

**Newton Planning Board
August 17, 2011**

The regular meeting of the Newton Planning Board was called to order at 7:00 PM on August 17, 2011 by Vice Chairman Le Frois.

OPEN PUBLIC MEETINGS ACT - FLAG SALUTE - ROLL CALL – RULES

PRESENT MEMBERS:

Mr. Le Frois
Mr. Flynn
Mr. Flaherty
Mr. Tharp
Mrs. Le Frois
Mrs. Diglio
Mr. Russo
Mr. Caffrey
Mr. Torre
Mrs. Mattingly

BOARD SECRETARY:

Kathy Citterbart

EXCUSED:

Mr. Marion
Mr. Hardmeyer
Mrs. McCabe

PRESENT PROFESSIONALS:

Mr. David Soloway, Esq., Board Attorney, from the firm Vogel, Chait, Collins & Schneider, David Simmons, Board Engineer, from Harold Pellow & Associates, Jessica Caldwell, Town Planner, from Harold Pellow & Associates.

CONSIDERATION OF MINUTES

July 20, 2011

Mr. Tharp made a motion to approve the minutes from the July 20, 2011, meeting with corrections. Mr. Flynn seconded the motion.

AYE: Mr. Le Frois, Mr. Flynn, Mr. Tharp, Mrs. Le Frois, Mrs. Diglio, Mr. Russo, Mr. Caffrey, Mr. Torre, Mrs. Mattingly

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HISTORIC RESOLUTIONS:

**HPC-12-2011 – Town of Newton
Spring Street, Moran Street, Main Street, and Park Place**

Recommendation of placement of wayfinding signs in the Town of Newton to direct people to parking downtown & shopping.
Discussion ensued about the number of signs.

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

AYE: Mr. Le Frois, Mr. Flynn, Mr. Flaherty, Mrs. Le Frois, Mrs. Diglio, Mr. Russo, Mr. Caffrey, Mr. Torre

NAY: Mr. Tharp

PLANNING BOARD RESOLUTIONS

None

NEW BUSINESS:

**PBV-11-2011- Jeff & Jenny Lutz
Block 103, Lot 2
5 Overlook Road**

Applicants requesting permitted conditional use approval for a home occupation.
Angela C. Paternostro-Pfister, Esq., submitted a letter asking for the application to be carried to September 21, 2011, with no further notice at 7 PM.

OLD BUSINESS:

Resolution #147-2011- Revised Land Use Ordinance

Jessica Caldwell, Town Planner, with Harold Pellow & Associates gave an overview of where she left off from the last meeting. She stated: a couple of items will be addressed next month and they will be lot width and how to determine that, height exceptions, height measurements, set back measurements and just making it very clear how everything is measured, what can go into various setbacks and what can be height exceptions, exactly how the height is measured. Just so everybody knows there were a couple of different model ordinances we have worked with so there might be some conflicts between different parts of chapter 19 or chapter 20. We want to ratify those and make sure everything is the same. It will take a little bit of time to get through all of that. Also there are several areas that Dave Soloway and I have spoken about and that is the engineer should double check some of the things that are strictly engineering standards to make sure they match to what he and Harold have been doing all these years. There are a bunch of areas in the ordinance that I have highlighted and at the end of the highlighted area it says DBSJR reviewing, which is David Simmons. He is in the process of reviewing to make sure engineering fits what is appropriate. There is one other set of highlights that I made and those are areas that Mr. Soloway and I talked about that we noted were changes that you might not be aware of and we wanted to highlight them with the board.

Mrs. Diglio stated: On page 19-5, minor subdivision, I believe Mr. Soloway stated he wanted a better definition. It is defined exactly as it was in the first copy. I wasn't quite sure of what better definition you wanted.

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Mrs. Caldwell stated: I don't have that note for minor subdivision.

Mr. Soloway stated: The way it is written up under 19-3.7 is under this ordinance minor subdivisions and minor site plan can be granted by a committee of the board rather than the whole board which seems like a delegation of power and it is something everybody should think about. If you look at the definition of minor subdivision and all the variables you have to meet to be a minor subdivision under this ordinance it has to be very neat, clean and uncomplicated and anything that has unusual problems whether it is variances, suitable issues, etc. doesn't qualify as a minor subdivision and it goes back to the full board so they tie in nicely.

Mrs. Diglio stated: Your comment is on page 12 of the minutes. Mrs. Diglio read Mr. Soloway's comment.

Mr. Le Frois stated: I think the definition Mr. Soloway was talking about is in 19-3.7 not the definition of the minor subdivision. The changes that Jessica made were addressing Mr. Soloway's comments.

Mrs. Caldwell stated: The issue I was going to go over on this is what Mr. Soloway was talking about. It is a change in policy where you can have a committee like the TRC but where a duly authorized committee of the Planning Board could review these simple minor site plans and simple minor subdivision that are almost completely compliant and don't have a lot of issues. It would be similar to the Historic Commission. That is a policy change and I am open to your comments.

Mr. Tharp stated: For example if someone wants to move a lot line they would go before a subcommittee so the Board wouldn't have to hear that? Do neighbors get to hear it because there is no formal meeting?

Mrs. Caldwell stated: If there is no variance then you don't notice for a minor subdivision anyway.

Ms. Caldwell stated: The concept behind this idea is if the changes are minor for example looking at a sign, restriping the parking lot, not changing the building or the structure then they could go before the smaller committee. It is quicker and easier for the applicant and if the Board has a lot going on it is not burdening the Board with minor applications.

Mr. Le Frois asked: That would mean creating a committee. How would that be dealt with?

Ms. Caldwell stated: That would be delegated by the Chair and the Planning Board. There is the TRC so I thought you could use that committee since it is already in place.

Mr. Soloway stated: One of my partners represents the Planning Board in Sparta and I have occasionally gone up there and I think they have this type of set up. I think the way they do it that committee meets a half hour to forty-five minutes before the regular meeting. So as the room is filling you see them talking up and they call the applicants up one by one and have the discussion. Whatever works best for everyone is what you should do.

Mr. Tharp stated: Do you really need to have a committee?

Mr. Soloway stated: On a minor subdivision I don't think the Board can divest itself of it entirely because the end result of the process is that the Board signs off on the deed and I don't know if you want to delegate it to a committee of one. It would be similar to the Historic Preservation

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where they would review it and the Board would pass a resolution. Again, this is for the simple stuff. The other thing you might want to look at is under this definition of minor subdivision a lot more things could become major subdivisions. You may want to look at the ordinance fee schedule to see if that creates an issue for some people that come in on a 2 lot minor subdivision that doesn't meet all of the criteria and then all of a sudden it is called a major and costs a lot of money.

Mr. Soloway stated: This is a policy judgment. I feel it is advisable for the Planning Board to keep a finger on the process.

Ms. Caldwell stated: The Board can form any subcommittee. It is a matter of appointing who you want to appoint.

Discussion ensued on the subcommittee.

Ms. Caldwell stated: Page 19-41 is not highlighted but I wanted to bring this to your attention. In the section 19-17.26, we put in a landscaping, tree protection and replacement. The idea here is that if you are clearing excessive trees of large amounts, you would either replace them on site with equivalent trees or you would pay into a tree bank. The actual concept of the tree bank is not in place yet with the Town Council. The tree bank would collect money and use the money to plant trees in other locations throughout the town. We have a Shade Tree Commission in town and with the tree bank they would have some money to plant some trees elsewhere.

Mr. Flynn asked: Referring to Page 19-25, when an applicant submits an application for a major site plan, they submit for preliminary and final at the same time is that correct?

Mr. Soloway stated: The custom in Newton is that the Planning Board has been reluctant to grant both simultaneously. In other communities that is very common.

Mr. Flynn stated: I like the process of them getting preliminary site plan approval and then coming back for the final and letting us know exactly what they did. I like the idea of this process that developers admit their construction flaws to the Board and explain why.

Mr. Soloway stated: Preliminary is the important one not final. Once you get preliminary that dictates the terms. To go from preliminary to final all you are required to do is comply with any particular ordinance provisions there may be relating to final. Preliminary defines the project, defines the approval.

Ms. Caldwell stated: This is a policy procedure.

Discussion ensued on this issue.

Mr. Flynn stated: As long as the Board has the discretion to make the decision per application.

Mr. Le Frois stated: That is not changing right?

Ms. Caldwell: No, it is governed by the Board more than procedures.

Ms. Caldwell reviewed page 19-57 which includes Sections 19-10, 19-11, 19-12. She stated: These are all model ordinances from the DEP that we were asked to put in place as part of Plan Endorsement Process.

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Ms. Caldwell continued with Section 19-16 and some schedules. She advised the Board to view the ordinances and if you have any issues with them let me know. We put them in with everything else that is being changed.

Ms. Caldwell reviewed Chapter 20 – Mr. Soloway and I decided to call it The Form Base Code. It is based on a model that comes out of the new urban movement. It is also based on Transect Zoning. In general the idea is to lessen restrictions on uses and be more specific on building types. That is a more traditional Form Base Code. Some of the real traditional Form Base Codes would not worry about uses and just worry about the building. This is actually a hybrid where we have talked about uses from a protection standpoint for the Town. The idea is to be more prescriptive on what the buildings will look like. It works well in a Town like Newton where you have a historic type development and newer green filled developments. It's trying to mirror a historic type of development where you have pedestrian friendly buildings, which means buildings are closer to the street, parking is behind, it is trying to go back to a more traditional type of development, more based on pedestrian scale.

Ms. Caldwell reviewed the Permitted Uses Table for T-1 through T-6.

Mr. Flynn stated: I think there should be strong consideration in the residential use of line 82 in the T-6 zone, residential over commercial. The reason I think that might not be a good use for that specific area because I think as the center of the Town builds up the use on the top of the buildings could have a better use than just residential use. Rather than having Spring Street being someone's back yard, Spring Street would be a core business area. Move those uses one block out.

Mr. Torre stated: I would disagree with you. Having some level of residential housing is a much more reliable income for a landlord that owns a building than a commercial or office space. We want these buildings to be viable in the downtown core.

Mr. Flynn stated: But where you have an area of primarily business use on the street level. I think the core of that street should be business first.

Discussion ensued on apartment over commercial.

Ms. Caldwell stated: The existing zoning now does not permit it. All of the housing is previously nonconforming. The issue we face with the Town is there were building owners who wanted to come in and redo those apartments and make them nicer so they could get more rent. They were not getting approved by the Zoning Board because it was not in the Master Plan or the Ordinance. There were so many coming in that the Zoning Board said to the Town Council we want some policy direction on this. From a planning prospective, having apartments over stores creates a 24-hour downtown. If you can get more mix of clientele in there, you have people who will go downstairs to get their dinner or do some shopping on the weekends. When you go to a place where their downtown is all offices and no retail it is ghost town at night. So from a planning perspective the idea has been to bring people back into the downtown to live so that you create the 24 hour downtown and thriving business district that works not just when people are working at the office from 9 to 5. That creates a more thriving community.

Ms. Caldwell stated: Having the mix on Spring Street is what is helping the town stay viable. This is a good discussion.

Discussion ensued on pre-existing non-conforming.

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Mr. Soloway stated: A use variance is very hard to satisfy. Even when you get one, everything you do thereafter, you have to come back in under the use variance. It is a lot of risk and expense to the property owner.

Mr. Russo stated: Under T-6, 20-7 House of Worship, Living Waters is downtown so that should be changed to permitted. Number 17 Community Centers that should be permitted as well.

Discussion ensued on Houses of Worship.

Mr. Soloway stated: If they have a zone change and makes it not permitted it does get grandfathered. It has a status of pre-existing non-conforming use.

Mr. Soloway stated: If a pre-existing nonconforming use has a total loss, it loses its protection and would need to seek a variance.

Mr. Tharp asked: Is partial destruction defined as more than 50%?

Ms. Caldwell stated: There is no exact number.

Mr. Soloway stated: No, it is not precisely defined.

Ms. Caldwell stated: If the House of Worship is a permitted use, you could have the house next door to you convert to a church. I think the reason it was put in there as not permitted is because of something like that, not because of any pre-existing use but the potential to construct something like that.

Ms. Caldwell continued: There are a lot of issues with Houses of Worship. They do become kind of tricky. I am open to whatever the Board would like to see.

Mr. Tharp asked: When you wrote this up were there guidelines?

Ms. Caldwell stated: I looked at what exists today, at what is typical, and then I had some of my own ideas but there is no set standard. Form Base Codes don't regulate uses; I added in the Use Table as something to add a little more guidance for reasons just like this.

Mr. Tharp stated: On Number 10, I would only allow it in the T-6 and leave the rest alone.

Mr. Russo stated: I would leave it T-1 – T-3 not permitted and T-4 – T-6 permitted.

Mrs. Le Frois stated: Can you define what conditional use is?

Mrs. Diglio stated: If you make T-3 conditional would that protect the churches that are there now?

Ms. Caldwell stated: We would have to define what would make it a conditional use and what the conditions would be?

Discussion ensued on Houses of Worship.

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Mr. Soloway stated: At the end of this process, I think what the Council expects from you is similar to a Master Plan situation; what is your input. I would image you are going to adopt a resolution saying we like this but we have these recommendations.

Mr. Soloway continued: For the Houses of Worship in those zones is there standards they have to meet under the new ordinance?

Ms. Caldwell stated: The standards would be similar to the other buildings. The issue with the T-3 is we didn't really conceive of those types of buildings within the T-3 so we might have to add a building type.

Mr. Soloway stated: It is a complicated subject because under your typical development application now under the current ordinance you get a list of uses and even if it is a permitted use there is a specific parking standard. When you start saying this is permitted inside the zone in my opinion you are maintaining that type of control and you can at least address the issue. I don't know if you want to be calling any larger scale use a permitted use and they don't have to meet any type of standard in terms of having available parking.

Ms. Caldwell stated: It is not much of an issue for adding it into T-6 where you already have these types of uses. It is a little different when you add something into T-3 where you don't have it. I will check that and make sure we have something.

Mr. Tharp asked: What is Bristol Glenn classified as?

Ms. Caldwell stated: It is in a Special District. It is in District 7 – Senior Community.

Discussion ensued on Senior Communities and Paterson Avenue.

Ms. Caldwell stated: Paterson Avenue was put back to T-3. The reason it was put back to T-3 was because the Redevelopment Plan at the time we did the Master Plan called for residential. We recently amended the Redevelopment Plan and stated it was not conforming to the Master Plan and the Council is recognizing that the Redevelopment Plan superseded the Zoning Ordinance. We could combine it with another district.

Mr. Flynn asked: What is live/work?

Ms. Caldwell stated: The idea behind live/work is it is a combined unit where it is residential over commercial. It is more business intensive. The idea is expanding the home occupation use to let's say you are an artist and you have a big workshop and a gallery downstairs. It would be all one unit not a separate unit.

Mr. Soloway stated: Under the live/work, the occupation is downstairs and you live upstairs.

Ms. Caldwell continued with the definitions.

Mr. Tharp asked about building height.

Ms. Caldwell stated: I am aware of this and we are still working on this.

Mr. Soloway stated: This needs work because at the moment you have that definition. You have the definition of accessory building height which is measured in a different way and if you go to

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the individual zones the height is measured in another way. They will all have to be reconciled to the next draft.

Mr. Le Frois asked: Are we clear with light industrial, manufacturing?

Ms. Caldwell stated: I changed the light industrial definition a little bit. On page 20-25 is the new definition. I have defined what light manufacturing means and in that definition I have included light industry.

Mr. Tharp stated: They are one in the same.

Ms. Caldwell stated: Yes.

Mr. Le Frois stated: Ms. Caldwell will highlight the major points of each section going forward.

Ms. Caldwell stated: I will go over the highlights of each section and you can bring up any comments you may have to the next meeting.

Ms. Caldwell continued: Reviewed the guidelines for the specific zones. Reviewed T-2, T-3, T-4.

Discussion ensued on story height in the R2 zone.

Ms. Caldwell stated: 2 ½ stories, 35 feet is more standard.

Ms. Caldwell continued with T-5.

Ms. Caldwell mentioned: We don't have a floor area ratio. It will be governed by height, set back and parking requirements. We have minimum lot sizes on some of the zones but not on others. The minimum lot size is governed on setbacks and parking. That is helpful because sometime lot sizes can be arbitrary.

Mr. Tharp asked about wetlands.

Mr. Soloway stated: Wetlands can count as part of a setback but the Town of Newton does not have the authority to say you can go build in the wetlands. That is regulated by the State.

Ms. Caldwell stated: The site plan has issues regarding environmental constraints. When you apply for a site plan you need to identify those.

Discussion ensued on the apartment buildings throughout the town. Would they be considered pre existing non-conforming lots?

Ms. Caldwell stated: I will check the apartments.

Ms. Caldwell continued with T-6, S-1, S- 2.

Mr. Torre asked: On research and development labs, if something should happen to the hospital, they go out of business, then what happens. What can be allowed to go in there in lieu of the hospital? Could we allow an educational institution to go in there?

Ms. Caldwell stated: Building types are what the building would look like and the permitted uses are what goes into the building.

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Mr. Torre stated: I am trying to see the bigger picture.

Mr. Soloway stated: If the hospital would dissolve overnight. You can always change the ordinance. If there was a major event similar to that, I think you would have ample advance notice.

Ms. Caldwell stated: The way it is now is it is in a medical office zone so if the hospital went away it wouldn't be permitted to turn into a large retail establishment or housing.

Mr. Torre stated: If it did dissolve you would want to be able to allow something else good to come in.

Ms. Caldwell stated: Instead of having it be in a Special District, it could be a T-4, T-5, or something similar where it is a general zone instead of the Special District.

Mr. Soloway stated: You could do the same for the College.

Mr. Soloway stated: There is a practical matter on that large scale of use. They would have to come to the Town and there would be a discussion.

Mr. Torre asked: What is the great benefit to having special use areas designated?

Ms. Caldwell stated: You are promoting the uses, expansion and complimentary uses there. The concept behind the hospital district is you are promoting other types of medical facilities to develop around it.

Mr. Le Frois stated: Similar to a medial campus.

Ms. Caldwell stated: It has been zoned that way so that is why it is happening now. We might not be able to anticipate what comes in if this use went away.

Mr. Torre stated: From my standpoint, you don't want to see business given such great obstacles to come in when you are dealing with something that is dormant.

Mr. Le Frois stated: That would not be the case. We would have advance warning.

Ms. Caldwell stated: You will always be fine tuning your ordinances. They should be living documents that change and are adapted as they are used and that is how they can be fine tuned to be the best documents. We will not catch everything. We will try but something will come in that didn't occur to anybody. It should be a working document that changes over time and addresses issues as they come up.

Ms. Caldwell continued with the Special Districts 4, 5, 6, & 7.

Mr. Soloway stated: We had an issue with Dunkin' Donuts and what a sign was. I think we should have the definition of what a sign is.

Ms. Caldwell stated: I will add that.

Ms. Caldwell stated: Special District 8 is the Utility District. Mr. Soloway mentioned we want to add setbacks to that in case they want to build too close to the lot line.

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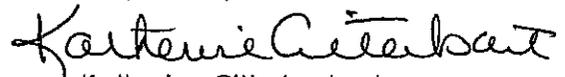
Ms. Caldwell continued with S-9 in the Inclusionary Zone. This includes the affordable housing set aside at 20% for the housing. The area has been expanded to south of Rt. 94 and added mix use and some retail opportunities.

Ms. Caldwell continued with Building type. We will continue with this for the next meeting. Mr. Le Frois opened up this portion of the meeting to the public. With no public stepping forward this portion of the meeting is closed.

ADJOURNMENT

Mr. Flaherty made a motion to adjourn the meeting. Mrs. Diglio seconded the motion. The meeting was adjourned with a unanimous "aye" vote. The meeting adjourned at 9:45 PM. The next regular scheduled meeting will be held on September 21, 2011, at 7:00 PM in the Council Chambers of the Municipal Building.

Respectfully submitted,



Katherine Citterbart
Planning Board Secretary