

TOWN OF NEWTON
PLANNING BOARD
MARCH 16, 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:

None

ROLL CALL: Was taken

Attendance: Mr. Marion, Mr. Hardmeyer, Mr. Ricciardo, Mr. Russo, Mr. Flynn, Mrs. Diglio, Mrs. Le Frois, Mr. Hemschol, Ms. Member, Mr. Le Frois

Excused: Mr. Flaherty

THE SUNSHINE STATEMENT: Was read.

CONSIDERATION OF MINUTES

February 17, 2016

A motion was made by Mr. Marion and seconded by Mrs. Le Frois to approve the February 17, 2016 meeting minutes.

AYE: Mr. Hardmeyer, Mrs. Diglio, Mrs. Le Frois, Ms. Member, Mr. Marion

The motion was carried.

HISTORIC RESOLUTIONS

None

RESOLUTIONS

None

OLD BUSINESS

None

NEW BUSINESS

Sussex County Habitat for Humanity (#PFSPV-03-2016)
82 Mount View Street
Block 19.05, Lot 33
SD-8 Zone

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Applicant is requesting preliminary & final site plan and use variance approval for the construction of a pole barn to be used for storage and office use.
(To be carried to April 20, 2016)

Mr. Le Frois stated: The applicant called ahead to ask to be heard at the April 20, 2016 meeting. No further notice will be given.

Sussex Car Wash, LLC d.b.a. Chuck's Car Wash, Inc (#MV-01-2016)
Block 9.03, Lot 14
115 Water Street
SD-3 Zone

Applicant requesting minor site plan and "d" variance approval to construct an extension of the underground conveyor system and the addition of a protective caravan canopy to the existing car wash facility.

Mayor Flynn and Mrs. Diglio were required to leave the room due to the D variance aspect of the application.

Sworn in were: Joe Golden of Golden & Moran, 22 Angelo Drive, Sparta, NJ. His license is current and the Board accepted his qualifications as a licensed professional planner and Charlie Gelormino.

Mr. Golden stated referencing Exhibit A1: This application is for expansion of a pre-existing non-conforming use and site plan approval to extend the existing conveyor system inside of Chuck's Car Wash. Exhibit A1 is a colorized version of the minor site plan dated December 27th, 2015. It is a "d" 2 use variance for expansion of a pre-existing structure. From the Bulk perspective this is in the SD-3. It requires a 2-story minimum building. We have a one-story existing building. It requires 70% lot coverage. We have existing 75.8%. The front yard is a minimum 6' maximum 18'. It is an existing building with 74.9' front yard. The minimum frontage build-up is 50%. We only have 28.2% build-up. We are not changing the building at all. We are adding a canopy which is an expansion of an existing use. The existing conveyor system grabs the front wheels of the vehicle and pulls it through the car wash. The entire car wash was updated with more modern equipment. The only thing that hadn't been updated was the conveyor. So now we will update it to the current technology. The new conveyors push the car from the rear wheels. There is a concrete slab at the rear of the building where cars enter the car wash. We will take the old concrete slab out, put a new concrete slab in, and extend the conveyor. There is no additional change to surface, grading, parking, lighting, or landscaping. On Exhibit A2 you will see one thing we are adding which is the canopy. The purpose of the canopy is so that it will shield the employees from the elements. It will provide protection for the employees. It is on a simple steel frame. It will be blue. It has optional side flaps for additional protection from wind, rain, or snow. For the "d" 2 variance this is considered an expansion of an existing structure. It provides a service to the community as a car wash. Although it's an expansion of the canopy in the rear it does not provide any additional car washing services. It doesn't allow any more cars to go in so it won't be affecting the line of cars, or traffic.

Mr. Ricciardo questioned: Will the mechanism that pushes the cars through extend out from the original building under the canopy?

Mr. Golden stated: Yes. You can see on the plan it will extend out about 20'.

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Discussion ensued on mechanics of the conveyor and the material of the canopy.

Mr. Golden stated: There is no visual negative affect on the community. Even with the canopy, this building will not extend beyond the rear of the buildings on either side. Behind the building there is a natural screening with the trees in the park. Relative to the site plan we haven't changed anything. No changes proposed at all. The slab is approximately 20' x 15'.

Mr. Ricciardo questioned Mr. Simmons: The 75.8% lot coverage is what they have presently. Since the canopy is secured to the concrete slab is it considered lot coverage?

Mr. Simmons stated: No. Because any rain that hits that is going to run down on to the concrete which is impervious.

Mr. Le Frois questioned: Is there any intent to add light under the canopy?

Mr. Golden stated: Not presently. There are existing lights under there now and they will remain.

Mr. Le Frois questioned: How will the four posts be mounted to the concrete slab?

Mr. Golden stated: The supports will have a metal plate each mounted with read head anchors into the new concrete. Four for each post.

Mr. Ricciardo questioned: Will the anchors be epoxied in?

Mr. Golden stated: No. Once the concrete is set, they will be drilled and set right in the concrete.

Mr. Ricciardo questioned: What material are the anchors? Are they epoxy coated?

Mr. Golden stated: They are steel.

Mr. Ricciardo stated: I'm concerned with rusting.

Mr. Golden stated: If the construction official requires epoxy we will make sure we do it. Mr. Gelormino wants them to last.

Mr. Le Frois questioned Mr. Gelormino: Are you expecting any new services from this change?

Mr. Gelormino stated: No. It will be a staging area for the car.

Mr. Marion questioned: Is there any kind of rating on wind this can take? I could see a strong wind come and rip this down.

Mr. Golden stated: The construction details will all be given to the building official. We don't have them as a part of this presentation.

Mr. Le Frois stated: We can subject it to the review of the engineer and his satisfaction.

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Mr. Simmons stated: From my report of February 10, 2016 the two witnesses have covered basically all the points I had made. The only item I would bring up is my number 12 recommendation that when everything is completed they submit an as-built plan so the Town has it for their records.

Ms. Caldwell stated: I would like to give a brief summary of my report issued on March 4, 2016. The use is in the SD-3 district. It is not a permitted use. But it is a pre-existing non-conforming use. It's a technical expansion because the canopy is expanding the size of the building but it's not expanding the capacity of the car wash. The proof is somewhat lessened because what they are looking at are there any additional negative impacts from this expansion of the non-conforming use. In terms of the bulk standards, they're pre-existing non-conforming for the maximum front yard for the story height there is a minimum of two stories and this is a pre-existing one story. The maximum lot coverage is 70% and they have 75.8% and the frontage build out a minimum of 50% at the building set back is 28.2%. These are all pre-existing non-conforming so there are no variances at this time. The only variance would be the expansion of the non-conforming use and the minor site plan approval.

Mr. Le Frois requested Ms. Caldwell review the positive and negative impact.

Ms. Caldwell stated: In terms of the positive he is improving the function of the pre-existing business. In terms of the negative I asked him to address any changes in circulation pattern, any visual impacts, any impacts in the surrounding traffic and I believe he adequately addressed that to show there are really no impacts. It sounds like it will improve the operations so that is a positive.

PUBLIC PORTION

No public stepping forward. Public portion closed.

Mr. Soloway crafted a motion: Grant the application for site plan approval and for expansion of a pre-existing non-conforming use subject to the typical conditions also to submitting an as-built for approval by Mr. Simmons of the final plans; to incorporate the design features testified to by the applicant with the four posts.

Motion made by Mr. Ricciardo to approve. Mrs. Le Frois seconded it.

Aye: Mr. Marion, Mr. Hardmeyer, Mr. Ricciardo, Mr. Russo, Mrs. Le Frois, Mr. Hemschot, Ms. Member, Mr. Le Frois

Motion carried

Mr. Golden requested they proceed at their own risk in obtaining permitting without waiting for the resolution to be adopted in a month.

Mr. Hardmeyer made a motion to approve. Mr. Marion seconded. All approved.

Newton Donuts, Inc. (#APFSPV2-03-2016)
Block 18.02, Lot 16
65 Sparta Avenue

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Applicant requesting to amend the site plan a second time as a result of requirements from the Sussex County Engineer's Office, which included a revised site triangle easement and additional right-of-way dedication.

Sworn in were: Ms. Neggia, Esq., of Bernd Hefele's Office and Daniel Davies of Golden & Moran Engineering, 222 Birch Road, Newton, NJ. His license is current and the Board accepted his credentials.

Ms. Neggia stated: There were issues regarding parking spots. The requirements initially were five spots and the Board requested a letter from the corporate program indicating that 12 spots were required. This letter was previously submitted. The second issue is that based on those parking spaces there had to be a modification to the traditional site triangle easement and consistent with that, and conversations with the Town Engineer, David Simmons pursuant to his direction, the plan shows that traditional site triangle easement has been accomplished. In addition because of same there has been a modification to the light and landscaping plan. This was changed in response to the modified site triangle easement which is also reflected on the plan. One of the things that was done was there was an issue with the size of the trees. Therefore our proposed plan is to change the species of trees from Red Maple to Dogwood which is a different size. And finally, there was a curb modification along Railroad Avenue and this is due to the new landscaping. This is also reflected on the plan. So tonight we have presented two separate plans, one for the site and one for the light and landscaping. It is my understanding that has met all the requirements to have that result including some minor comments that were made on Mr. Simmons's March 2, 2016 letter that address two technically typographical errors on the metes and bounds which will be addressed by the surveyor by the time we go to the next step.

Mr. Soloway requested the letter.

Ms. Neggia introduced Mr. Davies.

Mr. Davies stated: We came before the Board for site plan approval. We had to make some modifications due to County comments. We then needed an amended site plan and we were granted approval. Following that there were discussions on further right-of-way dedication for the County and site triangle easement dedication to the Township. The traditional site triangle easement was going to present a problem for the applicant because corporate has a requirement of 12 parking stalls, not less. Their program does indicate there is a need for parking and we had the availability of those spaces in the front. The previous site plan had dedicated a parking stall to landscaping but as a result of the corporate program we have had to take that back. But we also gave a lot more landscaping in the front. Working backwards and forwards with the professionals the site triangle easement was modified from the curb line off the proposed parking lot and it is more a polygon shape than a traditional site triangle. According to discussions with David Simmons you have to pull in the left shoulder to actually miss the parking site for it to become a problem turning on to Sparta Avenue.

Mr. Soloway questioned: Is this identical to the plan that has been submitted to the Board?

Mr. Davies stated: Yes. It is Sheet 3/7, the site layout plan, last revised February 4, 2016. On the upper left hand corner it shows the site triangle easement has been dedicated to the Town. As discussed with Mr. Simmons and myself this will accommodate the needs of corporate, Dunkin

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Donuts, satisfy the requirements of the site triangle easement with the Town, and also on the modifications to the curb, you'll notice there are three triangle points and this is to accommodate the root system of the tree. These were presented to both professionals who agreed with those. The tree was changed from a large Maple to a small deciduous. We ran through all the conditions that are required for this particular site and the planner's comment letter does indicate that we address all comments. Upon approval of this we are looking to advance immediate construction on this project. We have been before the Board many times and the applicant is eager to get moving. Pending approval tonight, we will go straight to the County for permits. We are waiting for the Board's approval. The only other thing we did with the site triangle easement, obviously we cannot have vegetation in it and any holes for lighting. We do have a free-standing sign in that area. We did move our lighting out of the site triangle easement and all of our larger trees have been moved out of the site triangle easement.

Mr. Le Frois questioned: Would you please summarize the before and after differences in the landscaping? Whether it's the number of trees or square footage of landscape area.

Mr. Davies stated: In a general sense, in the trees we have reduced one Red Maple and added three Flowering Dogwoods. Through prior agreements we have added landscaping in the grass area between the parking and the loading area; we have added a deciduous tree. We added a bit more buffering to the right hand side where you would be looking at the loading area. That was just moving landscaping around not adding on. These are the substantial changes.

Mrs. Diglio questioned: Are the Dogwood trees dwarfed?

Mr. Davies stated: No. We want it to be ultimately above the parked cars so you can see underneath it. So there are no security issues preventing people from being seen or anything of that nature.

Mr. Hardmeyer questioned: Looking at the landscape plan, I don't understand what is being proposed from the curb line to the sidewalk in the front on sheet 5/7?

Mr. Davies stated: We have a sidewalk extension from the existing sidewalk on Sparta Avenue coming on to the site. The landscaping proposed there is the exact same landscaping we had proposed before. We have some lower level shrubs added there. In that area is all grass. That area to the left is a substantial part of the site triangle so we are introducing grass back in. Right now that is all impervious coverage.

Mr. Ricciardo questioned Ms. Caldwell on the parking requirement.

Ms. Caldwell stated: The parking requirement here is 7 and they have 12.

Mr. Davies stated: With their modifying and the amended site plan last time set to unfold, the only reason it's come up is for the impact of the site triangle warranting discussion on maintaining that by the requests by the Board, the professionals and our office that a letter from corporate Dunkin Donuts would go a long way to understanding their parking requirements.

Mr. Soloway stated: Just so the Board is clear, there is a design standard in the ordinance related to site triangles and this does not comply; why?

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Mr. Davies stated: That is correct. It does not comply because there are several parking stalls within that site triangle easement that would result in the number of parking being less than what corporate Dunkin Donuts would require.

Mr. Soloway questioned: How many parking stalls would be in the site triangle?

Mr. Davies stated: Two.

Mr. Soloway stated: So even though there are only 7 spaces required for this use, Dunkin Donuts believes that it is appropriate if not necessary to have more parking spaces than that and when they design their sites they contemplate a greater number of parking spaces than what is required by Newton's ordinances. Is that correct?

Mr. Davies stated: Yes.

Mr. Soloway stated: You have submitted a letter dated February 23, 2016 from Dunkin Donuts corporate. We will mark it A1. The letter asks the Board to allow it to have a total of 12 spaces and indicating that under their proto-type would normally want even more than that.

Mr. Davies stated: Yes. Twelve is the minimum number of spaces they would require.

Mr. Soloway stated: To get a design waiver the showing they need to make is essentially like the positive criteria on a hardship variance, that it's impractical or unreasonable to comply with the specific requirement that they are seeking a deviation from. In this case, it's not that they aren't providing a site triangle easement, but it's not as large as what the ordinance requires.

Mr. Flynn questioned: During the January meeting, Dave Simmons described this problem and that you'd been to the site and you thought the triangle was adequate. Is that correct?

Mr. Simmons stated: What I did was I took the plans and I extended a line across Railroad Avenue where the existing curb line is on Sparta Avenue and graphically on the plan I measured back 10' to where a driver's eye would be. A driver's eye at that point would be looking southeast towards Sparta/Diller Avenue, the area affected by this site triangle easement. What I found graphically was that because Railroad Avenue intersects Sparta Avenue at a 90 degree angle because you are on a tangent and because of the proposed dedication of 33' from the center line of Sparta Avenue into this property the geometry is such that before the driver's eye would have to get involved with the vehicle in the closest parking spaces roughly 105 degrees. The bottom line is the vehicle in that closest space toward Sparta Avenue would not interfere with the site distance going down Sparta Avenue.

Mr. Le Frois questioned: Would that change if Sparta Avenue was widened?

Mr. Simmons stated: One of the reasons the County wanted the right-of-way; I believe they found an old road return for Sparta Avenue as a four rod load. Another thing is that the County a few years ago had a plan to do some improvements in this area. Much like the DOT has a desirable typical section of a roadway where it may not be that wide now but in the future they may come back and widen it up. It sets everything back appropriately so you have the right-of-way you need to work on something in the future as well. From that standpoint we started with a clear right-of-way dedication of 33'. The geometry is unique here and the Town is getting a

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radius return as well on that corner. All this was going to be done on the previous application that is getting taken care of now.

Mr. Le Frois stated: So in your opinion even though it doesn't meet design criteria it still appears to be adequate for the configuration that is being proposed now.

Mr. Simmons stated: Yes. It meets the configuration and the intent. What it amounted to was adjusting the hypotenuse of the site triangle easement.

Mr. Simmons reviewed his letter of March 2, 2016: With regards to the parking on page 2, we've heard the applicant address that as far as what corporate Dunkin Donuts prefers to have which exceeds the Town's parking requirements. On page 3, we talk about the modification to the proposed site triangle. I went through the right-of-way dedication how from a practical standpoint the vehicles stopped at the intersection of Railroad Avenue and Sparta Avenue will still have adequate room given the geometry of the site triangle and the additional right-of-way line dedication. Under item b, dedications, we have some parcels that are going to be deeded 33' from the center line to the County of Sussex. There's a 25' radius return at the westerly part of the subject property to the Town of Newton from the corner radius on its property. While I have the information in front of me, I did review the metes and bounds description of the proposed site triangle easement that needs a couple of minor corrections that the surveyor can take care of. They did move a light pole so that it is within the property boundaries as qualified by the right-of-way dedications. Item d on page 4, for meeting conditions for the original site plan approval and previous amendments other than what we are talking about here tonight would govern. Mr. Davies did mention how many parking spaces would be impacted. I believe its two full spaces and a small portion of a third space.

Ms. Caldwell reviewed her report dated March 7, 2016: This parcel is in the Merriam Gateway Redevelopment Plan area, area B. What I reviewed primarily other than the parking which has been mentioned, is landscaping. By changing the parking layout they did lose one tree, but the three triangular bump outs will allow them to add three trees. You have a total of 7 trees that they added on to the site. I reviewed the existing tree ordinance. They had 16 trees proposed for removal. Eleven of those trees are invasive species so we don't have those. So a total of 5 trees will be removed and have to be replaced. They are proposing to plant 7 trees so they are meeting the requirements. I recommended Flowering Dogwood which is recommended in the Redevelopment Plan.

Portion Opened to Public

None stepping forward. Portion closed.

Mr. Soloway crafted a motion to grant the application with amended site plan approval as presented in the plans and also to grant a design waiver from the ordinance requirements with the dimensions of site triangle easements. It would be subject to the typical approval conditions imposed on any application. It would be subject to compliance with items 2b, c, and d of Mr. Simmons's report of March 2, 2016. Subject to compliance with item 3 of Ms. Caldwell's March 7, 2016 report and needless to say except to the extent it is specifically changed by this approval there is a continuing obligation to comply with all of the conditions of the original approval.

Mr. Marion made a motion to approve. Mr. Flynn seconded it.

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Aye: Mr. Marion, Mr. Hardmeyer, Mr. Ricciardo, Mr. Russo, Mr. Flynn, Mrs. Diglio, Mrs. Le Frois, Mr. Hemschof, Mr. Le Frois

Motion carried

Town Square Gardens (# APSP-02-2016)
Block 5.04, Lot 5 & 7
7 Cherry Street & 64 Mill Street

Applicant is requesting amended preliminary site plan approval for the relocation of an emergency access.

Craig Alexander, Esq. is representing the applicant.

David Getz is sworn in.

David Getz states his credentials. Lehman & Getz, 17 River Street, Warwick, NY. He is a licensed engineer and his license is current. The Board accepted his credentials.

Mr. Le Frois asked Mr. Simmons to review the history of this application.

Mr. Simmons stated: I have prepared a colorized version of the applicant's key map to be distributed. The date is 3/16/2016 on it. There are three colors on this particular key map. There's yellow on the right, orange in the center and the left. And the small blue strip which is the extension of Center Street. On the right side of the key map is Mill Street or County Rt. 519. On the far left where the orange hits another street it is Shady Lane which is a Town road. The history of this application is as follows, around 2002 the applicant came in for an application on about 42 garden apartments. At the time the tax lot and blocks were different because they've been changed in the past few years. According to the key map we handed out the development was basically on lots 5 and 7 near Mill Street. Lot 7 which has frontage on Mill Street and Hillside Terrace is the site of the existing Town Square Garden Apartments which have existed there for several years. That was owned by the applicant at the time plus lot 5. The applicant came in for discussion about expanding another 42 garden apartments on what is shown here as lot 5. There were several meetings and discussions on various design issues and one of the considerations was fire protection, sprinklers, and what have you for the proposed garden apartments. It is a higher area of Town and basically it's located at the upper end of the low pressure zone as far as water pressure goes in Town. When some tests were done on the hydrants in the area it was determined that there was not enough volume of pressure for fire protection of the apartments that were proposed. Some discussions were held and the applicant asked if there was any way to bring water in from the high pressure zone. We looked at the distribution system map and on Shady Lane where it intersects Route 94 there is a 10" water main that is a high pressure main. So the applicant tried to obtain an easement through what's shown here as lots 3 and 1 to run a water main from the high pressure main in Shady Lane down to lot 5 where they want to build the 42 garden apartments. As it turned out they not only got the easement but they bought those pieces of property. They came back with a plan to not only put a water main through those pieces of land but to construct a street off of Shady Lane and have individual single family home dwellings along that street as part of the development plan. There were hearings on that plan and there were a lot of considerations and concerns from the Board and the property owners about storm drainage issues and other infrastructure issues if the applicant did go that way. At that point the Board asked it's planner at the time to look at the plan and come back with a recommendation. After he looked at the

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plan he came back and recommended that because there is existing concentrated development in the form of the existing garden apartments on lot 7 as shown in yellow, that on lot 5 the concentrated development be kept down there and that the area of lots 3, 1, and 30 be left in an undeveloped state as far as homes go. The applicant at the time agreed to that plan. The orange area that is shown as lots 3 and 30 on this particular plan was deeded in December of 2009 to the Town of Newton. They did retain an easement for a water main to run from Shady Lane towards lot 5 in yellow because they still have to bring down the high pressure water for fire protection in those garden apartments. At the time that the planner made his recommendation of where to place the development it was more conceptual plans put together at that point. The applicant agreed to further develop the plans and come back with detailed plans to satisfy the intent and design parameters I just mentioned. Unfortunately, Mr. Lehman who had diligently worked on the plans, passed away and his work was taken over by Mr. Getz and the other staff.

In the meantime there was the action of the permit extension act which Mr. Soloway could go into a little bit later which basically carried over any approvals that the applicant had obtained. They obtained approvals for the sanitary sewer extension permit to extend sanitary sewers up into the area of the proposed development and they also obtained a water main extension permit to bring the water main down and improve fire protection in the area. The other approval they had to get was from the County of Sussex, the Planning Board and the Engineering Department. Conceptually they got approval here at the Board and they worked on developing plans. They submitted revisions back and forth to our office over the years. Ultimately they had to go to the County Planning Board for review and approval. As far as the storm drainage system that was developed for this particular piece of property on lots 5 & 7 there were two open detention basins proposed that would help mitigate the increase in stormwater run-off because of the additional impervious space created by the apartments. They had gotten the plans to a certain point and then submitted them to the County. The County had concerns with the lower basin because it was going into a County road. Because of the geometry and topography in the area the berm was greater than 5' which would classify it as a dam. The County did not want to have a dam as part of the overall drainage system leading down to its drainage. So the applicant went back and took the detention basin and substituted underground pipes; 6 72" underground pipes, 130' long each to take the place of the basin. That satisfied the County. Another thing that went on was with the drainage. When this application came in around the early 2002 timeframe, new stormwater regulations had come into play. One of the requirements of the new stormwater regulations in addition to taking care of the volume of water coming off the site, they require generally the water quality and recharge back into the ground. At the time some of the residents along Hillside Terrace were concerned there would be additional stormwater recharge near their properties and they had experienced some water in their basements and they didn't want to exacerbate any existing situation. At the time, this Board granted a waiver from that requirement so the applicant didn't have to provide a recharge because of the reasons I just mentioned. When it came to the County Planning Board and Engineering Department they came up with similar issues and I gave them the background of what the Board discussed based on feedback that they had got from the local community. Then they agreed to that waiver as well. In addition, the County was concerned that with the existing access drive that comes down from the existing apartments towards Mill St., right across the street is a little strip mall. They believe that because of the nature and proximity to the garden apartments across the street, people will naturally gravitate towards the shopping mall to get pizza, Chinese, or whatever. They wanted to try and make the crossing as safe as possible. They had the applicant do additional sidewalk work and bring plans together to come down towards Mill St. and then actually have a mid-block crosswalk and

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depressed curb on the mini mall side in order to make it a safer crossing. So that was an additional change.

And finally, one of the main reasons the applicant has to be here tonight is that one of the conditions that was imposed by the Board when they conceptually approved this plan is that there would be a secondary means of ingress and egress to this site that was subject to approval by the fire subcode official. As you look at the key map in front of you, just below the circled 5 is a blue strip with a dark dash through it. That is the extension of Center Street which is just used as a driveway right now for an existing home on lot 4. Where it says Cherry Street, between the "y" in Cherry and the "S" in Street is a vertical stem that goes up towards the most easterly corner of lot 3 colored in orange. That is part of the applicant's property as well. One of the initial possibilities for providing emergency access was to put an emergency access drive on that stem towards the most southeasterly corner of lot 3. I had been out there with one of Mr. Getz's associates and Joe Inga who was the fire subcode official at the time. We looked at the geometry there coming up Harrison Street, making a right on Center, a left on Cherry and then a sharp 90 degree right on Cherry. It became obvious to us that it was a very difficult move for the fire department to make plus it was very difficult for them to do the construction in that area. So after looking at alternate ways to access the second means of ingress and egress the idea was developed by Mr. Getz's office to basically extend Center Street from its intersection of Cherry Street and Center Street further to the north where the circled 5 is on lot 5. They are requesting that the Town vacate that portion of Center Street giving half to lot 4 and half to the applicant's lot 5. On the applicant's half of lot 5 is where the paved emergency access drive would be constructed to intersect with the main road going into the development to provide the emergency access. Because that was a substantial change to the original application from 2002/2004, in Mr. Soloway's, Ms. Caldwell's, and my opinion, it necessitated them coming back before the Board.

The other thing that happened in this time frame, lot 7 was actually conveyed to a different party. When they conveyed it to a different party the applicants did reserve an ingress and egress easement on the main access road. By the time all these other infrastructure improvements have been designed and sorted out, some of them actually overlap onto lot 7; some of the underground storm drainage, sidewalks, water main drainage, etc.. So in response to that the applicant has been working with the owner of lot 7 to amend that easement to include the ability for him to construct this additional infrastructure, maintain and be responsible for it. The final thing I want to bring out historically is that one of the things the applicant is required to do as part of the original approval is to provide architectural plans and plans of elevation of the proposed buildings. They did provide them about a year ago but they never were presented to the Board. So when this hearing was scheduled I asked them to bring color renderings because I thought it was a good opportunity for the Board to view them and make comments on them as necessary. That's generally the path we've been down for 14 years.

Mr. Soloway stated: I just want to clarify one thing. Mr. Simmons used the word conceptual. In September of 2004 this applicant received preliminary site plan approval and preliminary subdivision approval. I think when Mr. Simmons says conceptual what he means is there were more things that still needed to be filled in then you would ordinarily have with that type of application. For various and complex reasons one of which is the fact that the Board and the Town were happy about the gift of the land they were going to get. Since that time the applicant in 2007 actually obtained an extension of the preliminary approval and the applicant in 2010 again came before this Board on an application relating to the sub-division part where it was concluded that it really wasn't a preliminary major sub-division. It could have been called a

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minor and the applicant was allowed to sub-divide off the orange lots which have since been conveyed to the Town. Even though this approval goes back to 2004, because of the Permit Extension Act it is still valid. The terms of the conditions of the 2004 approval still remains in effect and the reason that's important is that 3 or 4 years ago the zoning throughout Town was dramatically changed when the form based code was adopted. This project is under the old ordinance. One of the things that are necessitated by the amendment that they're proposing for the emergency access is that it is going to create some setback variances. There's an interesting issue as to which ordinance do you assess the setback variances under? Is it under the old ordinance when they were R-4 because they are still protected? Or because they are proposing now, do we look at the new ordinance. Because of the way the plan was set up and noticed they are seeking variance relief for setback violations referencing the old R-4 notice. It's kind of a moot point because interestingly enough they are actually closer to compliance with the setback requirements under the new ordinance than they would be if we applied the old. The best way to go about this so the Board covers all bases is to assess it under the old ordinance standards and obviously if it is an appropriate candidate for variance relief there it would be under the new ordinance as well.

Mr. Le Frois questioned: Is it a variance either way?

Ms. Caldwell stated: No. I think it applies to all of them under the T-2 in terms of setbacks. Under the R-4 it does come into some variances.

Mr. Soloway stated: To the extent that somebody wants to make an argument that anything they are proposing should go under the new ordinance. They actually have a stronger case under the new ordinance than the old ordinance.

Mr. Getz stated referencing Exhibit A1 (a colorized version of the site plan): This is Mill Street here, Hillside Terrace, lot 7 which is owned by a different party. The light colored buildings are all existing buildings along Cherry Street, Hillside Terrace and in the vicinity of the site. The lot that's colored here is our lot 5 with the proposed development showing the proposed buildings. The location of the proposed buildings has not changed for years and years.

Mr. Soloway questioned: So that is for the 42 garden apartments that have not been built?

Mr. Getz stated: Correct. The entrance to the developed area is the existing driveway to Mill Street. As Mr. Simmons mentioned one of the more significant site changes we've made is to abandon a previously proposed detention basin in this area of the site and is now proposed underground, mostly under an existing parking lot, partly under lot 5 and lot 7.

Mr. Soloway questioned: You are asking the Board to approve that change as part of this amendment?

Mr. Getz stated: Yes. The emergency access was proposed as coming to Center Street and Cherry Street and then making the sharp 90 degree turns to come up this green stem and then connect in with the proposed driveway serving the proposed apartments. We now propose it as an extension of Center Street as it's proposed at that location. It used to be on the west side of lot 4 and now it's shown on the east side of lot 4.

Mr. Alexander questioned: How will that access road be constructed? Will it be a retaining wall?

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Mr. Getz stated: There are retaining walls needed along the eastern side and there's some retaining walls needed along a portion of the western side.

Mr. Soloway questioned: The new stem area that is now proposed for the access, what is that called?

Mr. Getz stated: The emergency access.

Mr. Soloway questioned: Who owns that area today?

Mr. Getz stated: The Town.

Mr. Soloway questioned: Do you understand that it is being offered for dedication right-of-way, a paper street?

Mr. Simmons stated: That is my understanding. The only improvement that I saw in the extension of Center Street is the existing driveway going to the existing drawing on lot 4.

Mr. Soloway questioned: How wide is the right-of-way?

Mr. Simmons stated: It shows on the plan as 40'.

Mr. Soloway questioned: One of the conditions is that the Town of Newton Council agreed to vacate the Town's interest in that paper street. And if the Town of Newton vacates its interest in that paper street do you know what then happens?

Mr. Getz stated: Procedurally, I'm not sure. From a technical point of view our plans show 20' goes to lot 4 and 20' goes to lot 5. Emergency access would be constructed in the portion that's being added to lot 5.

Mr. Soloway stated: That would be correct. When a municipality vacates a paper street what happens is you draw a line down the center. One side goes to the owner on one side and the other to the other. If the Town does agree to vacate its interests is that the 20' portion on the right would be used for the emergency access and the 20' portion on the left would revert as a matter of law to the owner of block 5.05, lot 4. The applicant is making clear that it is not because it cannot without the consent of that person propose any improvement in the side of the paper street that is going to revert to the owner of lot 4.

Mr. Alexander stated: Mr. Simmons made a comment in his report about a fence. Are we proposing any fence along the roadway?

Mr. Getz stated: The applicant is certainly open to the idea of fencing the 20' strip.

Mr. Le Frois questioned: Could you describe the emergency access itself?

Mr. Getz stated: Yes. It is straight, paved, 14' wide and it widens as it approaches the onsite driveway so there is a proper turning radius provided for emergency vehicles.

Mr. Ricciardo questioned: Would that be the way out for the fire truck also? He wouldn't have to back out? He could go out the main driveway out through Mill Street?

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Mr. Getz stated: That is correct.

Mr. Le Frois questioned: Would it be marked as one-way?

Mr. Getz stated: It wouldn't be marked at all because it isn't a public street.

Mr. Ricciardo questioned: What would prevent the residents from using it as a secondary means of egress?

Mr. Simmons stated: In addition to the fence we had talked about having a gate on each end.

Mr. Ricciardo questioned: Who would maintain the gate and make sure that it was closed at all times? I know the fire department would have a key. Otherwise if you have 42 cars coming in and out of there that's running right past lot 4 constantly.

Mr. Simmons stated: The way the overall concept was discussed when we had meetings with the applicant and the professionals is that once this is vacated it will be private and the applicant will be responsible for the construction, the maintenance, the repair and everything involved with that including making sure the gate was closed if the Board approved the gate.

Mr. Flynn stated: If it's a condition of approval they have to maintain that condition in perpetuity. It wouldn't be allowed to be accessed by the public.

Mr. Hardmeyer questioned: How are you planning to surface that? Could it be something other than asphalt? Maybe interlocking pavers so they are pervious.

Mr. Getz stated: Unless the grass is really carefully maintained, the grass doesn't grow well. It looks good at first but it may not be the reality.

Mr. Simmons stated: We have a couple of other issues also. As you are looking at the emergency access coming up the vacated portion of Center Street, the way the topography is out there on the east side of Exhibit A1, in essence the back foundation wall is also a structural wall to support this access drive because you are eliminating width of what you've got to work with. That was the other reason why we talked about making this an emergency access because it was locked into that building wall so it would be their private access drive that they are totally responsible for. If the Town maintained ownership of it and they relied on a private foundation wall to provide lateral support we didn't think that was the best situation. Because of the desire to control the drainage in that area and keep it from going down near that foundation wall, if he grades it and puts the drainage in it and keeps that water from permeating into the ground right behind the foundation, I would respectfully suggest that may be the better way to go in this case.

Mr. Ricciardo stated: My only concern is that the occupants would eventually use it as a means of egress.

Mr. Simmons stated: Understood. Ms. Caldwell came up with the idea of putting the fence down there for some delineation for lot 4 so everybody knows where the limits are. I put in my report about the gate. I believe over by Castle Ridge where we had the one sub-division and a new cul-de-sac off of Straiford Place. At the time there was discussion about connecting the

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two cul-de-sacs but the neighbors at the time didn't prefer that. So an emergency access was put between the two, and there was a gate on each end of that. So that's where that concept came from.

Mr. Getz stated: There were minor changes along with the modification of the detention system. There were minor changes made to pipe sizes. In general the utilities are very much the same as the previous. Proposed crosswalk on Mill Street is here. Along with the development of that we made some minor changes to the driveway widening plan.

Mr. Ricciardo questioned: Where is your secondary means of egress for the entire parking lot other than Mill Street? Not including the emergency access road.

Mr. Getz stated: There is a connection here at Hillside Terrace through this parking area here.

Mr. Ricciardo stated: There is a driveway there now?

Mr. Getz stated: Yes.

Mr. Simmons stated: As you're saying that, I just thought of another item that the applicant may have to add if possible to the cross easement between lots 5 & 7. Lot 7 is owned by a different party now and the original means of ingress and egress is down that main drive towards Mill Street. I don't believe there was any easement granted to come out to Hillside. So that may need to be added if possible.

Mr. Getz stated: I don't recall if it is necessary.

Discussion ensued on paper street.

Mr. Flynn questioned: Are you requesting a grading easement on to Town property for that cut?

Mr. Getz stated: Yes and also for a swale out of this location.

Mr. Flynn questioned: Where is that swale going?

Mr. Getz stated: It leads to the pipe system here which leads to an above ground basin here. So it intercepts water that currently falls down in this direction and brings it into our new drainage system.

Mr. Flynn stated: Those things tend to get clogged on a regular basis when it gets flow from woods which is what you are doing. You are injecting water from a wooded area into the system.

Mr. Getz stated: The water follows a pipe system to this above ground basin. The outlet to that basin goes around the property line down through lot 7 and eventually into the Town system.

Mr. Flynn stated: When you intercept water from a large drainage area like that you can potentially push debris and compromise the pipes in the system because you have an open headwall and there is no graded inlet.

Mr. Ricciardo questioned: So it's not a retention basin, it's a detention basin.

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Mr. Le Frois questioned: On the underground stormwater basin, you mentioned it's under a parking lot. Would you stage your construction to provide alternate parking while that's being constructed?

Mr. Getz stated: Yes. And as part of our approval with the County we have to demonstrate that we are not increasing flow to the Town system or the County system on Mill Street.

Mr. Ricciardo stated: So you are adding impervious area but you are not increasing stormwater flow?

Mr. Getz stated: Correct. We are not increasing peak flow. That's part of the reason for the swale is so we can intercept some upstream water and get it into our system so we can have more of an impact.

Mr. Ricciardo questioned: And where does it discharge to?

Mr. Getz stated: This basin discharges to Hillside Terrace. The underground system which takes a lot of water from this area and this area discharges to an existing system on Mill Street.

Mr. Ricciardo questioned: And the additional impervious area is not increasing the flow of water into that stormwater system? What is peak flow?

Mr. Getz stated: The maximum rate of flow, in feet per second, or pounds per minute, it's the same concept. During various storms we've studied them and presented our results to Mr. Simmons office as well as to the County.

Mr. Ricciardo questioned: They agree that their present system can take that peak flow?

Mr. Simmons stated: They have not only met but reduced, under the new stormwater regulations, the peak rate of flow, not the volume, through the detention basins.

Mr. Hardmeyer questioned: Will this add to the potential flood situation?

Mr. Simmons stated: This does not affect that.

Mr. Hardmeyer questioned Mr. Getz: Describe the characteristics of the site.

Mr. Getz stated: It's mostly wooded. It's very steep. The driveway has about a 10% slope from this area. It's undeveloped land behind existing garden apartments.

Mr. Hardmeyer questioned: Will you be cutting a lot of materials out of there?

Mr. Getz stated: In some areas yes. There is a bit of a berm here.

Mr. Hardmeyer stated: I saw something like 20' cuts. Is that correct? And is there going to be any blasting?

Mr. Getz stated: Yes. There could be 20' cuts. But I believe blasting will not be used.

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Mr. Hardmeyer questioned: How much material do you estimate will be trucked off the site?

Mr. Getz stated: I can look into it, but I don't have that figure right now.

Discussion ensued on amount of material to be removed and removal procedures.

Mr. Getz stated: I expect it will be done in stages and there are some areas that won't be cleared.

Mr. Flynn stated: I'm noticing there are contour lines in addition to a detention basin that's going to be on somebody else's property. You should really delineate and limit disturbance. Unless lot 7 is going to grant you access for grading. There's several grade lines that extend but while you are doing construction those grade lines always push out.

Mr. Getz stated: You are referring to units 1 through 4. We're re-grading along the entrance drive also. So that's part of the easement agreement that we've been discussing that needs to be agreed between the two owners.

Mr. Ricciardo questioned: What if you don't come to an agreed easement?

Mr. Alexander stated: We can't build the project. We'd have to come back to the Board.

Mr. Ricciardo stated: So we are basing this on something that you haven't obtained yet for drainage and for work on another person's property.

Mr. Flynn stated: In a situation like this it wouldn't be uncommon to have a written agreement.

Mr. Alexander stated: We have an existing easement agreement with the owner of lot 7. It needs to be revised because at the time the property was sold the plans have changed. No one ever contemplated the underground drainage so we are in the process of updating and revising the easement to include these changes to the plans. We are not starting fresh. There is an existing easement in place. To a large extent, the applicant is proceeding at its own risk. Just as Center Street is not vacated, we have to go back to the drawing board.

Mr. Alexander questioned Mr. Getz: Do you testify that the proposed changes represent an improvement to the plan?

Mr. Getz stated: Correct.

Mr. Alexander questioned: Do you perceive any detriment to the applicant in that? And why not?

Mr. Getz stated: No. We believe that the new emergency access is easier to use for emergency vehicles. The underground storage as opposed to an above ground basin is a good change aesthetically as well as for the potential impact that could have happened to the downstream where the previous basin was. The proposed setback variance for this building here to this existing lot A and lot 33. The setback here, also to lot 33. The setback for lots 5 & 7.

Mr. Soloway questioned: Are those created by this amendment or were those variances previously granted when the Board approved this in 2004?

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Mr. Getz stated: I believe they were granted. I think there was some discussion about whether or not they were all granted. But the alignment, the layout, the geometry of the buildings has not changed. The last variance is distance between buildings which we have as 35'. Also the length of the building is longer than proposed.

Ms. Caldwell stated: In my report I identified three new variances. There are some old variances that were approved with the initial approval. I think what was asked of the applicant was to reaffirm all of those because the initial resolution is a little vague. I identified three new variances primarily because lot 7 is not a part of the application. The actual frontage now is Cherry Street. Whereas before they had dual frontages so the way we measured the setbacks was different. They are not actually shifting any buildings but the setbacks where the front yard and the side yards. They had two front yards and now they have one front yard. The addition of the emergency access in the back and the change of vacating Cherry Street create the setback variance as well. I can go through the variances in my report, but aside from the change in the emergency access, the fact that lot 7 is not a part of this application creates a technical variance issue. In my opinion, all the other variances were previously approved. But reaffirming them is a good idea to be clear.

Mr. Soloway stated: The resolution is from 2004 and is a little vague. It notes that variance relief is required for front yard setback, side yard setback, rear yard setback, minimum distance between structures, maximum building length and maximum building coverage. They don't really specify in the resolution what the variances are. However, the resolution does incorporate the June 15, 2004 report of Mr. Simmons and that report specifies what the variances are. As Ms. Caldwell indicated, the variances that Mr. Getz was testifying about, those were all granted. They are not before the Board. What new variances will be created by this application by authorizing that access road?

Ms. Caldwell stated: I identified three variances. The side yard should be 25' and it's 20'. The rear yard should be 75' and they have 25'. The minimum lot with the frontage should be 150' and they have 144.62' because the frontage is now on Cherry Street.

Mr. Soloway stated: When you identify them for this application you are identifying them under the old R-4 correct?

Ms. Caldwell stated: Correct. They wouldn't have variances under the T-2 standard, but since we are looking at it under the R-4 I identified those as variances.

Mr. Ricciardo questioned: What is on lot 33 between lot 5 and lot 7?

Ms. Caldwell stated: It's a home.

Mr. Flynn questioned: Regarding the water utility on page 4, why does the 8" water main that you have wrapping through the center aisle drive break off, go around the headwall, go down the 20' wide strip, come out onto Cherry Street, come around and go back up to the other building? Why was that schematic chosen?

Discussion ensued.

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Mr. Simmons referring to his report dated March 6, 2016 stated: The first page summarizes the changes we've been discussing as far as the emergency access route, the stormwater system, the sidewalks, retaining walls, change in ownership of Block 5.04, lot 7, and the developer's agreement between the applicant and the Town. Just to update you on that, one of the conditions of the original approval was a developer's agreement with the Town. Over the past several years as things evolve, the applicant has been working on a developer's agreement with the Town. I think it's fair to say that a base document has been prepared.

Mr. Alexander stated: Yes. I have been in touch with Mrs. Leo and we have a document which we have put on hold pending the outcome of this hearing, but I suspect we can complete it pretty quickly.

Mr. Simmons continued: There was a concern that if the Board sought approval for this and added any additional conditions those could be incorporated into the developer's agreement rather than having to come back again to amend that. On page two and the top of page three, these are the documents that we reviewed as part of this application along with the resolution for preliminary approval. Item number 6 on the site plan, we basically talk about the emergency access drive which is basically the center of Center Street. The one thing I wanted to note in addition to what we've discussed and is listed here, is the fact that where that existing dwelling is located on block 5.04, lot 4 we weren't able to locate the exact location of the sanitary sewer lateral and the water surface line that feeds that house. So the suggestion was that a blanket easement be granted by the applicant to those people who are the owners of lot 4 so that wherever those existing utilities come in they are covered as far as the right to have it there.

Mr. Le Frois questioned: Item 6AIII, you mentioned a 12' paved emergency access. I believe Mr. Getz mentioned 14'.

Mr. Simmons stated: Mr. Getz can confirm that for us. On page 4, under item b under storm drainage, we talked about underground detention as far as changing that from the previous above ground detention to eliminate the dam issue. Part of a facility like this that involves underground detention and water quality chamber, they have an operation maintenance manual that gets filed in the chain of title for this property so that everyone know their responsibilities. If some day they should sell this, it would come up in a title search as their responsibility not the Town of Newton.

Mr. Le Frois questioned: Would that cover Mr. Flynn's concern about the stormdrains picking up wooded water and the potential for clogs?

Mr. Simmons stated: That is a good point and I will have to check to see if it's in there. A lot of times what they have in the manual as far as the frequency of inspection, it may say after every 9" rainfall. But they can be fine-tuned.

Mr. Flynn stated: They should be submitting those inspection forms to your office on an annual basis to make sure they are complying with that.

Mr. Simmons continued: Item number C under sidewalks and crosswalks; these are the sidewalks that the County had discussed as far as bringing down the main access drive to get across to the retail facility on the other side of the road. The one thing I want to point out on that one is on page 5, iii. Responsibility for maintenance and repair of the main street crosswalk to be

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confirmed as it would be in the County's jurisdiction. However, the approved resolution between the County Planning Board refers to a developer's agreement between the County, the Town, and the applicant. My assumption is that the Town would want the County to maintain that crosswalk, not the Town.

Mr. Soloway questioned Mr. Alexander: Has that been addressed by the County at all?

Mr. Alexander stated: I don't recall if that item has been addressed or not.

Mr. Soloway questioned: Would it be your recommendation as a condition of any approval that the maintenance obligation not be on the Town?

Mr. Simmons stated: Yes.

Mr. Flynn stated: I was on the County Planning Board when that was approved and I believe that was a discussion that was made pertaining to the crosswalk in particular and that they would maintain it, either the County or the developer.

Mr. Simmons continued: Under item 7 you have zoning. Ms. Caldwell had listed those various variances. Then page 6 under item 8, with the deeds, I included Mr. Ricciardo's comments on what's the crunch list as to where they are at right now. There are some deeds listed here that need corrective deeds filed. There were certain issues in the metes and bounds. Looking at Exhibit A1 on the Hillside Terrace side of the property, the applicant did have another flag stem that went down Hillside Terrace but they did not develop that piece of property. They took that piece of property, subdivided it in half giving one half to one owner and the other half to the other owner on the other side. That's the deed that has metes and bounds that needs to be taken care of. There's a stormwater maintenance plan. We talked about lot 7 and those folks getting the property but the easement has to get squared away. On the top of page 8 under item 9, the ordinance calling for the dedication for the portion of Center Street, that has to get drawn up and finalized and under item Aii 2 that refers back to the service lines going into that dwelling on lot 4. We want to make sure those folks are covered, we don't want them to be separate from their utility connections. Some of these other deeds go to the vacation. Then under item 10 on page 9, we've got the various approvals, the County Planning Board. We received a letter dated January 14, 2015 that had some remaining conditions that the applicant will have to comply with. The County Engineer's office pointed out that they've got to get the appropriate permits when they finally get to the point where they are going to construct in the County road. They've got to approach the Town Council for the developer's agreement, the vacation of the portion of Center Street and the water and sanitary sewer fees. I do remember in the early 2000's the applicant was in front of the utility board and they received their permit and allocation and it has to be worded so the Town gets paid for those allocation gallons.

Mr. Ricciardo questioned: Do we get paid based on the 2002 or the 2016 rate?

Mr. Simmons stated: My recollection is that gallonage was approved, not dollar figures.

Mr. Simmons continued: Item D, fire subcode official, the emergency access as far as the fire chief looking at things. The construction official for the buildings and soil conservation. We did get a soil conservation permit but it has to be renewed. The DEP approvals for water and sanitary sewers, they have been operating under the Permit Extension Act but it will be gone on June 30th of this year. Resolution conditions that still must be satisfied, the developer's

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agreement. I did have under item 11a, blasting. If you recall in the Castle Ridge Plan developer's agreement it was put in there just in case. The various easements, condition number 6 plans for the vacation of Center Street. Addressing the utility and access issues we commented on before. Condition number 8 prepare construction schedule outlining the proposed phasing of the project, infrastructure, parking lots, payment of fees, taxes, and County Planning Board approval. This may be a good spot to stop because item 12 talks about the engineer's report from November 1, 2005 and gets into the architectural plans.

Mr. Soloway stated: Would item 13 all be conditions right to the end.

Mr. Simmons stated: Yes. They would all be standard conditions.

The Board took a 5 minute break and reconvened at 9:15 PM.

Ms. Caldwell referring to her report dated March 10, 2016 and stated: A lot of it was background information on the first and second pages. Under number 3a, I recommended a 6' screening fence between lot 4 and the approximate center line of Center Street. I went through what I think are the three new variances required based on the change of the lot ownership and the change of the emergency access, the one side yard setback. My final comments were on the architectural plans. The original approval had the architectural plans to be submitted and approved essentially by the Board Engineer. At this point, although the plans have been submitted they haven't been reviewed by anyone yet. I did make a request asking the applicant to provide a color rendering. They are also going to provide more detail on the siding. Also, to look at different ways to break up the buildings, they are long buildings; they received a variance to put in longer buildings than what was permitted at the time. I'm trying to find a way to make the buildings look better than what the original architecture plans submitted.

Mr. Ricciardo questioned: When were lots 5 and 7 sub-divided?

Mr. Soloway stated: I don't have the answer to that.

Mr. Ricciardo stated: Since it was previously one big complex, they've sub-divided it and some of these building are right on the property line. Will that have an effect on what was approved previously?

Mr. Soloway stated: I don't think so. In particular, you're noting that there is a 0' setback for one of the buildings on the property line; if you go back to the 2004 approval they must have had them as separate lots then because it includes the 0' variance.

Ms. Caldwell stated: I believe that it was two lots at the time of the approval because they do note that they are under common ownership but they do grant a variance from that common boundary line between those two lots even though they are under common ownership acknowledging that there's a lot line there.

Mr. Soloway stated: It references a June 2, 2004 plat by the applicant's engineer and in Mr. Simmons's June 15, 2004 report that's attached and incorporated into the resolution, on the second page, he itemizes the variances and they match up to what was flagged earlier tonight as already existing and one of them says side yard setback, the requirement is a 25' minimum. The provided proposal was 0' at the common line of lot 32. The lot numbers were different then. But that was already granted.

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Ms. Caldwell stated: If you are looking at the current application it is a side yard. If you are looking at the front property it would be a rear yard. It would be a rear yard from the front development, but from this development we're talking about now it's a side yard. The frontages are different now.

Mr. Soloway stated: Because those were separate lots then and they looked large, I don't know if you would have needed sub-division approval to convey lot 7. It may have been a separate legal lot.

Mr. Marion questioned: Will all the utilities be underground?

Mr. Simmons stated: On sheet 1, general note 14, all utilities shall be constructed underground.

Discussion ensued on utilities.

Mr. Simmons stated: On the left side of sheet 5, is the water main detail.

Mr. Marion questioned: With the easement for the water line going through Shady Lane all the way down, they will clear all the trees, put the water line down, and put grass on it. Who then maintains that if trees start growing on it? The applicant?

Mr. Simmons stated: I would have to check it, but I believe the developer's agreement was set up so that the watermain gets turned over to the Town of Newton. They are not proposing to plant anything over as far as trees go.

Mr. Ricciardo questioned: Why would the Town want to take the responsibility for that water main?

Mr. Simmons stated: It's on their property. I'd have to check this, but I believe, once the water main is completed the easement will go away. It would be an easement on your own property at that point.

Mr. Simmons stated: The easement currently exists and is recorded. The developers agreement lagged behind everything else. In all fairness to the applicant they had to deal with the County and get everything straightened out that way. The last piece of the application that has been worked on in an earnest way with the Town is the developer's agreement. It is just coming to the forefront now.

Mr. Le Frois stated: Let's move on to the architectural portion.

Mr. Alexander stated: We don't have the architect here with us tonight. We do have material that the architect gave to Mr. Getz, including renderings of information that we would like to present to the Board. If we can't answer the questions, we will have to come back.

Mr. Getz presented the architect's, Mr. Stefanelli, letter and it was marked as Exhibit A2 and colored renderings of the building which were marked as Exhibit A3.

Mr. Soloway read Mr. Stefanelli's letter to Mr. Getz dated March 14, 2016 which is Exhibit A2 for the record and indicates by the letterhead that he is a registered architect: To the best of my

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knowledge, the following is a list of approximate materials the owners plan to use on the exterior of the Town Square Gardens project. The materials are subject to change but will be similar or equal to the file. Exterior finish to be a standard brick in pattern with standard brick details. Colors will be full range of red vertex brick or equal reference color samples on the next page. Windows – there will be sliding windows suitable for egress at bedrooms and living rooms and a series of smaller aluminum casement windows and some fixed pane arches over some specialty windows. The windows will be white extruded aluminum with double pane insulated glass with white trim approximately 2 1/2" wide, standard steel lintels where applicable and limestone sills. Standard brick pattern in sides and top of windows. Entry doors will be embossed fiber glass entry doors painted white. Roofing will be 25 year asphalt shingle roof, gray in color with white fascia, soffits, gutters, and leaders. Heating and cooling units by Amanna or equal. Steps – any stoops will have brick veneer to match with limestone treads. Sidewalks to be concrete with curbs per code. Parking area to be black top with white stripes per code.

Mr. Alexander stated: I will have the architect at the next meeting.

Mr. Soloway stated: The architect should reach out to Ms. Caldwell before the next meeting.

Discussion ensued on the design, parking, etc.

Mr. Simmons stated: Going back to my report, page 10, item 12, on the HVAC units, general site note number 1 indicates that all HVAC equipment be located on the roof of the buildings and screened. They are shown as through-wall units on the architectural plans. So this needs to be clarified. Also, the retaining wall plans for the structural walls next to the emergency access because it is providing lateral support to that proposed fill.

Mr. Le Frois questioned the applicant: Will there be a doorway that allows the residents of the apartments to walk out to the emergency access area? We could see people setting up their grill and lawn chairs back there and using it as a patio.

Mr. Getz stated: We will have to address that.

Mr. Simmons stated: Mr. Getz and I discussed the width of the emergency access drive and it is 12' not 14'.

Discussion ensued on parking spaces, etc.

Mr. Simmons stated: Looking at the lot line on lot 3 or whatever lot number it was before we changed tax lots. That line, when it came to the sub-division part of what was going to get conveyed to the Town, was a little un-nailed down at that moment in time. In my recollection, that line was to extend far enough to the west to allow that parking lot at the end of road B to be on the applicant's property. In order to maximize the amount of land that the Town got, you can see the dashed line, it's the grading easement. When they filed the deed in December of 2009 to convey it to the Town, they reserved that grading easement as well. That way at least the Town had the maximum amount of land that it needed to get, but the applicant had the flexibility to grade that area where there was a fairly deep cut without losing out on any of the land.

Portion opened to public – Sworn in

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1st public: Ed Skorski, 15 Hillside Terrace – Concerned with water and flooding at the bottom of Hillside Terrace.

2nd public: Daren Howie, 35 Hillside Terrace – Concerned with slate, blasting, and losing woods. He would also like to know if they are going to fence it high or replant trees.

3rd public: Colleen Dionne, 11 Cherry Street – We came tonight to see if we will not be affected.

4th public: Philip Moscatello, 39 Hillside Terrace – Concerned with what happens if the watermain leaks? Are we going to get flooded? I am three houses away from end of watermain on Shady Lane.

No more public stepping forward, this portion closed.

Mr. Simmons continued: From the June 15, 2004 report, item 9, residential site improvement standards, item a. Parking for garden apartments section 5:21-4.14. Table 4.4. Requires 2.1 parking spaces for 3 bedroom garden apartments. Revised architectural plans have not been submitted. Assuming all the units are three bedrooms the requirement for 42 units by RSIS is 89 parking spaces. Only 84 parking spaces have been provided and there are no ADA parking spaces shown. The applicant should discuss this with the Board. I have to double-check it after the meeting, but I think I count 86 spaces on the plan. The note may say 50 some odd spaces, but I counted 86.

Mrs. Le Frois stated: It's actually 88 spaces required based on the 2.1 calculation.

Mr. Getz stated: The upper part of the notes on the right side of sheet one indicates general notes for the parking area and there are 30 spaces listed there. So 30 plus the 59 would be 89.

Mr. Le Frois stated: Additional information on the architectural renderings is needed. This application will be carried to April 20, 2016 at 7PM with no further notice required.

Mr. Soloway stated: Under the Land Use Law, when the period of protection expires you don't always lose your approval. However, Newton has a sun setting law and in this case there were dramatic ordinance changes. If the approval lapsed, they are in better shape with setbacks but other aspects of ordinance would make it difficult. They need a resolution before the end of June 2016.

Mr. Soloway asked Mr. Alexander: Do you consent to the statutory extension to carry the hearing to April 20, 2016?

Mr. Alexander stated: Yes.

DISCUSSION - None

CORRESPONDENCE - Reviewed

EXECUTIVE SESSION - None

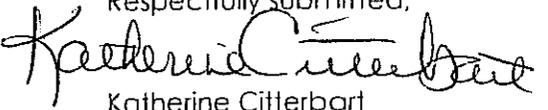
PUBLIC PORTION - None stepping forward

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ADJOURNMENT

Mrs. Le Frois made a motion to adjourn the meeting. Motion seconded by Mr. Marion. The meeting was adjourned at 10:21 PM with a unanimous "aye" vote. The next meeting will be held on April 20, 2016 in the Council Chambers of the Municipal Building.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Katherine Citterbart". The signature is written in a cursive style with a large initial 'K' and a long, sweeping underline.

Katherine Citterbart
Planning Board Secretary