

**Newton Planning Board  
October 19, 2011**

The regular meeting of the Newton Planning Board was called to order at 7:00 PM on October 19, 2011 by Chairwoman McCabe.

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

**PRESENT MEMBERS:**

Mr. Flynn  
Mr. Flaherty  
Mr. Marion  
Mr. Tharp  
Mrs. Le Frois  
Mrs. Diglio  
Mr. Caffrey  
Mr. Hardmeyer  
Mrs. Mattingly  
Mrs. McCabe

**BOARD SECRETARY:**

Kathy Citterbart

**EXCUSED:**

Mr. Le Frois  
Mr. Russo  
Mr. Torre

**PRESENT PROFESSIONALS:**

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

**CONSIDERATION OF MINUTES**

September 21, 2011

Mrs. Diglio made a motion to approve the minutes from the September 21, 2011, meeting with corrections. Mrs. Le Frois seconded the motion.

AYE: Mr. Flynn, Mr. Marion, Mr. Tharp, Mrs. Le Frois, Mrs. Diglio, Mr. Caffrey, Mrs. McCabe

**RESOLUTION**

PBV-11-2011- Jeff & Jenny Lutz  
Block 103, Lot 2  
5 Overlook Road Ext.  
Conditional use approval for a home occupation.

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

**AYE:** Mr. Flynn, Mr. Marion, Mr. Tharp, Mr. Caffrey, Mrs. McCabe  
**Resolution Approved.**

**NEW BUSINESS:**

**PBF-113-2011- Ave Care @ Newton  
Block 802, Lot 37  
85 ½ Trinity Street**

The applicant is requesting final site plan approval.

William Moran of Golden Moran Engineering represented Greg Ocdinaria of Ave Care seeking final site plan approval.

**SWORN:** William Moran, Golden Moran Engineering, 21 Main Street, Newton, NJ 07860, Greg Ocdinaria, Owner of Ave Care, Newton, NJ.

The Board accepts Mr. Moran qualifications.

Mr. Moran gave an overview of the application. Mr. Ocdinaria bought a 2-family residence located at 85 ½ Trinity Street and applied for preliminary and final site approval to convert the duplex to a care facility for people with dementia and mental disabilities. Mr. Ocdinaria appeared before the Board in November of 2009 and received his preliminary site plan approval with a few variances and subsequently he has received all of his state and local approvals to construct the facility.

Mr. Moran addressed Mr. Simmons' review letter of September 13, 2011. This letter addresses all the outstanding issues from the previous resolution and other items that have cropped up since construction has taken place.

Mr. Moran went through the letter. Mr. Ocdinaria has complied with items 2a,b,c,d,e. Relating to Item 3 there is a deviation from the preliminary site plan. Mr. Moran stated that the fence is within the setbacks of the building and it conforms to the depth requirements for the Town of Newton.

Mr. Simmons talked about the as-built survey. There are 5 items listed. Items b,c,d,e was information that the applicant's surveyor is going to obtain from Newton's Water and Sewer Department. Paul Baldwin from Newton Water and Sewer has confirmed they have been out there. With regards to the sanitary sewer easements in item d and the Conservation Easement item d, it is subject to checking it and making sure we are on the same page. The main item is section a, a 30 inch concrete pipe. The as-built survey shows a type b inlet off the easterly side of Trinity Street and there is an existing 30 inch pipe that runs 500 feet out to the wetlands area that discharges water from Trinity Street back to the swamp. I contacted Mr. Catalano to see if there is an existing easement for this pipe and if so, put the book and page reference so that it is complete for the town file. It was my understanding that Mr. Catalano could not find the easement for this particular drain. Based on RSIS requirements, I suggested he establish an easement 10 feet to the left and right of the storm drain and convey that to the Town since it is an existing drain and has the right to discharge. This is shown on the as-built map that is in front of you tonight and I also received this evening a revised description that the applicant's attorney will have to work with Mr. Hollander, our office and Mr. Catalano's office to put it together to convey it to the Town.

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Mr. Simmons reviewed the detail drawing. The pipe runs under the emergency stairs that were constructed and it runs underneath the outdoor gas generator and runs through the middle of the fenced in recreation area for the residences of the establishment and out towards the wetlands area. When the 20 foot easement was established it encompassed the emergency stairs, the gas generator, the HVAC unit and it extended and encroaches onto the existing well. I went back and forth with Mr. Catalano and had a conversation with Mr. Hollander this afternoon and he had some concerns about the pipe and questioned if the pipe should be relocated. He also made the suggestion to the Board that any approval considered tonight be subject to working this issue out. The best case solution so that the applicant would not have to get involved with it again would be to construct a couple of manholes and bypass the area so it is not under the steps, and make the easement go along those lines. We also discussed having something written in the easement subject to if the Town had to get in there and work on its storm drain; the property owner would be responsible for removing the steps, removing the generator, removing the HVAC unit and reestablishing them at their own expense. If the applicant or the property owner did not do that the Town would have the right to do what is necessary to access the property. Mr. Hollander and I haven't finalized anything yet but those were a couple of options we discussed. My intent tonight was to inform the Board what happened as far as this drain. The history on this is that the property was vacant property and the drain was there. Before this applicant came in, there was a duplex house constructed on the lot and at that time the drain was still there. When this applicant came in, it is the first time we are seeing this drain on the plans so additional improvements were constructed over this drain which brings us here tonight.

Mr. Soloway asked: Was it not shown on the preliminary plans?

Mr. Simmons stated: No.

Chairwoman McCabe asked the applicant if he is aware of the pipe.

Mr. Occlinaria is aware of the pipe but he did not know about the options. He wanted to know who is going to put the manhole in.

Mr. Moran stated: I would recommend that we put in the easement for the Deed that Mr. Occlinaria be responsible for moving any of the structures located on the pipe. It has been there for a multitude of years and there have not been any issues with it. The Town can inspect it to make sure it is still intact and in good condition. I think Mr. Occlinaria would be agreeable to that option as opposed to constructing inlets because that would involve ripping up the improvements he has already done.

Mr. Simmons stated: One of the concerns Mr. Hollander had was with the emergency stairs and the emergency generator because in this facility there is an elevator with the people on the first and second floors and locking doors if ever they had to work on that area with people living in there could be trouble. It is an issue that needs to be worked out with the Town to see which way they want to go.

Discussion ensued.

Mr. Simmons stated the best option would probably be to construct 3 manholes one on each side of the dwelling and one in the apex. Put two sections of 30-inch pipe in and abandon the hypotenuse where it goes underneath the stairways. The alternative would be an easement. There is an easement on the plan and the key thing is there are improvements above the existing pipe that was constructed as part of this application. In this case there is an HVAC unit

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and there are emergency steps over the pipe. The 3<sup>rd</sup> alternative would be the drain pipe be installed in a triangular area and the hypotenuse abandoned.

Mr. Soloway suggested there be an easement no matter what.

Mr. Marion stated: We are putting the burden on the applicant. The Town did not know about this. This is the Town's fault not the applicant's fault.

Mr. Soloway stated: I don't know if the applicant is without fault. There is some responsibility on the applicant to spot the condition if it was disclosed on the preliminary plans. This would have avoided the situation of constructing the improvements. I would not agree that it is entirely the Town's fault. This is a complicated issue and Mr. Simmons' thinking is the Town attorney is not sure where the Town should go on this. This is a tricky issue on Mr. Occlinaria's end. And from what Mr. Moran mentioned, Mr. Occlinaria would like to talk to his attorney. I don't think we can resolve this tonight.

Mr. Soloway stated: I would suggest you consider everything else with this application and make sure there are not any other loose ends.

Mr. Moran stated: Mr. Occlinaria would be amiable for moving any structures in case the Town had to get in there. The house has been there since 2007 and the Town inspected the footings for the stairs, the pipe may be so far down that no one has ever seen it. This is a speculation on my part. Mr. Occlinaria has spent a lot of money and he would like to get his operation up and running so he can generate some income. He does have his TCO. We just ask for some consideration on that end.

Mr. Flynn commented: The pipe has been there for some time. It is probably not going to collapse and if it does there are technologies that you can access and fix the pipe from either end to reline it without just ripping it up if there were structures over the top of it.

Chairwoman McCabe asked if the applicant is willing to enter into an agreement in taking the responsibility of removing any structures that might be in the way to work on the pipe, is that something we can proceed with tonight or are there still too many unanswered questions.

Mr. Soloway stated: I am reluctant to commit the Town and the Board. I guess you could add a condition to add a drainage easement to the satisfaction of the Town attorney. This is a very broad condition.

Mrs. Le Frois asked Mr. Simmons if the Water and Sewer Department looked at this situation.

Mr. Simmons stated: Yes. Mr. Baldwin's staff went out and located the water and sewer lines, and the water service lines both the domestic and fire protection lines. With regards to the storm drain Ken Jaekel, DPW supervisor sent his staff out to check out the location of the storm drain. I spoke with Mr. Catalano the applicant's land surveyor and they went out and located the paint marks and that is how the location was established on the map you see here tonight. No one mentioned to me that they saw anything of an eminent collapse.

Discussion ensued on what to do if the Board cannot work this out.

Mrs. Le Frois asked how Mr. Hollander felt about this.

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Mr. Simmons stated: Mr. Hollander was ok with this if the Board made a decision subject to working this out.

Chairwoman McCabe asked Mr. Moran if there were any other issues that are still open.

Mr. Moran stated: I believe that is it. In summary I believe we have covered all the items in Mr. Simmons' letter and we respectfully request that the Board grant final approval so Mr. Occlinaria can open his business.

Mr. Simmons stated there are no other issues.

Mr. Soloway stated there are no other issues besides the easement.

Chairwoman McCabe opened it up for discussion from the Board on the easement issue.

Discussion ensued.

Mrs. Le Frois stated: If it is the position of the Board to be involved in all of these what ifs and directions as to the next step then we need to have more information. If the Board is in consensus to kind of punt this to Town Engineer and Town Attorney to start working out with the applicant's attorney and come to a reasonable resolution that is acceptable to the Town and obviously with the applicant, we can move forward with what we need to do tonight.

The Board agrees they have the confidence in the Town Engineer and Town Attorney to work this out with their expertise.

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

**Mrs. Le Frois made a motion to approve this application subject to working out an agreement between the applicant and the Town regarding a drainage easement for the maintenance responsibility with any other costs related to the satisfaction of the Town Engineer and the Town Attorney and if they are not able to come to an agreement it returns to the Board for resolution. Mr. Flynn seconded the motion.**

**AYE:** Mr. Flynn, Mr. Flaherty, Mr. Marion, Mr. Tharp, Mrs. Le Frois, Mrs. Diglio, Mr. Caffrey, Mr. Hardmeyer, Mrs. McCabe

**Application approved with conditions.**

**PBSP-07-2011 Michael & June Martin/Jersey Dog  
Block 803 Lot 1.05  
77 Water Street**

Approval to use a former gas station property for a hotdog restaurant.

William Haggerty, Dolan and Dolan represented the applicant.

**SWORN:** June and Michael Martin are the lessees of the old Hess station on Water Street.

Mr. Haggerty stated: This property has been vacant for many years. They met with the TRC to discuss seeking a site plan waiver and it was determined that this would not be appropriate that there were certain issues that they should appear before this Board to discuss. Among them

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would be parking. It should be emphasized they are not changing the footprint or the exterior of the building. They will use the existing signage, and lighting. They have asked JCP&L to replace a new light stanchion that exists already to further illuminate the parking area. They propose to stripe the parking area and have a couple of outside tables.

Mr. Soloway stated: No one has looked at the application to make sure the application is complete.

Mr. Simmons stated: It is an existing facility so after I reviewed a lot of the waiver requests and for purposes of this application it was in my opinion to recommend to the Board subject to the Board's approval the waivers be granted and the application be declared complete.

Mr. Simmons reviewed the waiver requests from the site plan checklist. He gave a synopsis of of the completeness issues.

Mr. Simmons stated they have done all the legal requirements. They also provided a Letter of Interpretation from the DEP.

Chairwoman McCabe asked the Board if they had any issues with the completeness issues.

**Mr. Flaherty made a motion to accept the application on its completeness. Mr. Diglio seconded the motion.**

**AYE:** Mr. Fynn, Mr. Flaherty, Mr. Marion, Mr. Tharp, Mrs. Le Frois, Mrs. Diglio, Mr. Caffrey, Mr. Hardmeyer, Mrs. McCabe

**Application deemed complete.**

Mr. Haggerty asked June Martin what she proposes to do with the property.

Ms. Martin stated: We propose a hot dog restaurant. No changes will be made to the building. We will change the sign with our logo on it. The sign will be similar to what the current HESS station has there. We will open with two employees. We will be using the existing lighting with one additional light being installed by JCP&L. We have conferred with JCP&L for the installation of the light. We have an order number. JCP&L stated they need to make an appointment with me and our electrician recommended an additional light post. They have lighting for the backs of the poles ranging from 100 watts to 400 watts. They recommended 150 watts so I am sure they can accommodate us. The 150 watt is what is there now. We will have a couple of tables inside the building. The dimensions are a lot narrower than we thought, so we can only fit two fours and two twos inside and two to three tables outside. We plan on pushing the concrete barriers together, refacing them with a decorative stone to create planters out of them.

Mr. Haggerty referred to a depiction on the front of the building.

June Martin stated this is for the sign. The width will be 38' 7" by 31". The two sides will be plain yellow. I comply with the requirements from the Health Department regarding a grease trap being installed.

Mr. Haggerty handed out a packet with information on what is being presented. **Exhibit A-1**, a picture of the proposed sign, **Exhibit A-2**, Letter from Paul Baldwin dated October 18, 2011 from Newton indicating the Newton Water/Sewer Department feels it is ok to proceed and with a recommendation of a grease trap, **Exhibit A-3**, Floor Plan showing the proposed layout to the existing building, **Exhibit A-4**, a snapshot from NJDEP of who is responsible for monitoring the

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property, **Exhibit A-5**, curb ramps & parking, **Exhibit A-6**, copy of the handicap curbing, **Exhibit A-7**, a plan from Isolux Electric Lighting Agencies showing the lighting plan available from the existing lights with one additional light to enhance the existing lighting.

Mr. Haggerty went over item 4 – parking of Mr. Simmons report dated October 6, 2011.

Mr. Soloway asked: Is your calculation of the parking based upon your assumption that this is a restaurant, tavern or food establishment as opposed to a drive in fast food restaurant?

Mr. Haggerty stated: We are going to have a few tables as indicated. It is not expected that anyone will go and have an hour lunch. That is not the nature for this type of facility. We do believe and expect that the parking we have provided is adequate and appropriate.

Mr. Haggerty went over item 5 – Site plan to narrow the exiting ingress/egress cuts by using the decorative planter and safety wall. The height of the planter will be two feet.

Mr. Haggerty mentioned if the weather is not cooperating there will be a counter inside with 10-12 bar seats. This will be addition to the tables they have planned.

Mr. Simmons wanted to know how many seats will be at the outside tables.

Ms. Martin stated there will three tables outside that sit four people.

Chairwoman McCabe wanted to know about the plan for circulation. You are going to have an, "Enter Only" on the westerly side and then "Exit Only" on the easterly side. This is very close to an intersection on the westerly side. Are you proposing a "Right Turn Only" going out?

Ms. Martin stated if it is necessary we will.

Mr. Haggerty stated we would coordinate that with NJ DOT.

Chairwoman McCabe asked: Does NJ DOT have any problem with you using the turning lane.

Ms. Martin stated they had no interest in the existing property and that is why he sent me the letter.

Mr. Haggerty stated that additional detail on the handicap access will be provided to the satisfaction of the Construction Official.

Mr. Haggerty reviewed the construction details with the Board.

Mr. Simmons reviewed the parking again and clarified they will have 11 spaces which is the requirement with one for the employee so there is a total of 12 spaces.

Mr. Tharp asked: Has anyone looked inside the manholes?

Mr. Martin stated: They are not manholes. They are not drains. There are a lot of test holes.

Discussion ensued on the grease trap. It will be stored at the back of the building and it meets the Town Engineer's requirements.

Mr. Flynn asked: Does the sign on the building conform to the sign ordinance?

Discussion ensued on the sign.

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Chairwoman McCabe opened up this portion of the meeting to the public.

**SWORN:** Dorothy Bellush, Water Street. I would like to ask how the outside picnic tables would be to the north line which is where my property line is. I understand there should be a 15-foot setback on the side.

Mr. Haggerty stated: There is a concrete wall that does provide some separation. The concrete wall is about one foot high. We can put some kind of visual screening there.

Mr. Soloway read from the ordinance. Side yards shall have a minimum width of 15 feet if off-street parking is to be provided in the rear of the building.

The Martins agreed to some type of screening for example PVC or wooden fence.

Mr. Soloway stated: I would recommend you write it out that you will screen it with a solid PVC fence and if it necessary to screen the tables from view to the satisfaction of the Town Engineer.

With no more public coming forward, Chairwoman McCabe closed this portion of the meeting.

**Mr. Marion made a motion to accept the application. Mrs. Le Frois seconded the motion.**

**AYE:** Mr. Flynn, Mr. Flaherty, Mr. Marion, Mr. Tharp, Mrs. Le Frois, Mrs. Diglio, Mrs. Caffrey, Mr. Hardmeyer, Mr. McCabe

**Application accepted.**

**MISCELLANEOUS**

Mr. Simmons stated: I received some correspondence from Thorlabs' engineer that in the rear of the building that they are constructing towards the Pine Street side, they want to know if they would be allowed to put some nitrogen tanks back there in some type of enclosure. They show the location back by the refugee dumpster area. I asked them to provide me some further details as to the size of the tanks, and number of tanks. I have not received the answers yet but I have some concern regarding some detail to some minor site plan adjustments to the field. I felt they should come back to the Board for some discussion.

Mr. Soloway stated: The applicant's professionals submitted a letter indicating that he thought outdoor storage was permitted under the redevelopment plan. My response to that is it may or may not be permitted. I would refer it to Mrs. Credidio, who is our expert on the Redevelopment Plan.

Mr. Simmons stated: I received some documentation from Wells Fargo Bank stating they would like to make some lighting changes. My assumption is they would like some additional illumination as required from the ATM Banking Regulations. They have two existing ATM machines. One in the lobby as you walk in the front of the building and one at the left hand side by the drive through. They are proposing adding to the front of the building two lights downward facing that are 70 watts each to illuminate the front of the bank. In the back they want to replace one of the poles with a 30-foot pole with a shoebox fixture. One of my concerns is this is a deviation from the heights we are used to dealing with and it changes the aesthetics. My suggestions would be they need to come back to the Board for an amendment to the site plan.

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Chairwoman McCabe stated: If they are required by banking laws to have a 30-foot light then that is what it will have to be. There are alternate designs though.

**ADJOURNMENT**

**Mrs. Le Frois made a motion to adjourn the meeting. Mr. Flaherty seconded the motion. The meeting was adjourned with a unanimous "aye" vote. The meeting adjourned at 9:18 PM.** The next regularly scheduled meeting will be held on November 30, 2011, at 7:00 PM in the Council Chambers of the Municipal Building.

Respectfully submitted,

A handwritten signature in black ink that reads "Katherine Citterbart". The signature is written in a cursive style with a large initial "K".

Katherine Citterbart  
Planning Board Secretary

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**EXHIBITS**

**Exhibit A-1**, a picture of the proposed sign, **Exhibit A-2**, Letter from Paul Baldwin dated October 18, 2011 from Newton indicating the Newton Water/Sewer Department feels it is ok to proceed and with a recommendation of a grease trap, **Exhibit A-3**, Floor Plan showing the proposed layout to the existing building, **Exhibit A-4**, a snapshot from NJDEP of who is responsible for monitoring the property, **Exhibit A-5**, curb ramps & parking, **Exhibit A-6**, copy of the handicap curbing, **Exhibit A-7**, a plan from Isolux Electric Lighting Agencies showing the lighting plan available from the existing lights with one additional light to enhance the existing lighting.