

**Planning Board Meeting  
Regular Meeting September 22, 2010**

The regular meeting of the Planning Board took place on the above date. Chairwoman McCabe read the Open Public Meeting Act and requested Mrs. Citterbart called the roll. Board Secretary Mrs. Citterbart stated there was a quorum.

**MEMBERS PRESENT:** Mrs. Becker, Mr. Flaherty, Mr. Flynn, Mr. Le Frois, Mrs. Le Frois, Mrs. McCabe

**EXCUSED:** Mr. Caffrey, Mr. Russo

**ALSO PRESENT:** Mr. David Soloway, Esq., of Vogel, Chait, Collins and Schneider, Mr. David B. Simmons, Jr., Board Engineer from the firm Harold E. Pellow & Associates, and Kathy Citterbart Planning Board Secretary.

**FLAG SALUTE**

**CONSIDERATION OF MINUTES**

None

**HISTORIC RESOLUTIONS**

None

**RESOLUTIONS**

**#PB-05-2010- Thorlabs, Urban Renewal, LLC  
Property Location: 56 Sparta Avenue  
Block: 1104 Lot: 21 MXD Zone  
Will grant final site plan approval for a mixed-use building.**

Mr. Soloway stated: There is a very minor change that stated in the original draft indicated that they receive preliminary and final site plan approval. This is incorrect. I have revised the draft with the word final deleted so it references they receive preliminary site plan approvals.

**Mrs. Becker made a motion to approve the resolution with the change. Mrs. Le Frois seconded the motion**

**AYE:** Mrs. Becker, Mr. Flaherty, Mr. Flynn and Mrs. McCabe

**OLD BUSINESS**

NONE

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**NEW BUSINESS**

**Sparta Avenue Redevelopment Plan Amendment**

Chairwoman McCabe stated: The Town Council adopted Resolution 159-2010. The Resolution authorizes and directs the Planning Board to review the Amendments to the Sparta Avenue Redevelopment Plan and transmit its comments to the Town Council within 45 days as required by NJSA40A:12A-17.

Mr. Soloway stated: The board's function on this is by statute. It is the same function you perform every time there is a proposed amendment to the zoning board minutes. It has to be sent to the planning board for review. You are to review it for consistency with the Master Plan. If you have any comments or recommendations you are free to make them. If you do nothing after 45 days the council can act.

Chairwoman McCabe stated: Section 6.3 the requirement for a minimum of 2 floors for Office/Manufacturing to be deleted and Section 6.4 Subdivision shall be amended to read in entirety story heights, floor heights shall vary.

Chairwoman McCabe asked: Does the board want the 45 days or do you want to approve since they are minor changes?

Mr. Soloway stated: I assume the intent of section 6.3 is they can have one floor of office/manufacturing?

The board stated: Yes.

Mr. Le Frois asked: On section 6.4, does it eliminate any requirements for a minimum story height or maximum story height?

Chairwoman McCabe stated: The original document allows a range of floor height. I think there is some language in the original that stipulated the ranges.

Mr. Soloway stated: My draft of the redevelopment plan had indicated that the ground floor vary and it went on to say the ground floor may be higher averaging from 8 to 20 feet. Upper stories may vary from 8 to 15 feet in height. As I read this amendment the height of a particular story is not very clear. It doesn't work a change in the allowable height of the entire building.

Chairwoman McCabe stated: This change could be because if a manufacturing business does come in and require a higher ceiling height on the first floor. Our criteria could have been too stringent.

Mr. Flynn: From my conversation with Mrs. Millikin, I understand that the property on Sparta Avenue purchased a piece of equipment for their process and they need more physical height for the equipment. My understanding is that it is specific for this particular piece of property.

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Mr. Soloway stated: It is particular to this zone but I believe it is a one property zone.

Chairwoman McCabe stated: It is specific to this owner and developer.

**Mr. Flaherty made a motion that the proposed change is not inconsistent with the Master Plan and the direction of the Board Secretary to notify the Town Council. Mr. Le Frois seconded the motion.**

**AYE:** Mrs. Becker, Mr. Flaherty, Mr. Flynn, Mr. Le Frois, Mrs. Le Frois, Mrs. McCabe

**#BP-06-2010- Kin Properties**

**Property Location: 11 Nelson Street**

**Block: 1005 Lot: 11**

**C-2 Zone**

**Applicant requesting waiver of site plan for occupancy of the property formerly used as the ACME Supermarket, by two tenants, a Dollar General Store and a second tenant to be determined.**

Chairwoman McCabe stated: It is my understanding that it is going to be amended somewhat to deal strictly with Dollar General because they do not have the second tenant yet.

John Ursin, from the law firm Courter, Kobert & Cohen representing the applicant tonight.

Mr. Ursin stated: We had anticipated the architect would be with us tonight. He had a medical emergency. We have received the engineer's report and had an opportunity to go through all of the comments in the report and would like to move forward because we feel we can answer all the inquiries to the satisfaction of the engineer.

Chairwoman McCabe asked: Are you referring to the September 16, 2010 letter from David Simmons of Harold E. Pellow & Associates, Inc?

Mr. Ursin stated: Yes.

Mr. Ursin continued: This applicant is the former ACME site. The building has been vacant for some time. It is 11 Nelson Street. It is Block 1005, Lot 11.01. The property is 2.408 acres. I am going to refer to Mr. Blake's plans.

Mr. Soloway stated: They do not need to be marked. They have already been submitted to the board and nothing is being changed. This is a little different because we do not have a live witness. He has not been sworn and what I understand is that what he is telling you is what he has taken from the plans. This technically is an application for site plan waiver rather than a full site plan approval. At some point the board may find it appropriate for him to be sworn in but right now I do not see any need to do it.

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Mr. Ursin continued: The plans by Mr. Blake are marked A1 – A4. The application before you is to allow some reconditioning of the property and allow a tenant to occupy roughly half of the building. The tenant is the Dollar General store. It is fully under lease. The present building will be divided in two parts. Mr. Simmons raised the issue of how will the entrance in the rear building be configured and until we have a tenant I would be giving you guesses at this point.

Mr. Ursin stated: We are seeking a waiver of site plan for the Dollar General Store to occupy 10,171 sq. feet in the front of the building and a condition of approval that when the second tenant is identified and they want to proceed, we will come back for an additional waiver. We expect the second tenant to be retail, dry goods, and we expect it to be fully conforming to the ordinance, etc. We expect no parking issues. The client has agreed to not seal but completely repave the parking lot, restripe the parking lot and completely recondition with the same materials the outside of the building so that all surfaces are repainted, power washed, and all the post redone as pointed out in Mr. Simmon's report. At this point if the board does not have any questions, I thought it best if Mr. Simmons indentifies his issues in his report and I can respond with the responses I received from the client.

Mr. Simmons went over his report. Going over the September 16, 2010 report pages 1 and 2 are just a summary. There were several items provided because of the check list.

Mr. Simmons continued: On page 2 there were several items that weren't provided but I recommended to the board that they be waived because this is an existing site and it is an upgrade and a new tenant. Under zoning, all the zoning requirements were met with the exception of an off set on the back but that is an existing condition not caused by this particular application. The second tenant will have to deal with this when they come back for a site plan waiver. Item 4 on the site plan and the access to the rear portion, again just so the board understands the front façade will not be divided. The whole front will be used by Dollar General. In the back left rear looking at it from Nelson Street, there is an existing cooler box which I understand from Mr. Ursin will be removed. On the back right hand corner there will be some loading docks from when it was ACME. Somehow they will have to configure that area for their access to be determined.

Mr. Ursin stated: The refrigerator box depicted at the rear of the building will be removed and we anticipate the new access will be along that side. We feel that will make sense in terms of parking.

Chairwoman McCabe asked: Can you explain where the entrance will be for the Dollar General?

Mr. Ursin stated: The entrance is depicted on A2 and it shows the existing entrance which is the same location and the configuration of the store.

Chairwoman McCabe asked: Is your client going to pave all the way out to Lawnwood Avenue to include the back access?

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Mr. Ursin stated: Yes.

Mr. Simmons stated: By subdividing the store the way the applicant is talking about, they are going to have to redo some of the utilities such as the electric, the HVAC units, sprinkler systems, etc. The concern I have is to make sure that they find out if it is going to be in the ground or top of building.

Mr. Ursin stated: The HVAC is a complete replacement and it is a roof mounted system with a roof manser cover.

Mr. Simmons stated: If you recall the Kohl's application they had a roof mounted HVAC and I just want to make sure that when the applicant submits their detail plans to the construction official, they get the units that meet all the sounds requirements with the properties around them.

Mr. Ursin stated: My client is aware they are in a neighbor and they have no problem complying with the sound ordinances.

Mr. Simmons continued: Item 4c there is existing lighting in the parking lot. The applicant is proposing on both the right and left hand side of the building when viewed from Nelson street that is an additional wall pack units on the building itself. That will provide some additional lighting especially around the area where pedestrians might go. My concern is that there is adequate shading so there is no glare going off into the residential areas. The fixtures should be down facing so there is no glare or light trespass onto adjacent properties.

Mr. Ursin stated: We submitted to the architect the lights we would like to use. They will be down facing. They realize they are in a neighborhood. There will be some safety lighting in the very back of the building. Mr. Simmons will have to approve that design.

Mr. Soloway asked: So the applicant is in agreement to modifying the application to the satisfaction of the town engineer?

Mr. Ursin stated: Yes.

Mr. Le Frois asked: Will the existing light standards be the same and will the same fixtures be there.

Mr. Ursin stated: Yes the light posts will be painted. I am presuming it will be new lighting that will go on the light posts with the design to be approved by Mr. Simmons. The lighting that will go on the post will be consistent with the design standards to ensure it does not affect the neighbors to be approved by Mr. Simmons.

Mr. Simmons stated: Item 4d is sign detail. I just want to make the board is aware that on sign c it appears to have a plate on it that reserves the area for the future 2<sup>nd</sup> tenant. The other thing I observed today is there is an existing pole with no sign on it and it is close to the free standing sign. Do you really need both signs?

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Mr. Ursin stated: The post will be painted to look better but no sign would be placed on this post at this time and we reserve our application to put a new sign up when the second tenant comes. The sign will not be internally illuminated.

Chairwoman stated: The sign on the building seems to be the only one that is illuminated.

Mr. Ursin stated: That is what I have in my notes.

Mr. Simmons continued with Item 4e the fire suppression system. Just want to make sure the utilities and fire protection system do not freeze in the cold weather months.

Mr. Ursin stated: We will provide a plan to you giving you specifications as to what heating will remain in the unoccupied space to provide heat to the sprinkler system.

Mr. Simmons continued with Item 4f. There is an existing 42 inch drain that runs underneath the building. I want to make sure that easements are in place for that drain and it is shown on the plan just so it is memorialized for the town's records. Item 4g 1. h and i. These are items that I observed during my inspection that the applicant should take care of even though it is a site plan waiver.

Mr. Ursin stated: My applicant will take care of these items. The property maintenance issues will be addressed immediately including any deteriorating blocks which will be replaced and repaired.

Mr. Soloway asked: What is your intention to painting the exterior of the building?

Mr. Ursin stated: The entire exterior of the building will be repainted.

Mr. Simmons stated: The access drive that runs from Nelson Street out to Lawnwood, there is some existing steel rail, and I recommend that be repainted also.

Mr. Ursin stated: No objection.

Mr. Soloway asked: Mr. Simmons is there a timing issue on all of these improvements before the CO is issued?

Mr. Simmons stated: All of this should get done before the CO is issued.

Mr. Ursin stated: My clients are in agreement to having all of this completed prior to a CO is issued.

Mr. Simmons asked: Do they an occupancy date in mind?

Mr. Ursin stated: They are asking to start the building permits tomorrow.

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Mr. Simmons asked: Winter is quickly approaching. My suggestion would be would the board and the applicant entertain posting a bond for the pavement if it had to be put off until next spring?

Mr. Ursin stated: That would be fine with the applicant.

The board stated they were fine with that.

Mr. Le Frois asked: Is it unreasonable to ask if a concrete sidewalk be installed as part of the repaving project adjacent to the curb on Nelson in front of the property?

Mr. Simmons stated: When I looked at the site in the field I was thinking resealing because everything was at the same grade. Mr. Le Frois brings up a good point. From the concrete bumpers to the existing curb line of Nelson Street if that was boxed out and a sidewalk put in as opposed to the asphalt otherwise there will be a grade differential and that will not work right.

Mr. Le Frois stated: What would work even better would be to put a curb on the store side and that would get rid of the bumper blocks which are a maintenance problem. That would create an island with a sidewalk on it. That might make it work a little better from a repaving standpoint.

Mr. Simmons stated: I think that is a good point. Most of the internal parking is not necessarily along the perimeter of the lot except along the area next to the PNC Bank. If the bumper blocks were removed and replaced with a curb, I think it would work a lot better.

Mr. Ursin stated: If we are talking about the property's frontage on Nelson and nothing beyond that then I would say yes to that.

Mr. Soloway stated: So we have a concrete sidewalk for property frontage along Nelson circumscribed by new concrete curb.

Mr. Le Frois asked: Does there need to be a pad for a dumpster? If there is, where would it need to be?

Mr. Simmons stated: I drove around the back and there is not a lot of room in the back.

Mr. Le Frois stated: If there is a dumpster it should be enclosed.

Mr. Ursin stated: If there is a dumpster it will be screened to whatever the town's standards are.

Mr. Le Frois stated: At the far corner of the property are some clothing bins, would they stay?

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Mrs. Le Frois stated: This has been an ongoing issue with the town. There has been an issue with them not being regularly serviced. The property owner is aware of this.

Mrs. Becker stated: They are being misused from what their regular intent was. I think the misuse is in connection with the vacancy of the property and will probably fix itself once the property is occupied.

Mr. Ursin stated: I will communicate this clearly with the new owner.

Mr. Le Frois stated: So the answer to my question is that the bins will stay for now?

Mrs. Becker stated: Yes they will stay and Kathy is aware of this situation and is pursuing with the bin owners.

Chairwoman McCabe asked: Item 4i, what are they going to do with the sign.

Mr. Ursin stated: We are not proposing to do anything with the sign post in the front of the building except for repainting it. When we come back for the second tenant we might use it at that time.

Mrs. Becker stated: It will be up to the second tenant to propose to the board what their use will be for that sign.

Mrs. Le Frois asked: Will the delivery trucks be in the parking lot for an extended period of time?

Mr. Ursin stated: The normal restrictions that you might place on this type of operation when it abuts a residential zone being no overnight tractor trailer storage and deliveries during store hours appears appropriate.

Mr. Simmons continued with Item 5a and Mr. Soloway stated that project does not require a COAH payment. It is staying in the same footprint. Just the type of use is changing. The COAH fee is triggered by new construction, enlargements etc. The resolution will read pay the fee if required but I don't believe there will be a fee.

Mr. Simmons continued with Item 5b. An as-built plan will be provided.

Mr. Ursin asked: Is that to be provided after the resurfacing has been done and the new permits are issued?

Mr. Simmons stated: Yes. Because on the as-built plan it will also have a schedule as to what signage would be up.

Mr. Ursin asked: I wasn't sure because if it gets pushed back until the spring time because of the cold weather.

Mr. Simmons stated: If in fact because of weather conditions and timing the paving got pushed back until the spring there be an item put in there for x dollars to finish the as-built.

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Mr. Simmons continued with Item 5c. We have a site plan for the board's files. Item 6 were the approvals required from Newton Construction Official, Newton Fire Sub Code Official and Sussex County Planning Board. I also recommend from our discussion from tonight in regards to the loading zones for the dollar store they be subject to the approval of the Fire Sub Code official as well to make sure we aren't inadvertently blocking any fire lanes.

Mr. Soloway asked: On the items that need to be bonded will we have to have a developer's agreement as well?

Mr. Simmons stated: The bond should be provided for the items that aren't completed. I will put a time limit in there. I will put a date of July 1, 2011 for the board's consideration.

Discussion ensued about the back of the building to allow the trucks plenty of room to meet the fire sub code standards.

Mr. Flaherty asked: Is the sprinkler system going to be separated into two separate systems.

Mr. Ursin stated: It would not be feasible to separate the sprinkler system. My guess would be one sprinkler system covering both tenants.

**PUBLIC**

Chairwoman McCabe opened this portion of the meeting up to the public. With no public stepping forward Mrs. McCabe closed this portion of the meeting.

**Mrs. Becker made a motion to grant the applicant a site plan waiver for the Dollar General Store portion of the building pending the conditions discussed tonight be met. Mr. Le Frois seconded the motion.**

**AYE:** Mrs. Becker, Mr. Flaherty, Mr. Flynn, Mr. Le Frois, Mrs. Le Frois, Mrs. McCabe

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**ADJOURNMENT**

**Mrs. Le Frois made a motion to adjourn the meeting. Mr. Le Frois seconded the motion.**

The meeting was adjourned with a unanimous "aye" vote. The meeting adjourned at 8:07 pm.

The next regular scheduled meeting will be held on October 20, 2010 at 7:00 pm in the Council Chambers of the Municipal Building.

Respectfully submitted,

Katherine Citterbart  
Planning Board Secretary