

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

The regular meeting of the Newton Planning Board took place on the above date. Vice Chairman Marion 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. Hardmeyer, Mr. Russo, Mrs. Le Frois, Mr. Hemschof, Mr. Flynn (15 minutes late), Mrs. Diglio (15 minutes late), Mr. Marion

Excused: Mr. Flaherty, Ms. Member, Mr. Ricciardo, Mr. Le Frois

THE SUNSHINE STATEMENT: Was read.

CONSIDERATION OF MINUTES

April 20, 2016

A motion was made by Mr. Hemschof and seconded by Mr. Russo to approve the April 20, 2016 meeting minutes.

AYE: Mr. Hardmeyer, Mr. Russo, Mrs. Le Frois, Mr. Hemschof, Mr. Marion

The motion was carried.

HISTORIC RESOLUTIONS

None

RESOLUTIONS

Krogh's Brewing Company (#MSP-05-2016)

Block 16.03, Lot 7

56 Paterson Avenue

Redevelopment Area

Resolution granting minor site plan approval and redevelopment plan deviations for a craft brewery and tasting room.

Mr. Hemschof made a motion to approve the resolution. Motion seconded by Mr. Russo.

AYE: Mr. Hardmeyer, Mr. Russo, Mr. Hemschof, Mr. Marion

Abstained: Mrs. Le Frois

Motion carried.

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

OLD BUSINESS

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

Applicant requesting amended preliminary site plan approval for the relocation of an emergency access (carried from March 16, 2016 and April 20, 2016 meetings).

Dan Flynn, Sandy Diglio, and Helen Le Frois have signed an Affidavit of Hearing to be able to participate in the voting on this application.

Mr. Craig Alexander, Esq. of Dolan & Dolan is representing the client. Mr. David Getz and Mr. Mark Stefanelli were previously sworn in.

Mr. Getz introduced Exhibit A6, dated 5/18/2016, an enlarged grading plan with new features, and stated: A question came up last month as to whether the buildings would have basements. This plan provides clarification on that. Our offices went back and forth with the architect Mr. Stefanelli and no basements are proposed. There will be a small utility room at the lower level for water heaters and other mechanical features. It will be 100 square foot maximum. It will be one per building. In three of the buildings it will be located below the lowest residential floor. The buildings are units 13-15, 16-21, and the third is unit 7-12.

Mr. Stefanelli stated: The other two buildings are on a flatter grade and will accommodate the hot water heater within the apartments. We've located the utility room as close to the access road as possible.

Mr. Hardmeyer questioned: So the main water supply for that unit will come into that room and run off of that for each apartment?

Mr. Stefanelli stated: Yes.

Mr. Getz stated: We have additional detail on the emergency access lane. We've added a section for pavement, 12' wide. We've done further reclinement of the edge of the building that backs up against the emergency access lane. It includes window wells along this back strip. We are now showing that the air conditioning units would be mounted on the 5' wide green strip that's afforded between the edge of the building and the edge of the driveway. We've added a guardrail along the length of the building for protection of the walls and air conditioning units. In response to Mr. Simmons' comments we've added a chain link fence along the western side of the 12' lane and a rumble strip that's a 10' wide easement. An easement would be needed to build a retaining wall and for possible future maintenance of that wall. We have locking gates at either end of the lane with a sign saying access is only for emergency purposes. I think this addresses some of the concerns.

Mrs. Diglio questioned: Will emergency personnel have keys for that?

Mr. Getz stated: Yes. A question was raised last time about grading and how much rock would be removed. It will be about 40,000 cubic yards. The deepest cuts will be about 27'. It will be a significant volume of material. As per Mr. Simmons' recommendation, the Developer's Agreement should include provisions for the damage that will be caused on the entrance drive

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

by all the truck driven traffic. In the event that construction might be stalled, that any vegetation would be restored and stabilized.

Mr. Soloway questioned: Would you be willing to provide a restoration bond to assure that?

Mr. Getz stated: Yes.

Mr. Russo questioned: Is there going to be blasting?

Mr. Getz stated: We don't expect any blasting. The contractor is familiar with similar areas around town and he expects that the top layers will be movable with a large excavator down to a certain level at which point we may have to go to hammering.

Mr. Marion questioned: To the left of buildings 13, 14, and 15 there is a proposed retaining wall. It pitches down. I was concerned last month with putting a berm in direct water. Is there anything you've done to make that happen?

Mr. Getz stated: Water is being directed to the basin from this upper area. With all the proposed imperviousness it's being collected and brought to our stormwater feature. The amount of water that will run off site will actually be reduced in this location because we are cutting it off with the roof collection system and tread lines. Along this area is cut through to create a berm.

Mr. Getz stated referencing Exhibit A7: We've increased the proposed plantings. We have evergreen trees. On the frontage side we have a variety of shrubs to soften those trees. Mr. Simmons' noticed there is a storm drain along that route. So we have proposed just to keep the shrubs in those areas. This affects the first two properties on Hillside Terrace. We've also increased the landscaping along the low side of these two buildings, the two northern buildings. When you enter the site, those eastern walls are quite high so the additional landscaping will help soften the view of those.

Mrs. Diglio questioned: What would you do if you needed to blast?

Mr. Getz stated: The contractor would have to adhere to all local regulations.

Mr. Soloway stated: Many aspects of blasting are controlled and preempted by the State. However, the Town has some major projects in the past and it requires a condition of approval that there be a provision in the Developer's Agreement relating to blasting specifically. It may cover areas such as insurance, notification of impacted residences, and take a before survey to lock in a baseline so if there was a claim of damage from blasting there would be a comparison. That can be helpful for the applicant. I'll direct this to Mr. Alexander. Would you have any issue with that kind of condition?

Mr. Alexander stated: No.

Mr. Marion questioned: If this projects gets abandoned midway through excavating because of cost. What insurances does the Town have that they can put the land back?

Mr. Soloway stated: That is why I raised the subject of a Restoration Bond. A Performance Bond guarantees completion. I'm not sure whether the scope of the completion would extend to restoration. If the Board approves, it would be prudent in the resolution to require both if

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

necessary to ultimately be determined by the Town Council as part of the Developer's Agreement. I would ask Mr. Simmons's opinion on that.

Mr. Simmons stated: What we've done in other applications, if there is a potential that they run into a lot of rock and they decide that it isn't worth pursuing, we usually have a separate Restoration Bond so that the site can be put back to rights as far as grading goes and to stabilize with seeding. So that if it was in that position for a number of years or perhaps forever it's not an unsightly thing for the neighbors to observe. We usually keep that as a separate item. As far as the amount of the bond goes we look at it as if it was the worst possible case and how much it would take to bring it back to reasonable rights.

Mr. Alexander stated: We have no objection to that.

Mr. Flynn questioned: Why didn't you choose to use retaining walls? You could cut some substantial land disturbance out of there. It wouldn't look bad in a terrace style.

Mr. Getz stated: I don't have an answer, but I can go back and look. It sounds like it may be worth considering.

Mr. Marion questioned: Will there be 27' of a rock face?

Mr. Getz stated: It will be a slope coming up. It won't be 27' vertical.

Mr. Simmons stated referencing the severe slope area: To maximize the amount of land that was conveyed to the Town, the property line of the lot was set only a few feet off the curb line of that parking lot. There was an easement reserved on what's now the Town's land to do that grading. So if they were to contemplate putting retaining walls on that slope as opposed to that slope then it should be worked out in the Developer's Agreement that those walls are the responsibility of this applicant and not the Town.

Mr. Hardmeyer questioned: I would like to discuss the upper set of apartment complexes. Up slope from that is a big parking lot and it's right at the base of that steep slope. Isn't there going to be a lot of seep and water coming off of those slopes and won't the water just be an icy mess in that parking lot? Can you add drains to the bottom of that slope to pick some of that up?

Mr. Getz stated: Yes. We can put an under drain to collect the seep.

Mr. Marion questioned: In the plans that we've been talking about there is a round disc that I see throughout the property. Is that representing soil mounds?

Mr. Getz stated: Yes. Those are areas of top soil for use later.

Mr. Flynn referenced page 7 of 16 and questioned: The storm filter is post detention. The storm filter goes to a manhole. Is the water going towards the manhole and then down to that catch basin?

Mr. Getz stated: That's water that enters the Town's drainage system.

Mr. Flynn stated: Another thing that is a concern of mine is the proximity of the excavation of the underground retention system with existing apartment building 54A. It's fairly close. You're

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

opening up a cavity next to that building. So there would have to be some serious shirring that would go on there.

Mr. Stefanelli presented sheet 1 which is site plan and the floor plan of the building and a revised sheet 2 which is elevations and the rendering from the previous application and stated: To address a couple of issues from the letter, there were two words that said "basement". It should be "grade". Also, the area below the slab is fill. So what I've done is taken each part of the building, A, B, and C and created an elevation of the entire front, back and side of the buildings will look like. We have shutters added to the back of each of the buildings to match the front. There is the gable in front and there will still be shutters and brick. The sections indicate the grade difference between the back and front of the buildings. In building A the grade is the same from front to back. In building B, the triple, there is a difference of 9 ½ ' from the front to the back. So that creates a wall at the lower level. We are going to try and break that up with a split face block. It can be decorative. We are proposing a reddish brick at the top and the split face block would be almond, tan, or light gray to break up the long wall. That would follow the floor line as it went down. It coincides with what Mr. Getz has mentioned, the landscaping being along that wall. So you have a split face block wall with the air conditioning condensers and this would be heavily landscaped to soften that taller wall. The other building above the detention basin would be this one which is a longer building. You have the same situation. It will go from being flush at the front and go back down to about 9.5' in the back and that would be landscaped above the retention basin and the triple would be landscaped as you're approaching this site. That's the area where we are proposing more landscape. What makes it a little bit trickier is the C elevation. It has six buildings with a lower parking lot to the left of the site. This elevation is the proposed front elevation of building C and this is the rear elevation of building C. This particular building slopes in one direction up the hill and the other direction in back. This section C here indicates the difference in grade between the service road and the front of the building where the parking lot is. In building C we have to position it half and half. There are no basements here. It is slab on grade. But we are going to position the first floor about half way in the ground from the rear elevation. That will allow me to provide window wells along the back elevations. The sill needs to be 44" from the ground. You need egress windows in the back of the bedrooms that are proposed in that area. We would locate them half way in the ground so the window wells would be about 30". In order to do that we need to introduce stairs to get up to the first floor. There are two covered porticos for entry. This is the side elevation of what it would look like from the service road down the slope, to the staircase, across the parking lot. We tried to dress up the rear. There are two comments that I would like to address. Regarding the guardrail in the back and the comment of can we keep the snow that's been plowed from the window wells? The design of the guardrail protects the window wells from any snow coming down into there. The guardrails would be positioned in such a way that if you did come out of the egress window there would be an entrance between each egress window so there would be a guardrail and then a small 36" opening and then a guardrail to protect the window well and the unit and then a 36" opening. If you used the window well, you wouldn't be trapped in any kind of alley way there between the guardrail and the building. There was another comment regarding the air conditioning condensers. I spoke to the developer and owner and we have narrowed it down to a Coleman unit. There was a concern about the decibel level of the units. The units would really not be in any proximity to the residential area. They would be behind each unit, pretty far away. According to the manufacturer the decibel level is 77 dba, with a low operating sound level. You can also get compatible accessories for further sound reduction. It's a Coleman LX Series.

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

Mr. Soloway stated: You can submit that, but for the purpose of any approving resolution, you should agree to comply with the noise levels as per applicable DEP requirements.

Mr. Alexander stated: We will comply.

Mr. Marion questioned Mr. Stefanelli: I think this is the third revision. I don't remember the lower left drawing having windows recessed into the ground. It seemed like everything was all above ground level. Now they are being put in ground with window wells. Is that in a 5' strip in the back? What's above ground to prevent anyone from falling in there?

Mr. Stefanelli stated: The guardrail would be within 5' of the window well. That's why I'm trying to keep the window well at 30" because you don't need a railing.

Mr. Marion stated: What if children are playing in the back of the building? You've got 6-8 window wells and a 5' strip of air conditioning equipment. To me that's a hazard and it's an accident waiting to happen. Also, is there any drainage or way of removing the snow? I don't recall looking at blue prints with window wells?

Mr. Stefanelli stated: With further investigation of the site the section was generated through this area and the access road to the front where we did the actual section is what I wanted to bring to your attention, that that was the situation there.

Mr. Marion questioned: What happens if you get the approval, you start building and then you realize that another building needs window wells. It's up to you to do your due diligence. This is the third revision of the units. How do I know what we approve is what the final product will be?

Mr. Stefanelli stated: This indicates the difference in grade front to back on each unit. The C unit needs to be addressed because of the steep slope that comes around. The service road is higher than the parking lot and it does need to be addressed. The only way to achieve lighting for the bedrooms and egress for the bedrooms and maintaining an entrance that is not overwhelming. If I raise the building another 3', I've tried to come to a middle ground where it's just far enough out of the ground in the back that we can have window wells and manageable for the stairs to get into each unit on the corner.

Mrs. Le Frois questioned: Have you calculated the cost per square foot?

Mr. Stefanelli stated: Not at this point.

Mr. Marion questioned: I know this was approved 12 years ago. It looks as though it will cost millions of dollars. Does the applicant realize this?

Mr. Alexander stated: The applicant is aware and it is his responsibility to bear the cost.

Mr. Hardmeyer questioned: Have you spoken with any fire or rescue squad regarding those window wells? If there was snow and someone had to get in there, it may be tough.

Mr. Stefanelli stated: I would be designing it according to the Fire Code Book. A drain will be needed to catch any water. We don't have a basement issue here. We don't have water going into the basement.

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

Mr. Getz stated: I would recommend a drain and we have an extra storm system we can tap into.

Mr. Flynn questioned the Town's professionals: This was approved in 2003 or 2004. In listening to the tapes and being here in the March meeting, I noticed there are quite a few people opposing the project. It sounds like they thought this project was not approved. There was a single family home component along with a denser residential, and there was a landswap with the Town. Can someone explain what went on in 2004?

Mr. Simmons stated: The applicant came in with a plan for the Garden Apartments to be constructed in the area of the site plans you are looking at tonight. One of the major issues they had to deal with was providing fire protection for those units. This piece of property is at the upper level of the low pressure zone in the Town's water system so they were really in a difficult situation as far as getting enough flow and pressure in this part of Town from the low pressure zone. They had asked us where was the nearest high pressure main that they could tie into and the nearest one I was able to locate was up on Shady Lane. I believe it's 10". The applicant went to the property owner that owned the land between the back of their property and Shady Lane with the idea of obtaining an easement to bring a high pressure water main down from Shady lane to service this area with fire protection. What they actually ended up doing was purchasing the property, not just an easement. After they purchased the property their idea was lets see if we can develop it and recoup our costs eventually. They showed a subdivision road coming down through that piece of property off of Shady Lane and dividing it up into lots for single family dwellings. There was a lot of concern from the neighborhood when that particular plan came out and how it was going to impact with drainage on the homes that were on Hillside Terrace and possibly make worse the drainage at that time. That, in combination with the new stormwater regulations which said you had to have a certain amount of infiltration as well as recharge, so at that time the Planning Board asked the Planner at the time, Jerry Lenuz, to look at the overall plan. He came back and suggested that a more appropriate use of the property would be to keep the property from Shady Lane down to the rear of this applicant's property undeveloped and therefore not increase the draining issues and concentrate the density down in this lower part that we're looking at tonight. In addition, he suggested leaving that portion that was going to be left undeveloped to the Town of Newton. The applicant agreed to that plan. In December of 2009, the applicant conveyed the roughly 15 acres from their LLC to the Town of Newton. So that "open space" area from the back of the property to Shady Lane is actually in the name of the Town of Newton.

Mr. Flynn questioned: Why does nobody know about this? Why do they think that this original application was denied? Probably because a substantial part of the single family homes was denied.

Mr. Soloway stated: They think it's denied because its 12 years later and nothing has happened.

Mr. Marion stated: Plus, I think Mr. Lehman passed away so that delayed the project.

Mr. Soloway stated: People will think whatever they think. It was approved in 2004 for preliminary. At one point they did come back for an extension that would not be unnoticed to anybody. They came back in 2008 or 2009 because the original approval was for preliminary major site plan approval and preliminary major subdivision approval relating to the lots that the Town got. Somebody figured out in the intervening time period that it wasn't a major subdivision that it was a minor subdivision. So they came back to this Board in 2008 or 2009 to change it

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

from major to minor subdivision approval. When you have a minor subdivision approval, there is a 190 day time frame for perfecting it. The Board approved the change and I guess they went ahead and perfected it in the 190 days. They subdivided the lots and conveyed them to the Town. The odd thing here legally is that they fulfilled a major condition by subdividing these lots and conveying them to the Town, but it took 12 years to submit architectural. As of tonight, that approval is still valid and is valid until the end of next month. The application now before you is to amend the prior approval in a few discreet ways, the main ones being the new emergency access that's proposed, also the new underground detention and a few other things. The bulk of everything else is not changing. So what's really before you is the proposed amendments, not reapproving the entire subdivision. Although I will say if you grant the amendments it gives them more time to perfect it.

Mr. Flynn questioned: What expires in June?

Mr. Soloway stated: Everything. Subject to whatever complications that might be caused by the fact that they've conveyed lots to the Town. When you get an approval under the Land Use Law, you are provided with a period of protection against intervening ordinance changes. They got preliminary. Ordinarily the period of protection for that is 3 years. When this happened they were just barely within the scope of the Permit Extension Act. So they are actually still valid under the Permit Extension Act, even back in 2004. However, the Permit Extension Act protection is expiring on June 30, 2016. Sometimes that doesn't matter because the municipality doesn't have a sunset ordinance, a site plan approval is still valid if the ordinance hasn't changed. In the case of Newton, the ordinance did change and it changed dramatically. So what was approved under this application is no longer permitted in the zone under the current ordinance.

Mrs. Le Frois questioned: What exactly is up for consideration before the Board?

Mr. Soloway stated: The emergency access route relocation from the westerly end of Cherry Street to an extension of Center Street. That's new and one of the two major things. The next is the modification of the stormwater system to eliminate a detention basin and replace it with an underground detention system. They've added sidewalks and retaining walls along the main access drive through block 504, lot 7 to reach a new pedestrian crosswalk across Mill Street as I'm reading from Mr. Simmons's March 10, 2016 report. As part of this process, in addition to everything else that's been discussed, when this was originally approved in 2004 there were no architectural. That was a condition of the approval and the Board said when they came in, it's been 12 years, where are the architectural. That's why that was produced. It's complicated, but maybe not as complicated as you think.

Mr. Hardmeyer questioned: We had a discussion on the amount of fill going out. Was any of the information on the volume of fill made available to the Board in 2004 when they made their original decision?

Mr. Simmons stated: Not that I recall. If you go back to the time when Jerry Lenuz recommended the Open Space be conveyed to the Town and the rest of the property be developed as shown on the site plan tonight, my recollection is that those plans weren't formatted in that configuration at that moment in time. But the applicant and the Planning Board at the time were in agreement, conceptually, that's what should be done subject to putting the plans together. The detailed plans weren't available at that time. When they talked about the exact acreage of the property that would be conveyed to the Town, the right-of-way lines along Shady Lane were obviously fixed and existing, but where the line was that was going

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

to divide the Town's land and the upper parking lot was subject to some floating. As a result of that there was a conceptual design in people's minds but the detailed plans were not available that night.

Portion opened to public:

1st Public: Stella Dunn, 24 Hillside Terrace. I was present for the meetings in 2004 and my neighborhood believed this was not approved. We were here at every meeting. The developers may not realize is there are quite a few houses on Hillside Terrace that are actually built on rocks. You can literally walk into their basement and there's a rock that the house is sitting on. I don't understand how you can think you are not going to have to blast. My question is what are you going to do for the homes across the street and in that neighborhood to insure that when you have to blast that we're not going to end up with water in our basements, broken windows, and broken foundations. You haven't said what you are going to do for the community. What are you going to do to fix our homes if you mess them up? These plans seem substantially different than what was submitted back then and should need to be reapplied for.

Mr. Alexander stated: Blasting was addressed previously. As a matter of law, if there is damage made to a neighboring property owner there would be claims made against the property owner.

No more public stepping forward. Portion closed.

Mr. Simmons reviewed his report dated May 11, 2016 and stated: On page 2 item 2a where the two elevations on two apartment b buildings, they confirmed that. As far as the area under the first floor would be built, they confirmed that. Item 2b, they talked about the water meter rooms and that was confirmed. I spoke to the water utility and my understanding is that in the existing apartment building the units are individually metered and the bill goes to the property owner. Item 2c we talked about window wells. I was concerned about that as far as ingress and egress and the safety issue. It's not inconceivable to me, I understand what they are talking about with a rub rail along the guardrail, but as the Chairman pointed out snow falls straight down. Somebody is going to have to be responsible for maintaining those window wells to make sure snow is out of there to get somebody out in the event of an emergency. Item 2d, there's a note on the plan that estimates the approximate material types subject to change but similar or equal to the following. I know the Board has discussed a lot of plans and the materials. I would suggest some language could be put into any resolution the Board might consider subject to Mr. Soloway's input that if there is any substantial changes they might have to come back to the Board. Item 3, on the grading plan, Mr. Getz pointed out that if the Town agrees to vacate that portion of Center Street, that's an important addition that hasn't been undertaken yet. Half of it would go to the property owner on the opposite side of this development, the appropriate easement should be reserved for this applicant to effectuate the type of grading and retaining walls they are talking about installing. Also, it should be specifically stated that they are responsible for maintaining it and not the Town or the other property owner. Item 3b, the guide rail and additional chain link fence will be added. Item 3c, it will probably be necessary to resurface lot 7 at the end of the project because of the 2500 trucks going up and 2500 going down. Lot 7 is not owned by the applicant, but by a different party. So in order to make sure there is no issue with the other party I suggest that they make this a requirement. Item 4a, I stand corrected on the dumpster. Behind one of the existing apartment buildings, close to the common property line, there are two dumpsters that will have to have a dumpster enclosure

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

area. They are on Exhibit A7 on tax lot 7. They have to include it in the Cross-Easement Agreement between the 2 property owners. Mr. Getz addressed the lower shrubs in the area where there were conflicts with the storm drain pipe that I pointed out. Item 5, I talked about some detailed change to the guide rail, and dumpster collection. Does the applicant have any objection to a twice a week collection if necessary?

Mr. Alexander stated: No objection.

Ms. Caldwell stated: I did not issue a revised report. There were two items based on my prior report. One was to provide more articulation along the back which they addressed by adding the shutters along the back and carrying the brick around the back as well as the new foundation split brick on the bottom. The other item was the screening in between the northern property line which they added as well. Those two items were addressed. Just to remind the Board we had three new variances created as a result of the application. One was the side yard, 20' was proposed where 25' is required. The rear yard of 25' where 75' is required. A lot frontage where 150' is required, 144.62' is provided. I believe this is largely because of the subdivision that occurred where the Town shifted the property line along the one section.

Mr. Soloway stated: That has added complexity as well because those variances are required under the old R4 zoning which is the zoning that was in affect when this was originally approved. Under the new form based code the property is now in the T2 zone and I think it complies with those same requirements.

Ms. Caldwell stated: It would comply. However, we are still following the R4 based on consistency throughout the entire application.

Mr. Russo questioned: Mr. Ricciardo had brought up the issue of sprinklers. Have you done any further investigation as to whether that is mandatory?

Mr. Getz stated: I did some investigation and the apartments that are two-stories will need to be sprinklered.

Mr. Marion questioned: Would it be possible on that one building where you have the recessed windows, I believe it's a 5' strip on each end, to put a fence or a gate to keep people out of there? I'm worried about people falling in there.

Mr. Soloway crafted a motion to grant the application to amend preliminary site plan approval, to relocate the emergency access route to an extension of Center Street, to modify the stormwater system to eliminate the one open detention basin and replace it with an underground detention system, to add the sidewalks and retaining walls along block 504 lot 7 to reach a new pedestrian crosswalk along Mill Street; with the three variances that Ms. Caldwell outlined; with the following conditions, they would have to agree to build it substantially in accordance with the revised plans that they submitted, the Fire Department should have a key to the gates that block off the access drive, the applicant is to be responsible for construction, maintenance and keeping the gate closed. To repair they would have to get an easement for secondary access from the northerly part of lot 7 to Hillside Terrace. They need to revise and update the easement with the owner of lot 7. Lot 4 is to get an easement for existing utilities that cross the applicants land. Maintenance of the access road is on the developer. HVAC systems to be located inside the buildings except for the exceptions mentioned tonight. No basements, but they are allowed the utility rooms in the three buildings not to exceed 100 square feet to be

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

used for water meters and mechanical features. Restoration bond if required by the Town Council as part of the Developer's Agreement. Also, if required by the Town as part of the Developer's Agreement, items relating to blasting if its required, specifically to provide insurances required by the Town, to provide notice to the impacted residents, before the blasting if required by the Town. And to do a before survey of what the houses look like in case there's a claim of damage as a result of any blasting. Install an under drain in the northwest parking lot at the base of the slope from what is now the Town lands. Design the guide rail to the satisfaction of Mr. Simmons to substantially protect the window wells from plowed snow. Comply with all applicable noise regulations. Apartments will be sprinklered as required by code. Provide a fence or gate to prevent outsiders from getting in the 5' strip to the satisfaction of Mr. Simmons. Referencing Mr. Simmons's report of March 10, 2016; there is a very big condition on putting in the emergency access its obviously contingent on the Town Council agreeing to vacate Center Street in the area where they're proposing this will be the new emergency access. As a result of the Town's agreeing to vacate that, if it happens, the one side of the street is going to the developer which will be the emergency access. The other side of the street will go to the adjoining property owner there. It doesn't sound like its going to be possible for the applicant to put in the improvements to the emergency access way without going on the other side of the road and depending on when they do that, the Town still owns it at that point, they need permission from the Town and if the Town has already vacated it they are going to have to enter into an Easement Agreement with the adjoining property owner who will then own that land. Appropriate easements, they alluded to this, are to be set up on the easterly portion of the Center Street right-of-way in favor of lot 4, to allow existing facilities to be located in their present location. This includes the outlined maintenance responsibilities. The foundation walls for the access drive should to be designed in a way that they support the weight of the Town's emergency vehicles and apparatus. Retaining walls to be entirely on their side of the vacated Center Street. All responsibility of maintenance and repair of the retaining walls to be on the applicant. The stormwater facilities will have to be included in the proposed Easement Agreement that is being prepared with the adjoining property owner. That will have to spell out the responsibility for the operation, maintenance, and repair of the drainage facilities and the pertinances to the satisfaction of the Town Engineer and the Town Attorneys. Items relating to the Operation and Maintenance Manual for the stormwater facilities as outlined in Mr. Simmons's March 10, 2016 report. Whatever storm drainage modifications that is required as a result of the County's approval will be the responsibility of the applicant or the County, not the Town. That includes maintaining the crosswalk. There will be deeds required as outlined in Mr. Simmons's report and other corrective deeds required as outlined there. The stormwater maintenance plan should be put in deed form and recorded with the approval of tax block and lot numbers by the tax assessor. Easement agreements with the owners of lot 7 for overlapping site improvements. Vacation of Center Street right-of-way not only subject to the Town Council, but we want approval of the Fire Sub-Code Official as to any existing utilities serving existing dwellings. A Developer's Agreement is needed. Also, possibly, additional details needed for aspects of the emergency access drive. This may have been incorporated in the plans for the 6' screening fence they constructed along the center line of the vacated Center Street both to provide screening to the adjoining property and to serve as a property line marker. Also, from Mr. Simmons's report from May 11, 2016 the applicant is responsible for maintaining the window wells. Applicant to have to come back to the Board if there is any substantial change in what they are calling the approximate typical materials. To add a board-on-board privacy fence, running down the center line to the plans if they haven't already done it. Resurfacing the driveway on lot 7 if required by the Town when nearing completion of the project. The two dumpsters referenced by Mr. Simmons will need an enclosure and an additional dumpster for

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

recycling material and refuse correction twice a week. Under drains for the window wells. Fire, Police and EMT should be added to the easement.

Mr. Marion questioned Mr. Simmons: Do you know if there are any storm drains or sewer lines on Center Street?

Mr. Simmons stated: The existing home on that lot, on the other half, obtains water and sanitary sewer service and it couldn't be determined where it was. The applicant is proposing as part of the easement to cover a sufficient size area so the property owners have a right to maintain their driveway and utility lines in their present location. I believe when the Town vacates a piece of property it is subject to the rights of any utilities of record.

Mr. Hardmeyer made a motion to deny the application. He thinks the Board in 2004 did not have sufficient information and may have acted hastily. Since then there have been substantial changes; the plan seems to change every week. He thinks it would be detrimental to the neighborhood. He thinks the applicant is just here to extend the permit. He advises the applicant to drop this application and come back with a new one that follows the new zoning code.

No second. Motion failed.

Mr. Russo made a motion to approve. Mrs. Le Frois seconded

Aye: Mr. Russo, Mrs. Le Frois, Mrs. Diglio

Nay: Mr. Hardmeyer, Mr. Hemschof, Mr. Flynn, Mr. Marion

Application Denied.

NEW BUSINESS

19 Merriam Avenue, LLC (#MSPV-04-2016)
19 Merriam Ave.
Block 22.02, Lot 3
T-3 Zone

Applicant is requesting a certificate of pre-existing non-conforming use or in the alternate a use variance approval for a six (6) unit multi-family residential use and expansion of a non-conforming use with the addition of a 25 sq. foot front porch. Mr. Morgenstern, Esq. requested in a letter dated May 18, 2016 to be carried to June 15, 2016 at 7 PM with no further notice when he was informed that we would only have five (5) eligible members to hear his "d" variance tonight and has consented to a statutory extension.

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

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

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

Kevin Kelly, Esq., of Kelly & Ward, LLC is representing the applicant. Bob Piontkowski from Habitat for Humanity and Jeffrey Doolittle, engineer are also here.

Mr. Soloway stated: For the record so the applicant was here on a concept hearing that under the Land Use Law is not binding in any way. The technical review was a preliminary meeting to discuss completeness issues. Although those two things did happen, neither one of them is part of the record on the application that is before the Board tonight.

Mr. Kelly stated: I will start with a letter to Ms. Nicholson from Ms. Citterbart dated February 18, 2016. It refers to a conditionally complete application and then it talks about the items that need to be completed. I believe we have completed the items on that list or they've been waived.

Sworn in:

Mr. Robert Piontkowski, from Habitat for Humanity.

Mr. Jeffrey Doolittle stated his credentials as a professional engineer and land surveyor and stated his license is current. His address is 200 Route 17, Suite 116, Mahwah, NJ. The Board accepted his credentials.

Mr. Kelly questioned Mr. Piontkowski about Exhibit A1: Referencing Jessica Caldwell's report that has been stamped in on April 7, 2016. I want that to be referred to as Exhibit A1, the undated letter. Would you explain the proposed plan for Sussex County Habitat for Humanity?

Mr. Piontkowski stated: This would create a permanent home for Sussex County Habitat for Humanity in the Town of Newton. We've been around since the mid 90's and we've moved several times. We are looking for a facility where we would have an office for the use of our Board and a building where we can store our equipment and materials. This would be limited use in terms of the amount of activity at the building. We work two days a week as volunteers. We generally have most of our materials go to job sites but we do have leftover materials, cement mixers, scaffolding, items of that sort that we will keep in the building. We also have two small trailers in the back we would use for storage. The Board meets monthly. Occasionally we have committee meetings. Most of these are during the day. There's no plan or thought of using the building for any public activity. So it would be limited to our operation. Our organization gets offers from various people to donate property or equipment. We were approached by Wells Fargo who was in the process of foreclosure. When we looked at this and we're thinking in terms of our own use it seemed to be a good fit.

Mr. Kelly questioned: Would you please tell the Board what exactly is Sussex County Habitat for Humanity (hereinafter "SCHFH")?

Mr. Piontkowski stated: It is a non-profit, 100% volunteer organization in Sussex County who's mission is to provide suitable low-cost, affordable housing for people in the community. The community is the whole of Sussex County. The organization has been involved in Sussex County since 1994 or 1995.

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

Mr. Kelly stated referencing Ms. Caldwell's report dated 5/5/2016: On the second page under site plan is item 4d which talks about surface parking location and refers to a specific variance for proposed parking in the front yard. Please present to the Board our reason for the parking.

Mr. Piontkowski stated: The existing building which we will have to raise, actually sets back the 30' from where it is. We started with that as a working position. The point is that, as you are aware, although there are no wetlands on the property we are part of the property that is part of a buffer zone for the wetlands. So the back part of the property where we would normally have parking and storage, nearly half of it is not available to us for use. Also, with the way the building is situated and where we intend to have the office, when we set up the handicap parking it would be right by the personal entrance into the office area. We have a Board member who is disabled and moves with a wheelchair or walker from time to time. The limited space that we have in the back would be much easier for us if we could have the parking in the front.

Mr. Soloway stated: It may be easier to have somebody describe the property and what you are proposing to do.

Mr. Kelly stated: Let's switch to Mr. Doolittle.

Mr. Doolittle stated referencing a 2 sheet plan about soil erosion, sediment control plan and site plan and disposal system plan for SCHFH dated February 2, 2016 and the last revised plan is March 14, 2016. The surrounding area is at the end of Mt. View Street from the center of Newton. It wraps around a horse shoe area. Once you come around the corner there's the substation to your left or east. Newton Auto Salvage is directly across the street. Beyond the substation is the property. Dimensions are 104' wide by 150' deep. It is .36 acres. Its substandard for all the lots that are in the area. It's non-conforming as it exists today as it is located in the power substation district. There is a rundown dwelling on it. It hasn't been occupied in several years. It is the type of house that Habitat would normally buy or come across by donation. They spend time and money into fixing it up and they create a low cost dwelling area for the town. In this instance, because of where it is its not well suited for residential use. They've opted to put their contractor yard there. They are putting up a 2000 square foot building that is 40' x 50'. It will be a pole building style construction. Architectural plans have been made a part of this application and should be in your packets. We've laid the site out as far as parking, the building location, the septic; we've located wetlands and with their proximity to the property there's a substantial portion of the right rear corner of the property that's encumbered by wetlands property. Therefore, we have to make an application for the DEP for a portion of that buffer to be used for our driveway to gain access to the rear yard. The septic has to be outside of that buffer. As far as the bulk requirements are concerned for the building, the only requirement in this zone is for side yard and rear yard setback and front yard. We're conforming in all instances as far as that is concerned. Parking requirement for the building for 2000 square feet will require 6 parking spaces. We've taken one of those as a handicap to comply with ADA. As we began to talk before the planning report came up with the non-conformity that we had four parking spaces that are located in the front of the building instead of the side or rear yards. Because of the way the property is laying out, the building setback closely matches the house that's there right now. There is along the house an asphalt area on the side that the dwelling has used from 2 to 3 parking spaces at a time in the front. We don't feel as if parking in the front is creating a new situation. We are preserving what is there now. Coming off both sides of the building and running off the side property to the back will be a fence a foot or more off the property line which will contain any construction materials and

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

tools that come and go from the yard. There will be a garage door as your looking at the building on the left. You can drive completely through the building. There will be a garage door on the back of the building. So coming out of there a truck would either be able to stop inside the building, load or unload, store it in the building, drive through the building and either park or continue to drive out to a project. With the fenced in rear yard and the four parking spaces on the front, if there is an onsite meeting at this location they wouldn't have to open up the fence in the rear yard. There are two additional parking spots to make up the six located in the rear of the building. Those would be for those who come from time to time to help out. In the left rear corner is where the disposal system is going to be located. We've done test soil back there and we've found suitable soil for the disposal system. There will be a bathroom in the building but no kitchen or cooking facilities. We are asking for a variance for the parking in the front of the building, but we are not creating a situation that is worse.

Mr. Doolittle continued: The second variance which pertains to the site that was brought up in the Planner's report, deals with sidewalks. Due to the commercial nature of the area and lack of pedestrians and lack of sidewalks on the remainder of the streets, it wouldn't serve the public for a 150' sidewalk running across. There is an area behind the parking stalls and the right of way, approximately 9 to 10', if the Board deems it necessary for some kind of pedestrian safety that could be striped. Again it's our opinion that its not necessary. There is a sidewalk against the building that the four parking spaces that will be in the front will be able to access from their cars and safely enter the building.

Mr. Kelly questioned: Where is the Auto Salvage and electric station in relation to the property? Where is the closest house?

Mr. Doolittle state: The Auto Salvage is across the street from the property to the northwest. The electric station is to the rear and the left of the property. To the right is an undeveloped area that is encumbered by wetlands or buffers. The nearest house to the property is a one-story house 500-600' away around the corner of Mt. View Road where the horse shoe is.

Mr. Hardmeyer questioned Mr. Doolittle: Is that structure you are describing the same one that is on the schematic that we have?

Mr. Doolittle stated: You do not have the recent one.

Mr. Soloway stated: We will mark this as Exhibit A2, May 18, 2016 – Architectural plan prepared by Shirk Pole Buildings, LLC dated 01/18/2016 consisting of 2 sheets.

Mr. Doolittle, describing the inside of the building, stated: Behind the entrance will be an open area finished off a little nicer. There will be file cabinets, a conference table, a utility room to heat that area and a bathroom.

Mr. Piontkowski stated: Additionally there is a small 400 square foot heated storage room in the back because we do have consumables that can't freeze in the winter time. Things like paint and caulk. The other 1600 square feet will not be heated.

Mr. Soloway questioned Mr. Piontkowski: If the Board approves this and the resolution requires that the building you construct be substantially as depicted in this drawing is that your intention?

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

Mr. Piontkowski stated: Yes. We will do the interior space ourselves. They will put up the shell and we will pour it.

Mr. Doolittle stated: This will be a one-story building. Its height is less than 16'. As mentioned before the roof will run parallel to the street. If you look at it from the street the first thing you'll notice is the gutter and then you'll see half of the roof.

Mr. Soloway questioned Mr. Piontkowski: Will there be an occupied second story?

Mr. Piontkowski stated: Not that I'm aware of. The only place that will have an interior ceiling is over the office, the bathroom, and the store room. It will have an 8' wall with a ceiling over it. The main part of the building will be an open space to the roof with trusses and minimal insulation. We may eventually add a ceiling under the trusses to conserve heat in the building.

Mr. Marion questioned: Is the floor cement?

Mr. Piontkowski stated: Yes. The building is pewter gray with white trim. The roof is a darker color.

Mr. Kelly stated: Let's go to the loading area.

Mr. Piontkowski stated: Essentially we work with pick-up trucks and a landscape trailer. If we have a lot of material, if we're building a house we have material delivered to the job site. Because of the way the doors are located and we can drive into the building and out the back side and ride around the loading and unloading will be in the building or the back yard. In the last 7 years I can only remember one time having a trailer truck to our facility to deliver anything. We don't get big loads of stuff. If we have a truck from a vendor, a delivery truck from Blue Ridge Lumber or Kuiken, something like a flat bed, the overhead doors are 10' high and 10' wide so we can accommodate them if we have to. In addition to lumber and cement, the main thing that we will keep in the building is our tools. A lot of the stuff that we have we don't want to leave it out in the weather. We don't carry a large supply of stock. We have leftovers from jobs. Occasionally we get a donation of something. In the beginning, it will be too big for us until we get rolling with it.

Mr. Marion questioned the two trailers: Are they going to be parked in the building or out back?

Mr. Piontkowski stated: I presume that we will leave them out back. The one is a two horse trailer that we keep tools in. The second is a landscape trailer. If it's a harsh winter we may bring them inside so they are more accessible to us during the week.

Mr. Marion questioned: Do you have any trucks or are they all volunteer's trucks?

Mr. Piontkowski stated: We do not own any. They are all volunteer's trucks.

Mr. Kelly stated: The next item in the Planner's report is item 4g, trash enclosure.

Mr. Piontkowski stated: We carry in and carry out. We have no intent to have a dumpster. We take garbage away daily. If we need to put something on the plan I'm sure that Mr. Doolittle will do that. But this is not the kind of operation that will generate a lot of trash.

Mr. Kelly stated: The next item is 4h, fences.

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

Mr. Doolittle stated: There will be a detail on the plan of how the fence will get installed in the buffer with a non-concrete base and we will indicate that it needs to be at least 12" off the property line.

Mr. Kelly stated: The next item is 4i, signage.

Mr. Piontkowski stated: The sign has not really been discussed as a Board. It would be a flat sign of either individual letters that stick out ½ - ¾ of an inch mounted or painted on the building. It will not be lighted or neon. It will be a very simple 8" to 12" height letters that spell out Sussex County Habitat for Humanity.

Ms. Caldwell questioned: If you don't have the exact details at this time you can submit this as a zoning permit to Mrs. Citterbart when you have the plan.

Mr. Soloway stated: What you submit would have to comply with the ordinance.

Mr. Kelly stated: The next item is outdoor storage.

Mr. Doolittle stated: Our application for DEP includes and allows a shed up to 150 square feet to be placed within the buffer without affecting its coverage. We will take advantage of it and that's the location where it will be.

Mr. Kelly stated: The next item is architectural plans and it ends with landscaping. It does talk about the variance that has been requested with respect to screening, buffering, parking, and trees.

Mr. Piontkowski stated: The 3 1/2" trees are absolutely no problem. As far as any parking in the rear, the fence will be PVC vinyl, solid privacy fence, 6' tall. They have 5" posts on the 8' center. The color will complement the color of the building, white or pewter gray. It will be a basic, neutral color.

Mr. Hardmeyer questioned: What is the purpose of the fence? Security?

Mr. Piontkowski stated: The fence is put up because our understanding is that we need to screen the storage yard so when people drive back and forth they don't see trailers and piles of mason scaffolding, etc..

Mr. Doolittle stated: It will help keep the site more orderly and in shape if there's a fence enclosure.

Mr. Marion questioned Ms. Caldwell: Is there a number of trees required on this property?

Ms. Caldwell stated: Yes. They are just required to do the one replacement tree and increase the size which they said they would.

Mr. Kelly distributed **Exhibit A3** and stated: Moving on to the use variance portion of the testimony. It's a **Google area view** that we put together. It shows what this neighborhood looks like. It goes to the negative criteria issue. It's our position that this is an inherently beneficial use.

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

It is a non-profit organization that is devoted to affordable housing which is a specifically recognized.

Mr. Soloway stated: It is a bit complicated.

Mr. Doolittle stated regarding the use variance: The property is now being used as a residence. The use that's being proposed, while not consistent with the SD zone, unless NJ Power and Light comes and offers to buy the property from Wells Fargo and expand their facility there is no other zone in town where they would be able to go. It's my opinion that the conversion of this property more closely conforms than the existing non-conforming use right now.

Mr. Soloway questioned: Is it a compatible use in the zone? Would you say that because of the odd zoning in this district that only allows utilities but there is other land in the district that this type of property would be suitable for this type of facility because it wouldn't interfere with but be compatible with the one permitted use in the zone; because the property is otherwise able to accommodate what you need to have for the use?

Mr. Doolittle stated: Yes. It specifically accommodates the use that's being proposed. The use as a construction yard and headquarters is much more suited as far as traffic that would come into it, both pedestrian and automobile and truck traffic. The businesses surrounding it would have similar use to the municipal facility to what the proposed use would be.

Mr. Soloway questioned: Will allowing this use variance have any detrimental impact on the neighboring properties?

Mr. Doolittle stated: Right now as a house it is being taxed. There are children that could live in this house that could utilize the school systems.

Mr. Soloway stated: I don't believe it's a detrimental impact. From a zoning perspective, I don't think the fact that you're not for profit can be considered a detriment.

Mr. Piontkowski stated: If Habitat for Humanity has this piece of property we have to use it in one of two ways. We have to use it as we are proposing or we have to request the types of permits we need to reconstruct it as a dwelling unit. It is an existing non-conforming use and my understanding is that we could turn it back into a viable house. We either use it for ourselves, we make it a house, or we abandon it. The most valuable use of this property is that we use it for our headquarters in construction.

Mr. Soloway questioned Mr. Doolittle and Ms. Caldwell: Do you think a non-conforming use as you proposed is more compatible in this area than the existing non-conforming residence?

Mr. Doolittle stated: Yes.

Ms. Caldwell stated: If you are talking about negative criteria and impact you want to look at the impact for the other properties.

Mr. Doolittle stated: I don't see how this will negatively impact the zone plan converting from residential to commercial. The municipal services that this property under the new use would require are very similar to the power station and the salvage yard. Their only requirements on

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

the municipality are going to be road maintenance and infrastructure. Because of the area in town that it is there is not even a requirement for sewer.

Ms. Caldwell stated: I think you hit a little on your positive criteria analysis when you were talking about the fact that its more conforming to what's permitted in the zone than the existing non-conforming use.

Mr. Marion stated: The residential unit that's there has outlived its usefulness. I think what you are proposing is more in kind to the area and having to subject a family to living there with a salvage yard across the street. I think it seems like a fit.

Mr. Doolittle stated: Looking at the overall scope in the Town, having an organization such as Habitat based out of Newton, the likelihood that they may expand and upgrade rundown dwellings within the city limits is probably greater. Assuming that does happen there becomes more low cost housing within the Newton area. It's purely my opinion, but the tax dollars could be made up in those areas.

Mr. Hardmeyer questioned: Does anybody know if Wells Fargo reached out to the utility company and offered them the chance?

Mr. Piontkowski stated: I believe they did. They would wait for a sheriff's sale if they were going to have one rather than buy it from them.

Mr. Hemschof questioned: You had a resale store in Branchville. Is there any plan to have one here?

Mr. Piontkowski stated: No. We do not have plans. We had an issue in Branchville in getting volunteers to run the store. If you can't have the store open during regular retail hours you don't do a lot of business. It turned out to not be economical.

Mr. Kelly stated: Going back to the five members here, we would need all of them in favor of the application.

Mr. Hardmeyer questioned ownership.

Mr. Soloway stated: Regarding the ownership, it's a little tricky but I am satisfied based upon the fact that they have a contract with the owner of the property to purchase the property and they have a sufficient proprietary interest. Under the Land Use Law it gives them the right to file a development application.

Mr. Soloway stated: The motion would be to approve the application granting use variance based on the finding of particular suitability. Mr. Kelly tried to convince the Board to rule that this is an inherently beneficial use, which is a highly favored use under the law. The benefit to an applicant if you are an inherently beneficial use is that it satisfies the positive criteria and then it's an easier balancing test for satisfying the negative criteria. It is not a frivolous argument that this would qualify, but it's a very complicated argument. My preference would be to draft a resolution finding that it's particularly suitable based on the testimony of Mr. Doolittle; you would grant preliminary and final site plan approval; you would grant the variances discussed in Ms. Caldwell's report and the testimony allowing the four parking spaces in the front yard, not requiring screening and buffering, and not providing the sidewalk. The conditions that would be

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

required to construct it substantially in accordance with the plans they submitted tonight in Exhibit A2 which is the architectural drawings; pewter gray with white trim and a dark roof. They can defer signage. There can be no retail sales here. To require that the fence would be at least one foot off the property line. To increase the size of the replacement tree to a minimum of 3 ½ inches and the standard conditions.

Mr. Simmons referenced his report dated April 26, 2016 and stated: Item 5b we suggested where they are going to put a dry well to do some test holes. They agreed to do that. Item 6b, there are no sanitary sewers so they will construct a septic system. Item 7b, the hours of operation for the flood lights should be specified. Item 10c, location of any exterior HVAC units will be shown and discreet. Other than that the standard items, the as-builts, etc.. And the sidewalk is for ADA, not for the street.

Mr. Soloway stated: The resolution in addition to the conditions I discussed we will also require compliance with items 5b, 7a, 9b, 9c, 11, 12, and 13 of Mr. Simmons's report, and flood light hours of operation be approved.

Open to public. None stepping forward, this portion closed.

Mr. Russo stated that the organization had discussed with me a payment in lieu of tax that will be paid to the Town by the applicant and they agreed to do so. So I would ask Mr. Soloway to note that in the resolution and whether that be affected by separate agreement between the Town Council and the organization or a Developer's Agreement.

Mr. Piontkowski said the Board was favorable to that idea.

Motion made by Mr. Hemschof to approve application as recited by Mr. Soloway and seconded by Mrs. Le Frois.

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

Motion carried.

AutoZone, LLC (#PFSP-06-2016)
Block 3.04, Lot 18
124 Water Street
SD-3 Zone

Vice-Chairman stated Mr. Hardmeyer left at 10:28PM and won't be a part of this application.

Applicant requesting preliminary and final site plan approval for the construction of a 7,382 square foot building to be used as an auto parts store and variances for lighting, parking, bulk area requirements and signage.

Mr. Francis J. DeVito, P.A. representing the applicant.

Mr. DeVito stated: We are removing the Pizza Hut and we are building a 7382 square foot building on that site. This is a permitted use in the zone. Most of the variances being requested are bulk. The sign variances we have are backwards. One sign is significantly smaller and one sign is slightly larger. But if you add the two it is less than what is permitted in the zone. It is a 2-

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

story zone but it is a one-story strip. I would like to introduce our architect, Mr. Thomas Pugsley to be sworn in.

Sworn in: Thomas Pugsley, Civil Engineer from Northstar Design, LLC. Mr. Pugsley stated his credentials. The Board accepted them.

Mr. Pugsley stated: The site is located on route 206. It is the former Pizza Hut. The access to the property is Route 206 and an access road that loops around from 206 to North Park Drive. The Pizza Hut was 2800 square feet. There are several zoning requirements that the existing Pizza Hut does not comply with such as the front yard setback, the percentage of frontage at the setback, the lot coverage and the building pike. However, it is consistent with the adjacent uses within the stretch along Route 206. The grading goes in an easterly direction. The lighting throughout are shoebox fixtures which are not consistent with the adjacent properties, and there is an existing freestanding sign by the entrance by Route 206. There appears to be two roof signs on the top of the Pizza Hut building. There are lights on the building.

Mr. Pugsley continued and referenced **Exhibit A1** - the colorized version of the site plan dated 5/17/16, sheet 2/12: We are proposing a 7382 square foot AutoZone building. It is a permitted use within the SD-3 zone. It is retail. It is similar to the existing conditions. We have the same bulk requirement variances that we are requesting. We are only proposing a one-story building where the ordinance requires a 2-story minimum. This is consistent with what is there now and in the area. There is the lot coverage. We are 77.5% where 70% is permitted. The front yard setback is a maximum of 18'. We are back at 57.74'. That is consistent with the Walgreens and the Wells Fargo that's on either side. As a result of being back the 18' we can't comply with the frontage buildout that is supposed to be 50% at the minimum setback. We are proposing 29 parking spaces where 30 spaces are required. We feel we could get an additional space in here. But from an operational perspective, AutoZone is happy with the 29 spaces so we don't see the need to extend the impervious coverage. We are requesting relief for that one space. The parking is provided in the front, side and rear yard. The ordinance does not allow parking in the front yard. Due to the geometry of the property which is long and narrow, the only customer entrance is in the southwest corner of the building. Therefore you need to have the parking in the front yard. We are requesting relief for front yard parking. Access to the site is similar to the existing conditions. You have the internal loop road. We are eliminating two internal connections and keeping two. The driveway connection to the loop road on the southwest corner is only 24' wide where 30' is required. One of the items that were brought up by Mr. Simmons was the location of this driveway and the potential for conflict of somebody pulling out of this driveway and exiting onto the loop road there. We looked at it and feel it is safe from an operational perspective for two reasons; there's been a driveway there and based on my discussions with the property owner there has never been an incident in that location. Secondly, if you drive along this loop road there are existing shrubs and trees that have grown up 5 to 6' so there is clear visibility. There is no obstruction and you can clearly see. We believe having the driveway here will not pose a safety problem. Regarding signage, the size of the existing freestanding sign located in the southwest corner and is approximately 37,000 square feet and we are proposing to reface it. We are also proposing two wall signs. One on the south façade which is 107.2 square feet and one on the west façade which is 60.6 square feet. The size that's proposed is consistent with the signage in the area. There was a little bit of discrepancy in how the sign is calculated. The ordinance states that if the sign is internally illuminated it can't be more than 8 square feet. The signs which AutoZone designs would fit proportionally to the building and the best presentation for the Town.

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

Mr. Devito stated regarding operations of the store: It will be open from 7:30 AM to 9 PM, seven days a week. It will employ 8 to 10 people. Six will be full-time the rest will be part-time. The maximum number at any time on one shift of four people in the store. We are one of the lowest traffic generators in the traffic manual. We don't see a high traffic volume, but we are successful operationally. We are very clean. Any further questions?

Mrs. Diglio questioned: Are there going to be trees and shrubs along 206?

Mr. Pugsley stated: There are no trees along the front but there is proposed a complete line of evergreen plantings along the entire curb line to prevent any headlight glare coming out onto 206.

Mr. Marion questioned: Do you have a picture of what the building will look like?

Mr. Devito stated: Yes we do.

Mr. Marion questioned: What about deliveries? Where is the loading area?

Mr. Devito stated: We have our own trucks and control the delivery times.

Mr. Pugsley stated: The loading area is in the back. The delivery vehicles come in from North Park, drive in through the loop road, pull in to the front of the store and then back into loading area and then pull out onto Route 206 which is right turn out only.

Mrs. Le Frois questioned: What is the height of the building?

Mr. Pugsley stated: The front of the building is 24' and the back is 21'.

Portion opened to public. None stepping forward, portion closed.

Sworn in:

Joe Cimmino, 523 State Route 94, Fredon, District Manager, AutoZone.

Mr. Cimmino confirmed: There will be a total of 8 to 10 employees. Six will be full time. We will have four employees at one time. The hours of operation are 7:30AM to 9PM, six days a week and 7:30AM to 8PM on Sundays. 29 parking spaces are more than adequate. The lights go off an hour after the store is closed. The outside lights shut down at 11PM. We control our own deliveries.

Mr. Marion questioned: Do the AutoZone sign lights shut down at 11 also?

Mr. Cimmino stated: Yes.

Portion opened to the public. None stepping forward, portion closed.

Mr. Simmons referencing his report dated May 9, 2016 and stated: The applicant addressed a considerable number of comments in this report. I had some discussion with Mr. Pugsley prior to the meeting and they are generally in agreement with everything. Just to highlight a couple of items to the Board, item 3a we ask that they provide detail of the retaining wall area of the

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

drainage that's going there. Item 3b, the applicant has shown that the Newton Fire Department can negotiate through this site. Does Mr. Pugsley have a detail on that?

Mr. Pugsley stated while referencing Exhibit A2, May 18, 2016: Yes. This is the Fire Truck Circulation Plan. It shows that it works.

Mr. Simmons continued: Item 3c, are there plans for a generator?

Mr. Devito stated: No.

Mr. Simmons continued: Item 3d on the land title survey maps submitted to the Board. There is an existing 25' wide common access easement shown which runs approximately through the middle of the proposed building. The site plan doesn't show the easement. The applicant should update the Board on the status.

Mr. Devito stated: We will do that. The landlord told me that it doesn't exist anymore but we will submit.

Mr. Simmons continued: Item 5b, just so the Board knows, Mr. Soloway had asked for any DOT approval. In the lower right hand corner of the site is where Mr. Pugsley indicated that they are bringing the storm drainage down. There was a situation where we thought there was an adverse slope on the pipe. After further testing to verify the inverts and they are changing that, he advised me that they don't believe they have to go into the DOT right of way. Item 6a,i, there is a one inch type a water service. They will verify whether it is efficient and obtain utility board approval. Fire protection as required for this building. Item 4, sanitary sewer, they are proposing to use the existing tap. We talked about the lights, hours of operation, the landscaping, and the signage. Page 5, architectural plans, the elevation shows the HVAC units will be behind that proposed parapet at the top of the building. Item 10b, there's one feature that I noticed that I wanted to clarify, the elevations call for the front left column to be 18" corrugated metal, painted red and the applicant to advise if different treatment is available.

Mr. Devito stated: We had a conversation regarding this. The problem involved, and maintenance involved didn't justify the change. AutoZone doesn't want to make a change on that.

Mrs. Le Frois stated: What's the issue?

Mr. Simmons stated: It looks like they took a piece of corrugated metal drain pipe, stuck it vertical and painted it red. I just wanted the Board to understand what they were talking about. I would recommend a square column with brick to match the rest of the building.

Mr. Devito stated: Make that a condition.

Mr. Simmons continued: Item 11, construction details, recommending pavement being increased. Item 12, various approvals, item 13 an as-built at the site.

Ms. Caldwell referenced her report dated May 9, 2016 and stated: Most of my comments have been addressed except for on page 3, item 4g, regarding pedestrian movement. I requested a connection between the sidewalk and the building for pedestrians.

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

Mr. Pugsley described the ADA access and stated: At the TRC meeting a request was made to have ADA access from the right-of-way. So though it doesn't show it here, during the Wells Fargo application they put in a sidewalk that comes up the left side of the driveway. So I provided an access to cut across the driveway. I made it going diagonally. Originally I was going to do it straight, but the slopes in the drive aisle there are longer than what's permitted in the ADA. So to get that straight across you are going to have to flatten everything out. I suggested it go on an angle for two reasons. One, it follows the roadway, and two, anyone who is going to be using this will likely be coming up 206 or from Wells Fargo. They will likely come out and walk across and go the shortest path which is going to be diagonally across the road. I thought this was the best pathway.

Ms. Caldwell continued: I think it is ok I just wanted to make the Board aware. On page 4, you missed a couple of design waivers under O. Number 2 is section 240-8A3, there is a minimum of 1,857 square feet of internal landscaping that would be required and you have approximately 465 square feet so that's a design waiver. Under section 240-8C6, there is one tree for ten parking stalls so five would be required. They've got three so that's a design waiver.

Mr. Pugsley addressed the design waivers and stated: The only way for us to get four trees in, would be to cut down trees. They are already pre-existing. So though we are not putting more trees in, we have more than would be required. There's 8 existing and we are adding 3 more.

Portion opened to public. None stepping forward, portion closed.

Mr. Flynn made a motion to approve the site plan as presented with a building area of 7,382 square feet; 29 parking spaces; the principle setbacks, setback variances as presented on the zoning table would be minimum lot coverage of 73.6 % with modifications noted to the building façade to the front pillar. The landscape plan as presented; there's no modifications to the egress and the DOT right-of-way; no changes in connection to the storm drainage to Route 206; signage variances for front and rear signage as presented on the plan; a variance for the frontage build out, 76.3% of max coverage, and a minimum lot width of 50' where 154' is presented; 2-story building where one is proposed. Front yard parking variance. Number of parking spaces is 29 when 30 are required. Design waiver for driveway width of 24' instead of 30' and two landscaping design waivers.

Mrs. Le Frois seconded.

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

Motion carried.

DISCUSSION - None

CORRESPONDENCE - Reviewed

EXECUTIVE SESSION - None

PUBLIC PORTION - None stepping forward

ADJOURNMENT

TOWN OF NEWTON
PLANNING BOARD
MAY 18, 2016
MINUTES

Mrs. Le Frois made a motion to adjourn the meeting. Motion seconded by Mr. Hemschof. The meeting was adjourned at 11:16 PM with a unanimous "aye" vote. The next meeting will be held on June 15, 2016 in the Council Chambers of the Municipal Building.

Respectfully submitted,



Katherine Citterbart
Planning Board Secretary