

TOWN OF NEWTON
PLANNING BOARD
JANUARY 20, 2016
MINUTES

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. Board Secretary Mrs. Citterbart stated there was a quorum.

SALUTE TO THE FLAG: Was recited.

OATH OF OFFICE:

Joseph Ricciardo – Regular Member
Kacie Member – Alternate Member
David Simmons – Board Engineer
Jessica Caldwell – Board Planner

ROLL CALL: Was taken

Attendance: Mr. Flaherty, Mr. Marion, Mr. Russo, Mr. Ricciardo, Mrs. Le Frois, Mr. Flynn, Mrs. Diglio, Mr. Hemschot, Ms. Member, Mr. Le Frois

Excused: Mr. Hardmeyer

THE SUNSHINE STATEMENT: Was read.

ELECTION AND APPOINTMENTS:

ELECTION OF ACTING CHAIRMAN: A motion to nominate and appoint Greg Le Frois to the position of Acting Chairman was made by Joe Ricciardo and seconded by Tom Russo. There was no discussion. Roll Call: Mr. Flaherty – yes; Mr. Marion – yes; Mr. Ricciardo – yes; Mr. Russo – yes; Mr. Flynn – yes; Mrs. Diglio – yes; Mrs. Le Frois – yes; Mr. Hemschot – yes; Mr. Le Frois – yes. The motion carried.

ELECTION OF CHAIRMAN: A motion to nominate and appoint Greg Le Frois to the position of Chairman was made by Neil Flaherty and seconded by Tom Russo. There was no discussion. Roll Call: Mr. Flaherty – yes; Mr. Marion – yes; Mr. Ricciardo – yes; Mr. Russo – yes; Mr. Flynn – yes; Mrs. Diglio – yes; Mrs. Le Frois – yes; Mr. Hemschot – yes; Mr. Le Frois – yes. The motion carried.

ELECTION OF VICE CHAIRMAN: A motion to nominate and appoint Gary Marion to the position of Chairman was made by Neil Flaherty and seconded by Tom Russo. There was no discussion. Roll Call: Mr. Flaherty – yes; Mr. Marion – yes; Mr. Ricciardo – yes; Mr. Russo – yes; Mr. Flynn – yes; Mrs. Diglio – yes; Mrs. Le Frois – yes; Mr. Hemschot – yes; Mr. Le Frois – yes. The motion carried.

ELECTION OF SECRETARY: A motion to nominate and appoint Kathy Citterbart to the position of Chairman was made by Tom Russo and seconded by Helen Le Frois. There was no discussion. Roll Call: Mr. Flaherty – yes; Mr. Marion – yes; Mr. Ricciardo – yes; Mr. Russo – yes; Mr. Flynn – yes; Mrs. Diglio – yes; Mrs. Le Frois – yes; Mr. Hemschot – yes; Mr. Le Frois – yes. The motion carried.

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APPOINTMENT OF BOARD ATTORNEY: A motion to appoint David Soloway, Esq., of Vogel, Chait, Collins & Schneider to the position of Board Attorney was made by Dan Flynn and seconded by Tom Russo. There was no discussion. Roll Call: Mr. Flaherty – yes; Mr. Marion – yes; Mr. Ricciardo – yes; Mr. Russo – yes; Mr. Flynn – yes; Mrs. Diglio – yes; Mrs. Le Frois – yes; Mr. Hemschof – yes; Mr. Le Frois – yes. The motion carried.

APPOINTMENT OF CONFLICT ATTORNEY: A motion to appoint M. Richard Valenti, Esq., of the firm Morris, Downing & Shered to the position of Conflict Attorney was made by Mr. Flynn and seconded by Mr. Hemschof. There was no discussion. Roll Call: Mr. Flaherty – yes; Mr. Marion – yes; Mr. Ricciardo – yes; Mr. Russo – yes; Mr. Flynn – yes; Mrs. Diglio – yes; Mrs. Le Frois – yes; Mr. Hemschof – yes; Mr. Le Frois – yes. The motion carried.

APPOINTMENT OF BOARD ENGINEER: A motion to appoint David Simmons of the firm Harold Pellow & Associates to the position of Board Engineer was made by Mrs. Le Frois and seconded by Mr. Ricciardo. There was no discussion. Roll Call: Mr. Flaherty – yes; Mr. Marion – yes; Mr. Ricciardo – yes; Mr. Russo – yes; Mr. Flynn – yes; Mrs. Diglio – yes; Mrs. Le Frois – yes; Mr. Hemschof – yes; Mr. Le Frois – yes. The motion carried.

APPOINTMENT OF CONFLICT ENGINEER: A motion to appoint Paul Ferriero of the firm Paul Ferriero Engineering to the position of Conflict Engineer was made by Mr. Russo and seconded by Mr. Hemschof. There was no discussion. Roll Call: Mr. Flaherty – yes; Mr. Marion – yes; Mr. Ricciardo – yes; Mr. Russo – yes; Ms. Member – yes; Mrs. Diglio – yes; Mrs. Le Frois – yes; Mr. Hemschof – yes; Mr. Le Frois – yes. The motion carried.

APPOINTMENT OF PLANNING BOARD PLANNER: A motion to appoint Jessica Caldwell of J. Caldwell Associates to the position of Board Planner was made by Mr. Russo and seconded by Mrs. Le Frois. There was no discussion. Roll Call: Mr. Flaherty – yes; Mr. Marion – yes; Mr. Ricciardo – yes; Mr. Russo – yes; Mr. Flynn – yes; Mrs. Diglio – yes; Mrs. Le Frois – yes; Mr. Hemschof – yes; Mr. Le Frois – yes. The motion carried.

NEWSPAPERS OF RECORD FOR 2016: A motion to appoint the New Jersey Herald and the Sunday Herald as the official Newspapers of Record was made by Mr. Ricciardo and seconded by Mr. Russo. There was no discussion. Roll Call: Mr. Flaherty – yes; Mr. Marion – yes; Mr. Ricciardo – yes; Mr. Russo – yes; Mr. Flynn – yes; Mrs. Diglio – yes; Mrs. Le Frois – yes; Mr. Hemschof – yes; Mr. Le Frois – yes. The motion carried.

2016 TECHNICAL REVIEW COMMITTEE APPOINTMENTS: A motion to appoint, Mr. Le Frois, Board Chairman, Ms. Caldwell, Mr. Simmons, Mr. Russo, Mr. Hardmeyer as Alternate as the TRC committee members was made by Mr. Ricciardo and seconded by Mr. Hemschof. There was no discussion. Roll Call: Mr. Flaherty – yes; Mr. Marion – yes; Mr. Ricciardo – yes; Mr. Russo – yes; Mr. Flynn – yes; Mrs. Diglio – yes; Mrs. Le Frois – yes; Mr. Hemschof – yes; Mr. Le Frois – yes. The motion carried.

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In compliance with the Open Public Meetings Act, the following is a list of the monthly meetings of the Town of Newton Planning Board. The Board will meet at 7:00 PM on the third Wednesday of every month. The meetings will be held at the Town of Newton Municipal Building, 39 Trinity Street, Newton, NJ 07860.

January 20, 2016

February 17, 2016

March 16, 2016

April 20, 2016

May 18, 2016

June 15, 2016

July 20, 2016

August 17, 2016

September 21, 2016

October 19, 2016

November 16, 2016

December 21, 2016

January 18, 2107

A motion was made by Mr. Flynn and seconded by Mr. Russo to approve the meeting dates for 2016. There was no discussion. Roll Call: Mr. Flaherty – yes; Mr. Marion – yes; Mr. Ricciardo – yes; Mr. Russo – yes; Mr. Flynn – yes; Mrs. Diglio – yes; Mrs. Le Frois – yes; Mr. Hemschof – yes; Mr. Le Frois – yes. The motion carried.

CONSIDERATION OF MINUTES

December 16, 2015

A motion was made by Mr. Hemschof and seconded by Mr. Marion to approve the December 16, 2015 meeting minutes.

AYE: Mr. Flaherty, Mr. Marion, Mr. Ricciardo, Mr. Russo, Mrs. Le Frois, Mr. Flynn, Mrs. Diglio, Mr. Hemschof, Mr. Le Frois

The motion was carried.

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HISTORIC RESOLUTIONS

None

RESOLUTIONS

2015 Zoning Summary

Mr. Soloway asked if there are any changes to the Zoning Summary. Mr. Le Frois brought up for discussion a memo submitted by Mr. Hardmeyer relative to the Taco Bell application asking if the Board should consider some specific exclusions or inclusions within the zones that would consider the needs of drive-thru restaurants compared to sit-down restaurants.

Discussion ensued on whether or not to have the Town Planner review the current code and make recommendations based on needs of a drive-thru establishment in a particular zone. The Board determined that the Town Planner should review them on a case by case basis as needed.

Mrs. Le Frois made a motion to accept the Zoning Summary as submitted by Mr. Soloway. The motion was seconded by Mr. Russo.

AYE: Mr. Flaherty, Mr. Marion, Mr. Ricciardo, Mrs. Le Frois, Mr. Russo, Mr. Flynn, Mrs. Diglio, Mr. Hemschof, Mr. Le Frois

The motion was carried. Resolution approved.

**Brian Giblin (MSD-07-2015)
36 Halsted Street,
Block 14.03, Lot 11, T-5 Zone**

A resolution granting a minor subdivision.

Mr. Flaherty made a motion to approve the resolution. The motion was seconded by Mr. Flynn.

AYE: Mr. Flaherty, Mr. Marion, Mr. Ricciardo, Mrs. Le Frois, Mr. Russo, Mr. Flynn, Mrs. Diglio, Mr. Hemschof, Mr. Le Frois

OLD BUSINESS

None

NEW BUSINESS

Housing Element & Fair Share Plan – Spending Plan – Resolution #01-2016

Ms. Caldwell stated: The Town Attorney prefers that we use a resolution format as it is more favorable to the judges in the court. So this is a resolution memorializing what we reviewed last month.

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Mr. Ricciardo made a motion to approve the resolution. The motion was seconded by Mr. Russo.

AYE: Mr. Flaherty, Mr. Marion, Mr. Ricciardo, Mrs. Le Frois, Mr. Russo, Mr. Flynn, Mrs. Diglio, Mr. Hemschof, Mr. Le Frois

DISCUSSION

Newton Dunkin Donuts (#ASPV-08-2015) by David Simmons

Mr. Simmons stated: As you recall the site plan was approved conditionally. One of the conditions was that the County Planning Board approval had to be obtained. The applicant went to the County and the County requested that additional right-of-way be deeded to the County on Sparta Avenue. Instead of 25' from the center line it would be 33'. One of the reasons for that is in the overall plan for Sparta Avenue the County wants to widen that out with turning lanes and they want to get this set up. So as a result this pushed the right-of-way line into the property and also pushed the sight triangle easement at the intersection of Railroad Avenue and Sparta Avenue back further. As a result of that it took away two additional parking spaces and there is one little bull nose along Railroad Avenue where there was some landscaping that had to be eliminated. I discussed the revised plan with Ms. Caldwell and Mr. Soloway. They still met with seven spaces on the left and three spaces in the front, the number of spaces in the Town ordinance but Dunkin Donuts Corporate wants at least 12 spaces. The only places left to put the additional two parking spaces is roughly close to the intersection of Railroad Avenue and Sparta Avenue. If you add these two spaces in it is still outside of the right-of-way as far as the County needing the 33' from the center line but it would have been within a portion of the sight triangle easement. I looked at the sight triangle easement and using a 35' leg along Railroad Avenue because it is a dead end cul-de-sac and a 60' leg along Sparta Avenue because it's a collector street, connecting the hypotenuse of the sight triangle but when it gets to the part of those two parking spaces run along the curb line. So you get a sight triangle trapezoid. You'd still have a sight triangle restriction in that area. I also looked at where a driver's eye would be when they come down Railroad Avenue towards Sparta Avenue and look to the left down Sparta Avenue. Because of the 33' from the center line the driver would have to turn their head 110 degrees to the left approximately to get that sight triangle easement. As far as restricting anything it really isn't. From a geometric standpoint it will work. As we discussed it further amongst the three of us that's really a design waiver for that shape of a sight triangle easement. I explained to Mr. Davies that the client was going to have to come back and get a design waiver from the Board. So that is generally what they are going to be coming back for.

Mr. Ricciardo wants a letter from Dunkin Donuts Corporate regarding the parking spaces to put in the file. Also, the applicant should try to replace green space being lost with removal of bull nose, if possible. Mr. Simmons will communicate these items to the applicant.

Francesco Schepis, et al. vs. Town of Newton Planning Board, et al. by David Soloway

Mr. Soloway stated: You may remember that the Board got sued a few years ago over a Newton Theatre application that wasn't even before the Board as an application. The Theatre wanted to put up a fence on its property to help with parking and they needed approval from the Historic Commission. By ordinance, when the Historic Commission acts the application gets bumped up here for formal confirmation. The Board did that and tweaked it with a few changes. A couple of months later a lawsuit is filed by the next door neighbor making a claim that putting the fence where it did cut off access to a portion of their property where they had

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always parked their cars. They sued the Theatre and the Board. I managed to get the Board dismissed from the lawsuit on the basis of what does it have to do with us. But I've received a letter from Kevin Kelly who is representing the neighbor enclosing a copy of a decision by the Superior Court prohibiting construction of the fence because it interfered with what the Court found was an easement and Mr. Kelly specifically requested that the Board modify the resolution to state "to eliminate this approval and any other provisions that are inconsistent with the judge's decision". The fence has not yet been put up. I wanted to alert you to that. My feeling is that I don't think we should do a formal resolution on our dime to retract what you did previously. I understand that the Theatre has appealed the trial court's decision to the appellate division so that may change and also that there may be some negotiations going on between them. I would suggest that you tell me to do one of two things: number one is just ignore the letter, or secondly I send a responding letter stating that although we are not going to pass a formal resolution we'll attach a copy of the Court Order to the resolution for the Board's file.

The Board instructed Mr. Soloway to ignore the letter for now.

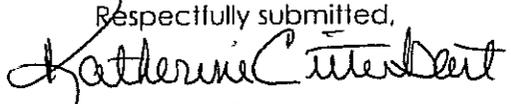
CORRESPONDENCE - Reviewed

EXECUTIVE SESSION - None

PUBLIC PORTION - None stepping forward

ADJOURNMENT

Mrs. Le Frois made a motion to adjourn the meeting. Motion seconded by Mr. Marion. The meeting was adjourned at 7:53 PM with a unanimous "aye" vote. The next meeting will be held on February 17, 2016 in the Council Chambers of the Municipal Building.

Respectfully submitted,

Katherine Citterbart
Planning Board Secretary