15 feet from any residential use. The commercial ones would come in for minor site plan, if they are not part of a major site plan. The residential ones would be able to be approved by the Zoning Officer as long as they meet all the standards.

Ms. Caldwell continued: There are some regulations in terms of the use. Unlimited use during an emergency, exercise of the generator would be permitted during weekdays between 10 a.m.-5 p.m. for the maximum of 30 minutes. If there is any proposal for a unit adjacent to a right-of-way there would be screening required, either natural screening or fencing, subject to approval by the Zoning Officer. In terms of noise they would have to meet the New Jersey Noise Control Act and if they don't they can utilize sound attenuation enclosures like screening or landscaping until they meet it. If it is fuel storage or a diesel it will have to have a double walled fuel storage tank and comply with all applicable regulations. It is a \$100.00 fee for the application and \$500.00 for fining it. It is a permit that we noted as revocable if the use standards are not followed, so if someone is misusing it the Zoning Officer could take away the permit.

Mr. Marion asked if it was one fee of a \$100 for diesel, propane or a little generator. Ms. Caldwell stated: Yes, one fee for any type of generator, either residential or commercial. The \$100 fee would be in addition to the site plan and fee for commercial.

Mrs. Le Frois asked for clarification that this is not for a temporary generator that someone would use in the event of a power shortage but a permanent standby generator. Ms. Caldwell stated: Exactly. There are definitions in the beginning that identify permanent vs. portable and the portable generators aren't regulated by this. No permit is necessary for the portable standby generator that you would keep inside.

Mr. Soloway questioned if you have to comply with the noise standards how is that determined? Mr. Simmons stated that he looked up on the manufacturer's he was familiar with and normally what he has seen decibel (hereinafter "db") are ratings of 23 feet. On some of the more sound efficient models the db reading is right there so for example Kathy as Zoning Officer can see what model number xxx produces 53 db, the maximum might be 65 or 55 and she can say based on this it meets it. What I suggest is if they come in with some hybrid that at a distance is smaller than that and they don't have the information from the manufacturer that it is not up to Kathy to calculate, but for the applicant to go back to the distributor/manufacturer and provide documentation that it does meet it. From the standpoint, as they say there is more than one way to skin a cat, they may have a better enclosure, they might recommend some sound buffering, there may be a couple of different ways to go depending on the application; let the applicant come back with information from their supplier.

Mr. Solway questioned not allowing an exercise period for more than 30 minutes, is that typical? Mr. Simmons stated that from what he has seen that is typical.

Mr. Le Frois stated that in the past regarding generators there was always the discussion on the type of fuel, this doesn't talk about it at least from what I can see so is this going to be an issue? Mr. Simmons suggested that the larger generators are going to be site specific. Whether you have the natural gas available or whether propane is an option because of offset distances from the building or whatever code requires. The one thing Jessica did put in there was with diesel to have a double walled fuel tank.

Mr. Hemschot questioned the type of screening anticipated; shrubbery or fencing, as it seems this will be an issue with all of them if they are visible from adjacent property or a right-of-way. Ms. Caldwell stated

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that there is a preference for natural screening which would be taller shrubbery or evergreens and if that is not possible because of the space or the area then there is the option of doing a fence. The fence is subject to our regular zoning code so it would have to meet those standards.

Mr. Soloway stated that as with any ordinance referred to you, you are to make a finding as to the whether the proposed ordinance is consistent with the Master Plan. You have the right to, but not the obligation, to make any recommendations about the ordinance that you may see fit and vote on.

Mr. Hardmeyer made a motion to find the proposed ordinance consistent with the Master Plan with no recommendations for changes and to direct the Board Secretary to communicate that to the Town Council. Mr. Flaherty seconded. Roll Call: Mr. Flaherty – yes, Mr. Marion - yes, Mr. Russo - yes, Mr. Hardmeyer – yes, Mr. Hemschot – yes, Mrs. Le Frois – yes, and Chairman Le Frois – yes. The motion was carried.

Mr. Marion questioned as the ordinance stands or possibly be adopted how does it reflect if someone has a townhouse and wants to put in a generator? Ms. Caldwell stated: Anything over a two-family would have to come in under commercial or residential site plan so they would have to come in with a minor site plan. Mr. Marion questioned that they could do that if they were in the middle of a row of townhomes that were attached like the Martorana? Ms. Caldwell stated: Subject to approval by this Board. Mr. Soloway stated that generally that would not be permitted under the typical Master Deed and By-Laws for Condominium type communities. Usually that is a common area, it is not the owner of the townhome's area to do with what he/she pleases, that's usually owned and regulated essentially by the Association and typically they don't allow that type of thing. Ms. Caldwell said barring that if it is an apartment complex and the apartment owner wants to put it in then it would be a commercial site plan. Mr. Marion restated he meant for the individual townhome, but it sounds like if it is under By-Laws then they don't. Ms. Caldwell said that under our ordinance they could if it was ok with the By-Laws.

DISCUSSION

PBSPV-06-2012 – 16 Washington Street – Block: 8.08, Lot 34.

Mr. Simmons wanted to bring to the Board's attention, so it is on record, this was an application where the applicant received approval to construct a driveway entrance off of the street in the front of the property. There was limited distance available to put parking any place else so the Board granted approval and the site plan that was submitted with what called for the driveway to be constructed out of bituminous concrete surface, basically asphalt. We did get a call from Kathy's office to see if the project was completed so we could close it out. I did go out to the site a year ago and what the applicant constructed was concrete. It has been three years now since the Board approved it. I went by tonight and there are no cracks in the concrete or anything else. What I wanted to do, if it is alright with the Board so we can close it out, is just put it on the record so that the Board understands that I did go out and look at it but you approved asphalt, they constructed concrete. It's a suitable, durable material, there are other concrete driveways but it's not exactly what you approved, they used the concrete instead, so if the Board is satisfied with that we can close it out.

Mrs. Le Frois questioned if it met the rest of the plans? Mr. Simmons stated: Yes. Mr. Soloway stated that he didn't know if any formal action was required but it might be appropriate to, if the Board is ok with it, note that fact in the minutes and direct Mrs. Citterbart to place a notation to that affect in that file. None of the Board had any issue with the concrete over the asphalt.

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CORRESPONDENCE

Chairman Le Frois restated the correspondence included.

EXECUTIVE SESSION

None

PUBLIC PORTION

Mr. Soloway stated he recognized Mr. Briggs and was aware that he is here to register a complaint about something having to do with the Martorana application and if I am correct about that Mr. Hardmeyer should step down from the dias because he always had to recuse on that application as he was on the 200 ft. list. At that point Mr. Hardmeyer stepped down.

1ST Public

Charles Briggs – 73 Pine Street – I am here on a complaint on the Martorana project. When we were going through this meeting it was supposed to be a 6 ft. beige fence which is on the final site plan. Now there is a 6 ft. white fence up. It was my understanding that because he asked if he could change it to a white one the Building Dept. said sure, why not. I don't think that is right. It was supposed to be beige. It's clearly white and I have a problem with it. I contacted Mrs. Citterbart and did not receive any phone call back. I want to know what we are we going to do about it. We didn't go through these meetings and say we were going to have a beige fence and it's a white fence! There is a lot of other stuff going on back there too. This is the main concern of mine.

Mr. Soloway stated that Mrs. Citterbart did alert me to that and I tried to follow up on that. First of all, I am not saying it is inappropriate to come here but the Board has no influence. Apparently, there is a notation on the site plan on sheet 3 which misspells the word beige (beigh) but does indicate that there is supposed to be a beige fence surrounding the project. The applicant did make a request to Paul Ferriero who was the special engineer assigned to this project by reason of Mr. Simmons recusal as to whether they could install a white fence, Mr. Ferriero looked at the plan, there is fortunately a detail to the fence on sheet 10 of the plan that indicates it's a white fence. Mr. Briggs stated that he didn't see that. Mr. Soloway stated that it conflicts itself. One sheet says beige, the other says white. In any event, Mr. Ferriero gave them permission to put in the white fence. Mr. Briggs asked what about the trees? Mr. Soloway stated that the trees are on the plans then, yes, you will get them. Mr. Briggs told the Board that they were not the ones living back there with all the beeping and jackhammering going on from 7 – 5 at night. I don't know how he is going to plant trees there over 4 inch stone. How is that going to go through a detention basin when it is all stone all through the back from the white fence all the way up to the berm. Where are the trees going to go? I don't know how they are going to go through all that stone.

Chairman Le Frois stated that Mr. Martorana is responsible for building what's on the plan. Mr. Briggs exclaimed that obviously he can do whatever he wants because he was supposed to do it in Phases. He didn't put up a silt fence until I complained about it. He didn't pull permits even when they were digging and the inspector asked what happened? He doesn't have any permits so they had to stop work. He just does whatever he wants to do over there and it just seems to be okay.

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Mr. Le Frois stated that Mr. Briggs comments were duly noted in our minutes. Mr. Briggs commented that the Board just lets him do whatever he wants. Who knows what's going to happen over there. He was supposed to clear a certain area and he clear cut the entire property and you know he did. I don't get it. If it was anyone of us you'd be on our tail and my sign isn't coming down.

Chairman Le Frois thanked Mr. Briggs.

With no more public stepping forward this portion of the meeting was closed.

ADJOURNMENT

Mr. Marion made a motion to adjourn the meeting. Mr. Russo seconded the motion. The meeting was adjourned at 8:00 p.m. with a unanimous "aye" vote. The next regularly scheduled meeting will be held on May 20, 2015 at 7 p.m. in the council Chamber of the Municipal Building.

Respectfully submitted,



Katherine Citterbart
Planning Board Secretary