

TOWN OF NEWTON
PLANNING BOARD
JUNE 15, 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. Millikin to call the roll. Mrs. Millikin stated there was a quorum.

SALUTE TO THE FLAG: Was recited.

OATH OF OFFICE:

None

ROLL CALL: Was taken

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

Excused: Mr. Hardmeyer, Mrs. Diglio

THE SUNSHINE STATEMENT: Was read.

CONSIDERATION OF MINUTES

May 18, 2016

A motion was made by Mr. Flynn and seconded by Mrs. Le Frois to approve the May 18, 2016 meeting minutes.

AYE: Mr. Russo, Mrs. Le Frois, Mr. Marion, Mr. Flynn

The motion was carried.

HISTORIC RESOLUTIONS

None

RESOLUTIONS

Town Square Gardens (#ASP-02-2016)
Block 5.04, Lot 5 & 7
7 Cherry Street & 64 Mill Street
Resolution denying a proposed amendment to preliminary site plan approval.

Mr. Flynn made a motion to approve the resolution. Motion seconded by Mr. Marion.

AYE: Mr. Marion, Mr. Flynn

Motion carried.

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

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Resolution granting site plan and variance approval to allow construction of a structure for storage of building materials.

Mr. Marion made a motion to approve the resolution. Motion seconded by Mrs. Le Frois.

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

Motion carried.

AutoZone, LLC (#PFSP-06-2016)

Block 3.04, Lot 18

124 Water Street

Resolution granting preliminary and final site plan approval and bulk variance relief for a retail auto parts store.

Mrs. Le Frois made a motion to approve the resolution. Motion seconded by Mr. Flynn.

AYE: Mr. Russo, Mrs. Le Frois, Mr. Flynn, Mr. Marion

Motion carried.

OLD BUSINESS

None

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 a 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. Flynn stepped down on this application.

Ms. Member certified that she has listened to the recording of the prior meeting and signed an affidavit of hearing.

Mr. Soloway explained the application and stated: In the first instance the applicant is looking for certification a pre-existing non-conforming use, which is a determination by this Board that the six residential unit building has without being abandoned been continuously devoted to that use back to a time when it was expressly permitted under the ordinance or pre-dated the enactment of the ordinance so that it's a legal and valid use. I discussed this with Mr. Morgenstern. I think he needs to address that aspect of his case first. If the Board does not grant the certification of the pre-existing non-conforming use, it will require a D-1 use variance, site plan approval and some bulk variances. If the Board does grant the certification they are going

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to require a D-2 use variance for expanding the pre-existing non-conforming use. My suggestion before it gets to that aspect of the case, he figures out what it is he has to prove. I think we should hear the application for the certification first, take a vote and then proceed with the rest of the application.

Bob Morgenstern, Dolan & Dolan Attorneys representing 19 Merriam Avenue LLC, stated: We are planning for a pre-existing non-conforming use for an existing building. We produced Faye Chiu two months ago who testified that she owned and operated it as a 6-unit building and did not intend to abandon that use. We introduced the listing agreement when she bought the 6-unit building. I'd like to introduce the Town of Newton Property Record Card, Exhibit A2, which shows that the building was built in 1950 and it is a six unit building. I present to the Board that the zoning in the Town of Newton first came into being in 1962. So this building was built before zoning and it was built as a six unit building. Secondly, I contacted the Department of Community Affairs to see how the building was registered. The records only went back to 1984. In 1984 it was listed as a six unit building. In 1998, for a couple of months it was a five unit building and then it was changed back to a six unit building. It may have been a mistake. We have five records from the Department of Community Affairs which we will mark as Exhibit A3. The last one is 2002 which was after Faye Chiu bought it which shows it was a six unit building.

Chairman Le Frois questioned: What was the purpose of the DCA registration?

Mr. Morgenstern stated: The law requires that multi-family buildings be registered with the Department of Community Affairs and they are inspected every five years.

Mr., Morgenstern continued: We also have a listing agreement which shows it was a multi-family building when Faye Chiu bought it and that is already in evidence. I think we have proof that the building was a pre-existing non-conforming use before zoning and we ask the Board for a certificate of non-conforming use for the six-unit building.

The Board reviewed Exhibit A2, the property record card.

Mr. Flaherty made a motion to accept the proof for grandfathering the six-unit apartment building prior to the zoning that went into effect for the Town of Newton. Seconded by Mrs. Le Frois.

AYE: Mr. Flaherty, Mr. Russo, Mr. Ricciardo, Mrs. Le Frois, Mr. Marion, Ms. Member, Chairman Le Frois

Motion carried.

Mr. Soloway stated: The application will be a D-2 application with a site plan and bulk variances. It is an expansion of a pre-existing non-conforming use because they are adding to the property.

Mr. Morgenstern stated: We have submitted plans by Charles Schaffer. I call John McChesney to testify as the owner of 19 Merriam Avenue, LLC.

Sworn in: John McChesney and Mr. Dykstra, Engineer and Surveyor, Malvika Apte, Town Planner

Mr. Morgenstern questioned Mr. McChesney: When did your company buy the building?

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Mr. McChesney stated: We purchased the building in November 2015. It was a deed in lieu of foreclosure.

Mr. Morgenstern stated referencing photos, Exhibits A-4 and A-5: Describe the improvements you are proposing to the property?

Mr. McChesney stated: The improvements that I am proposing is to take what was there and rebuild it. It's been completely gutted with the exterior in complete disrepair. We want to refinish that and remodel it. We want to replace the interior with brand new everything. For the site improvement we're looking to expand the parking for tenants in the rear. In the front we are going to put up a 25 square foot porch over the front which will improve the roadside curb appeal, along with various plantings. We don't have a specific plan in place but I am looking to do something along the lines of box woods cut just below the windows and hostas.

Mr. Morgenstern questioned: Will you be paving the parking lot and striping it for spaces?

Mr. McChesney stated: Yes. It is gravel at the moment.

Mr. Morgenstern questioned: Will you put new siding on the building on the front and rear and re-stucco the side. Will there also be drainage utilities installed.

Mr. McChesney stated: Yes.

Mr. Morgenstern questioned: Is there an attic and what will it be used for?

Mr. McChesney stated: I plan to use the attic for the location of water heaters, water supply, and electric panels. It would be for my own access only. So I can access up there and control to the extent possible water flow and heating. I will also be making some structural repair to the roof that will probably bring the height of the rafters down to maybe 6' so it will be used for light storage and mechanicals. We do not plan to put another apartment up there.

Mr. Morgenstern questioned the garbage.

Mr. McChesney stated: To the rear of the building we will have a garbage enclosure with 6 cans for garbage pick-up.

Chairman Le Frois questioned: Is there a basement at this building?

Mr. McChesney stated: No. It is a crawl space. We are going to put a rat slab in there.

Mr. Ricciardo questioned: Will the electric panel boxes be in the attic? Will circuit breakers be in the units?

Mr. McChesney stated: Yes.

Mr. Ricciardo questioned: Why don't you have a dumpster?

Mr. McChesney stated: The width isn't large enough. It will be a bit tight for a garbage truck.

Mr. Ricciardo questioned: How many parking spaces?

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Mr. McChesney stated: 8.

Ms. Apte stated: 12 is required.

Mr. Morgenstern stated: We fit in as many as we could. It will increase the parking when it is lined.

Mr. Ricciardo questioned: What materials are you using?

Mr. McChesney stated: On the front will be vinyl clapboard look. I like the fish scale or cedar like look but its vinyl material. The windows will be aluminum double hung. Many of them are still in good repair. There are four or five that need to be replaced.

Mr. Marion questioned heating and cooling.

Mr. McChesney stated: We are using electric. GE has a unit called a patch which is an in-wall low profile unit that provides heating and cooling.

Mrs. Le Frois questioned fire escapes.

Mr. McChesney stated: These are pre-existing fire escapes.

Chairman Le Frois questioned parking.

Mr. McChesney stated: Merriam Avenue has on street parking. I am limiting it to 8 spaces. We would not permit stacking. There are two two-bedroom units and they could have two spaces each. The one-bedroom and studios could have one each.

Mr. Riccardo questioned: Will each unit have its own meter? What about water and sewer?

Mr. McChesney stated: Each unit will have its own meter. I will be responsible for the water and sewer.

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

Kenneth Dykstra, Civil Engineer, provided his qualifications. The Board accepted them.

Mr. Morgenstern stated: Describe the proposed improvements on the property from your site plan.

Mr. Dykstra stated referencing Exhibit A6 – a colorized site plan sheet 2 of 4: This is an existing property on Merriam Avenue. It's a 50' wide lot by 180', 9,050 square feet. Developed with the existing building over 2000 square feet. There is a driveway on the left side of the lot that's paved. The back is a mix of gravel, grass, and an unfinished parking area. The proposal is simple. The site already exists, it's already a six-unit building and we want to enhance the features. Renovate it so the visual appearance is improved and the parking will be organized. The parking lot will be totally paved with 9'x18' spaces, 8 spaces provided. In the back we have a full 24' aisle for maneuvering which conforms to the ordinance. There are a number of variances associated with this site; pre-existing non-conforming conditions. The porch added to

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the front changes the front yard setback. We're already in a variance condition. Currently the front yard setback is 18' and we are proposing that the 3' covered entryway is 25 to 30 square feet in size. This changes the front setback to 15' where the ordinance requires 35'. The buildings adjacent are at a 10' setback so we are still behind the adjacent dwellings. So although it's a variance, there is no detriment to that condition as it is a visual improvement. We have a coverage variance. We didn't count the gravel parking area in the back even though much of this was some kind of gravel in the back. With this plan, the total site coverage will be 76% and the ordinance only allows 60%. We are a bit over, but for a project like this with six units to provide as many parking spaces as possible. We are putting in proposed drainage facilities. There will be three drywell systems and we will infiltrate into drainage system.

Chairman Le Frois questioned: Will the roof drain into those as well?

Mr. Dykstra stated: Technically it would. Some of it would go to Merriam Avenue, but the back areas of the roof would go in our drainage system due to the grading. We also need a variance for the number of parking spaces. We only have room on the site for 8 spaces. That's a hardship with this site. There is physically no additional room. Merriam Avenue does provide on-street parking. The parking is setback from the property line 4' and the ordinance requires 10'. The 8 parking spaces should be adequate for a six-unit building with mostly small one-bedroom apartments. I've covered the C variances. The D2 variance which is the expansion of the non-conforming condition, in my opinion we are improving the site by doing this. We are improving our parking situation which is good for the general welfare. It reduces the need for parking on the street. The cantilevered front entryway is a very attractive physical feature. It breaks up the front of the building and it also adds covering for the tenants that will be entering the building from that area. The parking lot backs up to two buildings on Sussex Street and those are both five or six unit buildings and they have paved rear parking lots, right behind this lot. So this is very consistent with the other buildings in this area. I see no detriment to the public on this application and it has no impact on your Zone Plan or Master Plan.

Chairman Le Frois questioned: Could you talk about what is proposed around the parking lot in the back? Will there be grass, shrubs, or fencing?

Mr. Dykstra stated: There is already existing fencing on the neighboring property. We have not proposed any landscaping in the back. Mr. McChesney may landscape to a certain extent but it will likely be a turf condition. So anything not paved in the back will be lawn. The more important focus is on the front.

Mr. Morgenstern stated: I think that is it on the bulk variances. A variance for impervious coverage, variance for parking, variance for front yard setback for front porch, variance for side yard setback. We contend that the variance should be granted because of the extraordinarily exceptional situation uniquely affecting the property which would result in undue hardship if the variances are denied. There is one other waiver that 50% of the parking area must be shaded

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by trees. Because of the narrowness of the lot that is a problem. We couldn't put the trees in without reducing the parking.

Mr. Ricciardo questioned: I have a concern with the lack of landscaping.

Mr. Morgenstern stated: There is landscaping on the plan in the front.

Mr. Marion questioned: Do you have anywhere in the back to pile snow?

Mr. Dykstra stated: There is 4' on each side and there is an area back here that is 400 square feet adjacent to the last parking space. There is a fence on the neighbor's property and there is a natural tree row that will remain on the back line. The fence on the back is a loose leaning wood fence. The southerly side is a wood fence and the northerly side is also a wood fence. With all of the fences around, I'm not sure what benefit you would derive from the shrubbery.

Mr. Marion stated: The sidewalk would have to remain useable and in good condition.

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

Mr. Simmons reviewed his report dated April 14, 2016 and stated: On page 2 under zoning, the applicant already discussed the variances as far as the front yard setback and the maximum lot coverage. There are some pre-existing non-conforming setbacks, but they are existing conditions not being made worse by this application. On the parking we already talked about the variance for the 8 spaces where 12 are required. We talked about 4' offset from side property lines where 10' is required. Under stormwater, the applicant did revise the plans to provide drywells. I requested that test holes be excavated in those areas of the drywells so we can be sure we have enough usable volume above any seasonably high water situation. If we had to go to half height drywells they might have to add some more units. I request that the test holes be made a condition. It is predominantly for residential use, but I request that they be truck rated. In case there is a moving van or U-Haul so it doesn't end up with broken grades over a drywell. Regarding utilities, according to the plan they have a ¾" water service line coming in from Merriam Avenue and there is going to be a new service line tapping into that 12" main that the Town constructed a few years ago. The service lines will have to be sized and approved. The ¾" line may not necessarily be adequate for six apartments. The sub-code official will double check that. They are proposing to sprinkler the building so they will have to have a separate line for that and provide a check for the Town. As far as lighting, the light fixture in the back that Mr. Dykstra pointed out is in the back and lights up the majority of the parking lot.

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Mr. Dykstra stated: It's a 15' fixture.

Mr. Simmons continued: Regarding landscaping, I didn't find any planning schedule or details.

Mr. Dykstra stated: As Mr. McChesney testified there is no formal landscape design but he will landscape the front and along the walkway.

Mr. Simmons continued: Regarding signage, I don't believe there is any proposed. For architectural plans we did talk about fire sprinkler system and fire escapes and there won't be an apartment in the attic. I suggest to the Board that an as-built be provided so it is documented for the Town's records.

Ms. Apte reviewed Ms. Caldwell's report dated April 14, 2016 and stated: Regarding the parking, wood on wood board fencing is required 6' between a residential yard. So this would be a variance.

Mr. Dykstra stated: We will make notation of that on the final revision of the plans.

Ms. Apte stated: In terms of trash enclosure, the owner testified that there will be six dumpsters located under the staircase. Part of the ordinance requires that the trash enclosure be accessible to the contractor hauler. In this case it is not going to be provided.

Mr. McChesney stated: They will have a contract with Waste Management with the big green garbage cans.

Mr. Soloway stated: Just so we're clear, there will be six individual garbage cans kept in a fenced in enclosure?

Mr. McChesney stated: Yes.

Ms. Apte stated: Regarding landscaping, there should be a two year guarantee of maintenance of whatever landscaping needs to be provided. This should be a condition of approval. Lastly, I would like to reiterate it's a D2 variance in which the applicant has to prove the positive and negative criteria. We did hear the negative criteria that it is not a detriment to

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Master Plan or public good. I would like to hear more on how it meets the Municipal Land Use Law.

Mr. Dykstra stated: It promotes the general welfare by providing additional paved and improved parking spaces for the property. The other is we are making a desirable visual environment. We are upgrading the site and making it more aesthetically pleasing. It does advance the purposes of Municipal Land Use Law.

Ms. Apte stated: They meet both positive and negative criteria.

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

Mr. Soloway crafted a motion to approve a D2 variance, grant bulk variance, allow 8 parking spaces instead of 12, 4' buffer area instead of 10', grant design waiver on shading, wood fence buffer variance, 76% impervious coverage, preliminary and final site plan approval; attic limited to landlord only, adequate number of garbage cans not to exceed six, condition on allocating parking spaces in the lease based on the needs of the tenants. Landscape in front is acceptable to Board Planner and Town Engineer and the sidewalk be acceptable. Test holes by dry wells to Town Engineer's satisfaction and designed for truck load, the service line for the 12" water main be sized and shown on the plan to Mr. Simmons's satisfaction. LED light be 15' versus 12' from Mr. Simmons report. The construction details in section 10 of Mr. Simmons's report be submitted to his satisfaction; an as-built to Mr. Simmons's satisfaction and the usual standard conditions. A maintenance bond for landscaping for 2 years on plantings.

Mr. Marion made a motion to approve the application. Mr. Flaherty seconded it.

AYE: Mr. Flaherty, Mr. Russo, Mr. Ricciardo, Mrs. Le Frois, Mr. Marion, Ms. Member, Chairman Le Frois

Motion carried.

DISCUSSION -

Bob Caffrey passed away. There is a memorial service in Newton on June 19th.

Mrs. Le Frois will be serving the Town of Newton on the Town Council starting on July 1st. As a result, she will be stepping down and resigning from her position on the Planning Board.

CORRESPONDENCE - Reviewed

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EXECUTIVE SESSION - None

PUBLIC PORTION - None stepping forward

ADJOURNMENT

Mr. Flaherty made a motion to adjourn the meeting. Motion seconded by Mrs. Le Frois. The meeting was adjourned at 8:25 PM with a unanimous "aye" vote. The next meeting will be held on July 20, 2016 in the Council Chambers of the Municipal Building.

Respectfully submitted,


Katherine Citterbart
Planning Board Secretary