

**Newton Planning Board
December 21, 2011**

The regular meeting of the Newton Planning Board was called to order at 6:00 PM on December 21, 2011 by Vice Chairman Le Frois.

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

PRESENT MEMBERS:

Mr. Flynn
Mr. Flaherty
Mr. Marion
Mr. Tharp (arrived at 6:45 PM)
Mrs. Le Frois
Mrs. Diglio
Mr. Russo
Mr. Hardmeyer
Mr. Torre
Mrs. Mattingly
Mr. Le Frois

BOARD SECRETARY:

Kathy Citterbart

EXCUSED:

Mrs. McCabe
Mr. Caffrey

PRESENT PROFESSIONALS:

David Soloway, Esq., Board Attorney, of Vogel, Chait, Collins & Schneider, David Simmons, Board Engineer, of Harold Pellow & Associates and Jessica Caldwell, Town Planner of Harold Pellow & Associates.

CONSIDERATION OF MINUTES

November 30, 2011

Mr. Flaherty made a motion to approve the minutes from the November 30, 2011, meeting with corrections. Mrs. Diglio seconded the motion.

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

HISTORIC RESOLUTIONS:

None

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RESOLUTION:

2011 Zoning Summary

Mr. Soloway stated: Under the Land Use Law a Zoning Board of Adjustment is required to make an annual report to the Governing Body's municipality regarding the variance applications that were reported. If they so choose to make any recommendations they may see fit regarding things they have looked at under the ordinance. We are under unusual territory because there is no longer a Zoning Board of Adjustment because it was merged into the Planning Board and the Planning Board is the surviving Board. So, what you should probably do is make the report but limit it to variance applications that would have been before the Board of Adjustment had there still been a Board of Adjustment. That is your jurisdiction.

Mr. Le Frois stated: I read your letter and it appears that the few variances that were highlighted in your letter were not significant enough to result in your recommendation for any changes to any ordinances that the Town currently has in place.

Mr. Le Frois opened up the meeting to the Board for any comments or questions of Mr. Soloway.

No comments from the Board.

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

AYE: Mr. Flynn, Mr. Flaherty, Mr. Marion, Mr. Russo, Mr. Hardmeyer, Mr. Torre, Mrs. Mattingly, Mr. Le Frois

OLD BUSINESS

Resolution #147-2011 – Revised Land Use Ordinance

Ms. Caldwell, Town Planner, Harold Pellow & Associates, went over the revised Newton Ordinance. She started with 20-98, 20-99 & 20-100.

Mr. Soloway made a comment on Section 19-6.3.3 which requires a minimum 50 foot right-of-way for most streets. He felt there was a conflict in the diagrams. He wasn't sure if the table was reflecting the exact right-of-way.

Ms. Caldwell stated: They are flexible. You work with the ideas that reflect the widths of each item based on the available right-of-way.

Mr. Soloway stated: I don't have an interest one way or another. It just seems that Section 19 is mandatory and it should be included.

Discussion ensued on the right-of-ways.

Mr. Flynn brought up the idea of dry wells to reduce localizing flooding.

Mr. Simmons spoke about the irrigation.

Discussion ensued on impervious surfaces and storm water.

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Ms. Caldwell asked if the Board wants the revisions to come back to the Planning Board or go right to Town Council.

Mr. Russo stated: I know the Council is looking to move on this so whatever would help to expedite the process would be helpful.

Mr. Flaherty stated he would be comfortable with the revisions that we made.

Mr. Soloway stated: There are two ways you can look at this. Officially it is before the Board for finding on whether the proposed ordinance is consistent with the Master Plan. I think the Board will find that it is consistent and instead of an exhausted resolution, what would make the most sense is to have in the transmittal a suggestion that the Council consider the modifications and changes that are reflected in the red lined or black lined ordinance. The real question is do you want to vote on that tonight and rely on Ms. Caldwell to make the changes and just send it or take a last look at it and adopt the resolution on the same night at the January meeting?

Ms. Caldwell stated: We can have an updated version for January. It will depend if you make any more changes before January.

Mr. Le Frois stated he would be comfortable with approving it tonight subject to the revisions that Ms. Caldwell would make for submittal to the Council for consideration in January.

Mr. Le Frois opened up this portion of the meeting to the public.

First public to speak

Jenny Lutz, 5 Overlook Road, Newton, NJ, referenced Chapter 20, Section 20-6, stated T2 Residential Zone. Where it says minimum lot size, I had brought up the question at the last meeting, because it says minimum lot size two acres, I was hoping to ask the Board if they would consider lowering that to 1.5 acres.

Mrs. Caldwell stated: We did revise it.

Mr. Soloway stated to Mrs. Lutz: At the last meeting I mentioned to you that you would probably always have to come before the Board. I am not sure that is correct. If your only deficiency is lot size you probably would not have to. If there are other nonconformities, then you would still have to come before the Board.

With no more public coming forward, Mr. Le Frois closed the public portion.

Mr. Soloway stated: The motion would be to make a finding that the proposed revisions of Chapters 19, 20 and 20A of the ordinance are consistent with the Town's Master Plan and to recommend that the Town Council consider the modifications and amendments that will be reflected in the red lined markup of the ordinance that will be prepared by Ms. Caldwell.

Mr. Hardmeyer made a motion based on Mr. Soloway's motion. Mr. Russo seconded the motion.

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

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NEW BUSINESS

**#PBV-10-2011- George M. Miller, III/George's Salvage Co., Inc.
Block 803 Lot 48.05
10 South Park Drive**

Applicant is requesting Amended Site Plan approval to erect an 1,137 sq. ft. canopy to the main building.

Mr. Soloway stated: In addition to being an amendment to the site plan approval, this application technically is also an application to expand a nonconforming D2 variance, therefore Mrs. Le Frois and Mrs. Diglio are not eligible to hear this.

RECUSED: Mayor, Helen Le Fois and Deputy Town Mayor, Sandra Diglio.

Representing the applicant tonight is Fred Norton, Esq.

SWORN: Louis Brandt, AIA from Louis Brandt Architect, LLC, Clifton, NJ, Michael Miller, Andover, NJ, and George Miller.

Mr. Brandt gave his credentials and stated his license is current. The Board accepted his credentials.

Mr. Norton asked Mr. Miller to explain what he is proposing to do.

Mr. Miller stated: I am proposing a 20 x 50 long canopy made of steel to protect the employees from weather. It will enhance the building.

Mr. Norton asked: Please expand on how it will benefit the employees.

Mr. Miller stated: A lot of times we work outside in the rain and this way the employees can stay dry and it will blend in with the other canopy that is there. There is an existing canopy on the building and that will be a continuation of the canopy. It does not raise the roof level.

Mr. Norton asked Mr. Miller to clarify that the canopy is going to be approximately 55' long x 20, 8ft wide. The application calls for the canopy to be 55 x 28, 8 foot wide.

Mr. Le Frois stated: There is a discrepancy of 8 feet with the size of the canopy.

Mr. Brandt stated: It is 20 foot 8 x 55 feet.

Mr. Miller stated that the existing water service line has been eliminated and that the canopy will not raise the roof level. It will be on the same pitch as the roof.

Mr. Le Frois asked about what the employees do.

Mr. Miller stated: The employees who are going to work underneath the canopy use tools or torches. It is out in the open. This canopy will keep everything dry. It will be a steel roof.

Mr. Le Frois stated that he wanted to make the point that the plans need to be modified to reflect the actual conditions out there. He stated that what Mr. Simmons saw on the original plans is incorrect information which now needs to be corrected.

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Mr. Simmons stated: I know some utilities have been changed for example the water service line. What I am suggesting in my comments is that on the revised plan that it be properly reflected on the as-built because if someday the Town has to work on the utilities they will know where everything is. I do want to verify that on the southwesterly part of the property there is an easement shown for the water main that is still there. If this easement has not been recorded it should be to show that you are on the map.

Mr. Norton stated that he does not have a problem making the modifications that Mr. Simmons suggested to the plans.

Mr. Soloway stated: If there is not a recorded easement the applicant will grant an easement to the satisfaction of the Town Engineer, Town Attorney and the Town Council for recording.

Mr. Simmons stated that the lateral sewer system be shown on the as-built as well.

Mr. Le Frois asked about item "d" which talks about the Town working with Mr. Miller on a retaining wall and landscaping.

Mr. Simmons passed around a half scale size plan of the proposed retaining wall and landscaping to the Board.

Mr. Soloway stated if it is going to be discussed it should be marked.

They will be marked **Exhibit B1, Mr. Simmons survey referencing the water line easement dated 12/21/11. Exhibit B2 is a half scale drawing entitled Retaining Wall study at George's Salvage and Memory Park, Dated December, 2011.**

Mr. Simmons reviewed the exhibits and stated the location of where the property line is.

Mr. Le Frois stated to Mr. Simmons that what you are going over is for information only. The canopy does not impact this.

Mr. Simmons stated that this has been something that has been going on for a while. Over the years there have been issues as far as trying to buffer the property.

Mr. Le Frois asked: Is that completely separate from this application?

Mr. Russo stated: It has nothing to do with this application just an FYI.

Mr. Le Frois asked Mr. Miller: Will the existing lights remain?

Mr. Miller stated: Yes. They will be wall mounted lights under the canopy.

Mr. Brandt stated: We will be adding a new wall mounted light same as existing.

Mr. Simmons stated: The plan shows one existing light.

Mr. Soloway asked: Is there a new light proposed for under the canopy?

Mr. Brandt stated: Yes, a new light is proposed.

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Mr. Le Frois made a comment that the existing building does not meet the requirements for setbacks but the canopy will go onto an existing building so it does not violate anything.

Mr. Le Frois opened up this portion of the meeting up to the public.

With no public stepping forward, Mr. Le Frois closed this portion of the meeting.

Mr. Soloway stated the motion would be to grant a D2 Variance to allow an expansion of a non-conforming use subject to modifications from David Simmons letter dated 11/22/2011. It will also be subject to listing the book and page of the water main easement. If there is not a recorded easement, the application will grant an easement to the satisfaction of the Town Engineer, Town Attorney and the Town Council.

Mr. Torre made a motion to grant a D2 Variance to allow expansion of a non-conforming use subject to modifications. Mr. Russo seconded the motion.

AYE: Mr. Flynn, Mr. Flaherty, Mr. Marion, Mr. Tharp, Mr. Russo, Mr. Hardmeyer, Mr. Torre and Mr. Le Frois

Mrs. Le Frois and Mrs. Diglio return to the meeting.

PBASP-21-2011- Thorlabs Urban Renewal, L.L.C.

Block 1104, Lot 21

56 Sparta Avenue

Applicant requesting Amended Preliminary and Final Site Plan approval to add a 20' x 20.5' concrete slab with a 600 gallon nitrogen tank and vaporizer unit to the west of the dumpster area.

Representing the applicant is Peter Donnelly, Esq. of the firm Graham Curtin.

Mr. Donnelly stated we are here to amend the site plan to install a nitrogen tank outside the building. We appeared two weeks ago before the Technical Review Committee. At the TRC meeting we came in with a very different plan. At the review committee we came in with a tank that was vertical and 15 feet high and a vaporizer that was also vertical and about 18 feet high. A lot of discussion came out of this. One of the discussions was about safety. We have two professionals from Airgas to answer all safety questions. The second thing that came out of the TRC meeting was the screening of the facility which resulted in a radically different design than we had three weeks ago. We will talk about that today. The tank is no longer 15 feet vertical. The dimensions of the tank and the vaporizer have changed drastically.

SWORN: Paul Melone, 4 Kings Court, Budd Lake, NJ, John Sauer, 5 Iron Horse Road, Oakland, NJ and Robert Byra, Langan Engineer, 619 River Drive, Elmwood Park, NJ.

Mr. Byra gave his credentials and the Board accepted them.

Mr. Byra gave an overview of **Exhibit A-1, color rendering of the site plan**, dated December 21, 2011. He stated nitrogen comprises about 78% of our atmosphere. It is a non-explosive, non-combustible gas that will be used at the Thorlabs facility. Nitrogen is being used because it is a very clean gas that can be used for cleaning and for purposes of manufacturing internal to the building. The gas is delivered to the site in a liquid form at negative 300 degrees Fahrenheit and is stored in a 600 gallon tank. The liquid portion of the gas is delivered through a vaporizer similar to an old style radiator in a house. The atmosphere itself warms up the liquid converting it into a

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gas and then being delivered into the building. The tank will be located on a concrete pad which is located on a north portion of the site. The pad is located in an area where the Board had previously approved five banked parking stalls. We have reconfigured those parking stalls. Three of the stalls will remain in the area and two are being relocated. The first is being relocated to the north west corner of the easterly car parking area and the second is being relocated in the banked park area on the northerly side of the Pine Street driveway. As a result there are no additional parking stalls being proposed and there are no parking stalls being removed from the application.

Mr. Donnelly asked if there will be any new lighting.

Mr. Byra stated: The proposed improvements do not affect any of the lighting that was previously approved. There will be no changes to landscaping and no environmental impact.

Mr. Byra reviewed **Exhibit A-2, dated 12/21/2011, photographs and mechanicals for the tank and the vaporizer unit.** Photo 1, is a picture of a horizontal tank which is being proposed, Photo 2 and 3 show the mechanicals of how some of the piping goes between the tank and the vaporizer.

Mr. Byra responded to Mr. Simmons letter. Included on the exhibit is a placard detail showing how signage will be posted on the tank as well as a detail showing the 8 foot high black vinyl coated chain link fence.

Mr. Byra stated for safety purposes the pad will have a fence along the perimeter of it. In addition, right outside the pad, on three sides will be concrete built bollards which will be a preventive measure to prevent vehicles from backing into the facility.

Exhibit A-3, colorized version of sheet CS 101 entitled Site Plan, dated 12/08/2011 is presented.

Mr. Byra gave an overview of Exhibit A-3.

Mr. Le Frois asked: How does the gas get from the pad into the building?

Mr. Byra stated: There is an underground line that goes from the vaporizer unit to the building and it is all underground.

Mr. Torre asked: How does the tank get refilled?

Mr. Byra stated: The tank will be filled once or twice a month. It is on a schedule of 3 to 4 weeks. There is a truck that will come to the site.

Mr. Hardmeyer asked: On the nitrogen tank, is there going to be a need for a compressor to keep the liquid at that temperature?

Mr. Byra stated that Airgas will answer the questions.

John Sauer, with Airgas, Inc. a Fortune 500 industrial gas company headquartered in Pennsylvania. He gave his credentials and the Board accepted them. Mr. Sauer also stated that he is a published author in the field of industrial gases and safe handling of industrial gases specifically nitrogen.

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Mr. Sauer stated that the tank is a special tank. It is one tank inside of another tank with a space of a half inch that has a vacuum drawn on it. It is acting as a big thermos bottle. The vacuum is a very good insulator and it maintains the nitrogen as a liquid just from the very good insulation properties of that tank. There is no extra equipment needed to maintain the tank. It is self-contained.

Mr. Donnelly asked Mr. Sauer to explain if a truck should accidentally back into the tank what will happen?

Mr. Sauer stated: It is designed to withstand a truck backing into it. If something did hit the tank, the nitrogen, as it was mentioned is 78% of the air we breathe so it is inert, non-flammable and nontoxic. It is very cold. It will not explode and it will not catch fire. The liquid would very quickly heat up and turn into a gas and dissipate into the air. If all 600 gallons were to leak out it would look like a fog and it would be there for a short time and dissipate into the air and within an hour or two it will be gone. There would be no adverse health effects. Because the liquid is minus 300 degrees, if it should contact skin there is a danger of frost bite. Dry ice is minus 109. No one from the general public should come in contact with the liquid. Our drivers who will be making deliveries will have protective clothing such as gloves and a face mask.

Mr. Torre asked: What would happen if this tank should become engulfed in a flame?

Mr. Sauer stated: There is a safety valve on the tank. Mr. Sauer explained what would be done.

Mr. Torre asked: What if the safety valve failed?

Mr. Sauer stated: There is a failsafe valve on it something called a rupture disk. If the safety valve was compromised, the rupture disk is designed to open up and do a quick release of the liquid.

Mr. Torre asked: Does this tank make any noise?

Mr. Sauer stated: There is no noise. The only noise would be a slight noise from a valve opening and closing. There are no mechanical moving parts on it.

Mr. Torre asked: Is there a humming noise?

Mr. Sauer stated: No more humming than you would hear gas flowing through a very slight hum close to the pipe itself. There is no separate electric needed. We have a data quest system on it that allows us to monitor the tank contents remotely through a cell phone. It is a battery-operated unit.

Mr. Donnelly asked Mr. Sauer to explain what the nitrogen will be used for in this facility.

Mr. Sauer continued: The nitrogen is very clean. It is inert meaning there is no water vapor, no dirt. It is very, very clean. It is used to clean optics that are made. In lieu of blowing air over it that has moisture or maybe some oils they will blow some nitrogen over it.

Mr. Donnelly asked: Does it have food uses?

Mr. Sauer stated: If you pick up a bag of potato chips and it is kind of puffy there is probably nitrogen gas inside the bag of potato chips. They will have a longer shelf life if they use nitrogen instead of air.

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Mr. Donnelly stated: Do you know how Thorlabs is currently cleaning optics?

Mr. Sauer stated: They use nitrogen in the cylinder form.

Mr. Melone stated: It is in a 50 gallon tank. The optics business unit is currently at 43 Sparta Avenue and 13 Woodside Avenue. Each of those facilities has a 50 gallon tank.

Mr. Sauer stated: As part of our proposal, we are trying to eliminate several or multiple portable tanks as the business has grown and replace it with one central tank and pipe inside the building.

Mr. Donnelly stated: This size of tank should meet your needs for about 5 years.

Mr. Sauer stated: Correct.

Mr. Le Frois asked: Is there a public or state inspection that is regularly done on a tank like this?

Mr. Sauer stated: It usually falls under the jurisdiction of the fire department. I do not believe there is a requirement for them to do an inspection. As part of Airgas's process, we do an annual inspection on each of our installations. We have a document that we look at and we check the operative rating and make sure the gauges are still functioning in the valves.

Mr. Le Frois asked: Is that information publicly available?

Mr. Sauer stated: We can make it public. It is something we do internally. It is not filed with the Town. Where it would be required is for hospitals where they are storing liquid oxygen which is very different from nitrogen.

Mr. Le Frois stated: My biggest concern is routine inspections.

Mr. Sauer stated: As a matter of routine, when the delivery is made the driver is instructed to do a walk around the tank and do a general inspection on the tank.

Mr. Sauer stated: Thorlabs will lease the tank from us. We maintain the tank. We have trained technicians who inspect the tank.

Mr. Tharp asked: How often is the tank pressure check?

Mr. Sauer stated: This type of tank does not need to be pressured checked. American Society Mechanical Engineer requirements are more stringent. The tanks are heavier and thicker and designed for lifetime use. The safety valves that are on the tank have a 5 year life so those will be replaced every five years.

Mr. Marion asked: Is this a brand new tank?

Mr. Sauer stated: This is a turned in lease but will have a complete rehab done on it. The valves will be changed out, it will be repainted, and the vacuum will be retested. Many of the tanks in our industry are around 30 or 40 years. By doing this full rehab they have that type of life.

Mr. Marion asked: What is the life expectancy?

Mr. Sauer stated: We have tanks that were built in the 1960's that are still in operation.

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Mr. Tharp asked: Are they made of steel?

Mr. Sauer stated: The outer vessel is steel and the inner vessel that is seeing the cold temperature is either a stainless steel or nickel.

Mr. Donnelly asked: Will there be any changes in the grading as a result of installing the pad?

Mr. Byra stated: No.

Mr. Tharp asked: According to Mr. Simmons report it says there is an underground electric line running through main building from the nitrogen tank to the facility. You said there is no electric.

Mr. Byra stated: That was shown on the plan but has since been corrected so that there is no electric and that will be removed.

Mr. Flaherty asked: What about security from vandalism? Will there be an alarm system or any surveillance?

Mr. Sauer stated: There is a locked gate and it is 8-feet high.

Mr. Marion asked: If this is not an explosive gas, is there any reason why it cannot be put into the building?

Mr. Sauer stated: If for some reason that liquid were to come out outside it dissipates very quickly where if it was inside it would be in a closed area. It is not impossible but the majority of installations we have like this are outside. Indoors you need extra ventilations and a lot of monitors are required mostly from the standpoint it doesn't have a scent, you can't see it, and you can't tell it is there but it will pull the air out of the room.

Mr. Marion asked: Where do you have tanks that are inside the building?

Mr. Sauer stated: Basically places where you can't put it outside. Like in New York City, downtown Boston and Cambridge where the property line is the building so physically there is no room to put it out side.

Mr. Simmons brought up item "j" which refers to landscaping requirements.

Mr. Sauer explained how the vaporizer will work. It is important to keep the area around the vaporizer open to free air flow.

Mr. Marion asked about where the line will be going that will be coming off the tank into the building. I am sure you would rather dig up the grass and not the parking lot since it was just paved.

Mr. Byra stated: It will be below the frost line. It is in within the grass area. Mr. Byra showed on Exhibit A-2 exactly where the line will be. It will be buried underground. The landscaping that is shown on the rear of the residential line (the properties along Pine Street) has not changed at all. Within a year or two the trees that are there now will be higher than the fence line. So it will provide sufficient screening.

Mr. Le Frois opened this portion of the meeting to the public.

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First Public

SWORN: Diane Zett, 11 Merriam Avenue, Newton, NJ talked about some follow up issues. The generator is sitting there with no wall or screening around it. I just want to make sure that the generator will be screened properly.

Mr. Donnelly stated: I can have our construction officials look at it and compare it to the plans and get back to engineers and make sure that we are following through on our obligations to properly screen the generator.

Mr. Soloway stated: The applicant is required to satisfy whatever is shown on the approved site plan. It does get checked by Mr. Simmons but while they are in the process of construction that particular item obviously did not get done yet.

Mr. Le Frois stated: It still is a work in progress and it may be a little early to bring that up.

Ms. Zett stated: That was mainly our concern. We have another question in the plan, would that be for another discussion or should we call to see if things get changed?

Mr. Le Frois stated: I would say if it is anything outside of what this specific application calls for, I would contact the Town and express your concern. If it doesn't involve this particular pad and tank, you should bring that up with them and they can address that separately.

With no more public coming forward, Mr. Le Frois closed this portion of the meeting.

Mr. Soloway stated: Motion will include amended preliminary and final site plan should be revised to show no electric. They need to provide complete details of the proposed black chain link fence with bottom rail and an as-built be provided after the installation and satisfy the conditions.

Mrs. Le Frois made the motion to approve the application as outlined by Mr. Soloway. Mr. Flaherty seconded the motion.

AYE: Mr. Flynn, Mr. Flaherty, Mr. Marion, Mr. Tharp, Mrs. Le Frois, Mrs. Diglio, Mr. Russo, Mr. Hardmeyer, Mr. Le Frois

#PBWSP-24-2011- Foodshed Alliance & SpringBoard Shoppes, L.L.C.

**Block 717, Lot 4
145 Spring Street**

Applicant requesting a Waiver of Site Plan to locate the Winter Farmers' Market to the Springboard Shoppes from January, 2012 to April, 2012.

William Gold, Esq., representing the applicant.

SWORN: Lou Tommaso, 143 Creek Road, Andover, New Jersey, President of the Foodshed Alliance.

Mr. Gold asked Mr. Tommaso to educate the Board on exactly what Foodshed Alliance does.

Mr. Tommaso stated: The Foodshed Alliance is a not-for-profit out of Blairstown, New Jersey. It is trying to connect farmers with people from the general public to buy locally.

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Mr. Gold asked if there is a geographical limitation in terms of how far someone can be producing the food and then selling it through this farmers' market.

Mr. Tommaso stated: We have a 25 mile radius.

Mr. Gold asked if the Foodshed Alliance had a farmers' market in operation.

Mr. Tommaso stated: We just completed our fourth year of a farmers' market in the Blairstown area. Two years in one location and two years at another location. I have also worked with the Sparta Farmers' Market which we just concluded our first season in the Sparta area at the Sparta Municipal building.

Mr. Gold asked if this was the first time that the Foodshed Alliance is trying to bring this together in the winter months.

Mr. Tommaso stated: Correct. This particular farmers' market is collaboration between Sparta Farmers' Market and the Blairstown Farmers' Market. We have taken vendors from each area that has products to sell through the winter months.

Mr. Gold asked: How many farmers are expected to sell their produce at the market?

Mr. Tommaso stated: Besides produce, we have meat, and baked goods. It varies from week to week from a low side of 12 to the high side of possibly 20 at most.

Mr. Gold asked: What is the proposed location for this?

Mr. Tommaso stated: The new proposed location will be the Springboard Shoppes at 145 Spring Street. It will be on Saturdays from 10 AM to 2 PM starting on the first Saturday in January and ending on the last Saturday in April.

Mr. Gold asked if they have any plans in 2013.

Mr. Tommaso stated the plan will be to get through this year and rethink how we want to do things for next year. We would like to start at a location beginning in November after we finish with the outdoors farmers' markets.

Mr. Gold asked how many people come to these farmers' markets.

Mr. Tommaso stated on a busy day we can get around 200 people total over a four hour span. Usually there is never more than 15 to 20 people buying items at one time.

Mr. Gold stated it will bring people to downtown Newton.

Mr. Tommaso stated that is the whole idea. It will be collaboration with us and the other stores in Town.

Mr. Gold asked are you proposing to make any changes to the existing building.

Mr. Tommaso stated: There will be absolutely no physical changes to the existing building.

Mr. Gold stated that is why we are asking for a Waiver of Site Plan because we are not doing any changes to the building.

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Mr. Gold marked **Exhibit A-1 dated 12/21/2011, Interior Site Plan.**

Mr. Tommaso went over Exhibit A-1. He stated it is a site plan of the existing Springboard Shoppes and it shows how the Foodshed Alliance will fit in.

Mr. Torre asked: How does someone become a vendor with the Foodshed Alliance?

Mr. Tommaso stated: Each vendor must be a member of the Foodshed Alliances. You have to fit the criteria. We try to keep all the vendors from Sussex County and be in a 25 miles radius from Sparta and Blairstown.

Mr. Torre asked: How many vendors do you plan to have at this location?

Mr. Tommaso stated: We would max out at 20 vendors.

Mr. Torre asked: What if more vendors were interested, what would you do with the overflow? So there would be no plan to put them on the street?

Mr. Tommaso stated: We can only accommodate the max amount of vendors. Everything will be contained inside.

Mrs. Le Frois stated there are 16 spaces on the drawing but you said there could be up to 20. So where would you set up the other four?

Mr. Tommaso stated: The other four can be set up by consolidating tables. Currently there is another room available if need be. There is also something called Chapter 23, which mandates rules and regulations for farmers' markets in the State of New Jersey.

Mr. Gold asked: Since you have been doing this for four years, what affects have you seen in terms of local agriculture by providing an outlet for local agriculture to sell products?

Mr. Tommaso stated: It is helping to achieve sustainability which is one of the goals of the Foodshed Alliance. Local farmers producing local products selling to local people. It is allowing the local farmers to stay in business. We can't compete with the big guys but customers like you are allowing us to thrive.

Mr. Gold asked Mr. Tommaso what his particular business is.

Mr. Tommaso stated: Livestock. I sell pork, goat, lamb chicken, etc. We have processed USDA and which allows me to sell at stores. My farm is in Green Township.

Mrs. Le Frois asked: The vestibule area of this building currently does not contain retail sales. It is the opening when you first come into the building and then you go down the hall and that is where the stores are. By placing these tables in the vestibule area have we gone through with checking that out and making sure there are no restrictions in terms of code or fire?

Mr. Simmons stated: When we had the TRC meeting this afternoon, the applicant explained what the optimum number of vendors he is talking about to be and how it will fit in. That is how we got the concept map that is in front of us. We discussed between the Fire Subcode Official and the County Health Department any requirements they have, may change that number. My understanding is that the applicant laid out the tables physically so in their own minds and for their use they felt comfortable with it. They were advised that the County Health Department

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and/or the Fire Subcode Official said if there is not adequate ingress and egress for safety or life threatening situations in this particular case they might have to move a table and may have to pare down.

Mrs. Le Frois stated: While I can appreciate the urgency of the applicant's schedule, I am hoping those officials have been contacted and are at least aware of the plan in its concept.

Mr. Simmons stated: I believe he had some initial conversations.

Mr. Tomasso stated: Mr. Andrews had some dialogue with the Fire Officials. I have spoken with the Officials at the Health Department. I don't think the Health Department will come and visit us this time because I believe that most or all of the vendors have been previously been inspected as individuals and do meet the requirements for the health code for the rules and regulations

Mrs. Le Frois stated: My question is more around the fact that based on this set up making sure that the Fire Subcode Official has looked at this and he is in agreement with it and signing off on it. I just want to make sure the appropriate approvals are met.

Mr. Le Frois asked about setting up and taking down that occurs through the front of the store.

Mr. Tomasso stated: Yes. The vendors pull up front; they unload and then move to another parking lot. This starts around 8:30 AM and tear down goes a lot quicker.

Mr. Tharp asked what the lawn signs are.

Mr. Tomasso stated: You call them lawn signs; we call them tricky tray signs. We want to have a couple on Spring Street and in some of the adjacent parking lots to direct people to the location.

Mr. Russo stated: We have to make that a contingent condition. We do not allow anybody to put up signs for safety reasons and if we allow one then everybody will want to put up signs. We have to think about that as part of the approval. You would be responsible for putting them up at a certain time and taking them down by a certain time something to that affect.

Mr. Tomasso stated: We would put them up at 9 AM and take down by 2:20-2:30 PM only on the days of the operation. We would not put them up days in advance and they will not stay up. We do it at all the other locations. It is part of our routine.

Mr. Le Frois stated: If you are willing to do that, I think that would be ok.

Mr. Russo stated: The only caveat is the Parking Authority technically owns the parking lots; the Town of Newton does not. We are granting approval for something we really do not have jurisdiction over. I can address it with the Parking Authority. I don't see it being an issue just that it is clear for the record. It is not our property to say what goes up or what comes down.

Mr. Russo stated he appreciated Mr. Tomasso's hard work and bringing this to the Town. Are the vendors aware of the parking restrictions on Spring Street? There is a one hour time limit on Spring Street and if they are participating as vendors and park in Lots 3 or 5 they will have to be paying for the parking. It is not free parking on Saturdays.

Mr. Tommaso stated: They have to be aware of the rules.

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Mr. Le Frois opened up this portion of the meeting to the public.

First public

SWORN: Nanette Thomas, 7 Orchard Street, Newton, New Jersey stated: I think this is probably one of the most positive things that could have happened to this town. I go to farmers' market all the time and I don't like wasting my gas. The nice thing about the farmers' market, and I have gone every Saturday, is that it is close. It is local. I think it is horrendous that in a County that was at one point the agricultural center of New Jersey that we have sunk so low that we have to put them on Spring Street but if that is the best we can do so be it. I thought it was a win-win situation for Newton High School. I am also on the Board of Education. I thought it would bring people into the school to see what we have done and make them more aware. I didn't think it was a big deal for parking. These are people who are dedicated and buy. If you have never gone you should. They are more than willing to tell you about their product. They will even deliver to you if you beg them. I can't say enough about the farmers' market. I think this is so great for Newton. It will definitely bring more people down to Spring Street and we have the space. I hope this goes through. I would not worry about the vendors or the parking or the people. We need this. It is good, it is positive. We should be on the front page of Herald just for doing this.

Mr. Tommaso stated: I think that is what is representative of the overwhelmingly positive public.

With no other public stepping forward, Mr. Le Frois closed the public portion of the meeting.

Mr. Le Frois stated what is in front of us is the granting of a Waiver of Site Plan for the Farmers' Market to be located at the Springboard Shoppes at 145 Spring Street. We have heard testimony that certain conditions would be met as part of the granting of that waiver.

Mr. Soloway stated: Typically when you grant a Waiver of Site Plan approval, I don't prepare a resolution. Mrs. Citterbart does. The conditions that have been made are clear. If you approve this, like any other Land Use application, you do not approve temporary things. Provided they comply with the conditions, which it is for Saturday use only and to continue it for the winter months this year and next and if there are no sufficient changes, they do not need to come back to get approval. It should be noted that the Planning Board will be granting Waiver of Site Plan approval only. If any approvals are required from the Fire Subcode official or the Board of Health, the applicant is required to obtain them and comply with their requirements. The Board does not have jurisdiction over those items. If the Board agrees, the Waiver of Site Plan would allow the applicant to put up temporary signs. They would be allowed to put them up any time after 8 AM and remove them by 3 PM.

Mr. Tommaso asked: What if the hours change for some reason? Can we say one hour prior to opening and one hour after closing?

Mr. Soloway stated: I don't see any basis that they need to be limited to four hours. I would suggest to the Board that on Saturdays the hours be stated as during normal business hours and signs be put up one hour prior and one hour after. The Board has no objection if there are signs in the Municipal parking lots but applicant has to understand it needs approval of the Parking Authority to put them there.

Mr. Soloway continued with the conditions. All tables and sales are to be indoors.

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Mr. Russo asked about the fees and escrows. Have they been satisfied and is there still a question of any of that is being waived.

Mr. Gold stated: I am not charging any fees to the applicant for my counseling to do this. It is a non-profit. They are all volunteering their time to make things better for our community, for the Town. I would ask whatever fees you could waive, I would appreciate it. It is a non-profit.

Mr. Soloway stated: The Board does not have the authority to waive fees.

Mr. Gold stated: The Town Council does.

Mr. Russo stated: As much as I would like to help the applicant, then every non-profit would want to seek relief and I don't know if that is the precedent we want to set.

Mr. Russo stated: Again, it is the precedent not the amount.

Mr. Flaherty asked: Would it be better to say weekends and not limit yourself to Saturdays. What if there is a snow storm?

Mr. Tommaso stated: In all honesty as far as the winter farmers' market for scheduling purposes it will be Saturdays.

Mrs. Le Frois stated: You want to be careful because the applicant is saying it is an event as opposed to an established retail operation. It is very clear from Mr. Andrews' letter that he has underlined and he is seeking to sponsor an event and that is how the Alliance would like to be referred to as well.

Mr. Tommaso asked: If we wanted to do something in the warmer months during the week, would we have to come back to the Board.

Mr. Soloway stated: The way it is framed now if you want to do it in the warmer months during the week the answer would be yes. If you want to do it in the warmer months on the days that have been granted to you Saturdays or Sundays then no you would not have to come back.

SWORN: Kendrya Close, Stillwater, New Jersey stated: I feel this is getting much bigger than it needs be. We have farmers' markets that run on Saturdays in the summer and we couldn't possibly run another market in Newton on Saturdays. We would have no vendors. It is going to be a winter market. It would never move to the midweek because most people have other jobs. We have talked about an outside market in Newton from 3 PM to 7PM but that is totally hypothetical right now. It is in the developmental stages. I understand that we will get a customer base and people will want it in the summer but it could never happen on a Saturday in the summer. It would have to be midweek and at that point we would have to come back to the Board.

Mr. Marion made the motion to approve the application based on the recommendations and conditions and recommending to the Town Council to waive any application fees. Mr. Flaherty seconded the motion.

AYE: Mr. Flynn, Mr. Flaherty, Mr. Marion, Mr. Tharp, Mrs. Le Frois, Mrs. Diglio, Mr. Russo, Mr. Hardmeyer, Mr. Le Frois

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CONCEPT PLAN

#PBCP-22-2011- Martorana Enterprises, LLC

Block 1201, Lot 5 & 5.03

100 Sparta Avenue

C-4 Zone

Applicant to discuss a Conceptual Townhouse Plan

Dave Simmons and Jessica Caldwell have excused themselves from the meeting due to a conflict.

Paul Ferriero of Ferriero Engineering will represent the Town of Newton tonight as the Planning Board Engineer.

Mr. Soloway explained that in the Land Use Board there is a provision that allows applicants before the Planning Board to seek what is a concept hearing. The end result of a concept hearing is that the Board takes no action in any event anyway. A concept hearing is a meeting and a discussion between the applicant and a Board. It is informal. The only obligation of the parties is to do it in good faith. An applicant presents a concept about a detailed plan of what the applicant would like to do by way of a development project. The Board looks at it and provides input. Nothing is binding; it is just a discussion.

Mr. Soloway continued with who would be able to sit and listen to this hearing. Mr. Hardmeyer since he is on the 200 foot list will be asked to sit in the audience. I would welcome any input Mr. Hardmeyer would like to offer because he is a neighbor. The Mayor and Deputy Mayor because the concept they are discussing would require a use variance and would not be eligible to participate if this matter is actually filed as an application before the Board. Because of the informal nature I don't have a problem if they stay where they are and participate. I will defer to the applicant's attorney.

Mr. Fiorello stated: We have no objection to the Mayor and Deputy Mayor participating and even commenting. It is a concept.

Mr. Soloway continued with Mr. Flynn being able to sit and hear the hearing. Mr. Flynn is employed by Mr. Ferriero's engineering firm. I don't know if that presents a conflict of interest. For tonight, I feel Mr. Flynn can listen.

Mr. Ferriero concurred with Mr. Flynn staying for the hearing. We welcome any comments.

Anthony Fiorello, Esq represented the applicant. He gave an overview of the application. He explained the current layout of the property which consists of being just short of 10 acres. We have thought of a better plan which could be a transition area. To the rear and north of the property there are single family residences. To abut a single family residence to a commercial C4 development is an abrupt change. This would create a lot of tension with the homeowners. As a result of this, Mr. Martorana has gotten 15 neighbors to sign a letter which states they have reviewed the plans which you are going to see and they prefer these plans in lieu of the commercial development that was going to go there.

Mr. Martorana stated that he was approached by a few neighbors who asked him if he would consider going to the Town and getting their feelings on changing what was originally approved

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for. A short time after that I was informed that a multitude of neighbors had a quorum at the public library and they spoke about what I wanted to do and ask if I would come forward and attempt to put up townhouses. I personally feel it would be a better application. They expressed their concerns with what was bothering them as far as buffers, privacy, berms, evergreens and fencing.

Mr. Martorana continued: I took a lot of my ideas that are on the rendering from the Master Plan. I feel townhouses would be much better for Newton than condos. You want to see trees, want to see green, you want your privacy, you want your front and back yard; you don't want to see asphalt. I feel it is a good sense of community and I hope you like what we present to you.

Mr. Marion asked: You came before the Board about five years ago with a similar plan. Is this the same plans from then with the townhomes you wanted to put up?

Mr. Martorana stated: The plan has been totally revamped.

Discussion ensued on what will be staying and what will be taken out.

Mr. Marion asked how many bedrooms will the townhouses have.

Mr. Martorana stated: 2-3 bedrooms, 2 car garages, 2 car backup. Around the premises you will have the ability to park 2 to 4 cars in your own driveway and garage.

Mr. Fiorello stated: Originally they were going to be 2,500 sq. feet but they have been scaled down to 2,000 sq. feet. There will be four condo units and they will be above the community center. These probably will be one bedroom but the rest will be townhouses, garages, front lawns, driveways. The backyards will be lawns and will back up to backyards to the people of the residential houses west and north.

Mr. Marion asked if they gave any consideration to drainage of the development.

Mr. Fiorello stated: We are going to go from 90 percent impervious which was approved with drainage structures. The amount of drainage will be drastically less.

Mr. Russo stated: This project takes on an intriguing twist because what you are approved for would add 300 to 400 cars a day in terms of trip count but this plan you are presenting with 54 units, 46 visitor spots is probably 60 to 80 percent less cars and anything that will lower the amount of cars that will go onto Sparta Avenue is a good thing in the long run. Now is a good time to have this conversation.

Mr. Martorana stated: I think the biggest attraction to this is the reduction. There is a 300 parking space difference. With the commercial parking you are encountering multiple trips.

Mr. Soloway stated: In terms of traffic the comparison is between the 28,000 and the 12,000 sq. foot building and the self-storage facility vs. the townhouses.

Mr. Matorana stated: That is what I am talking about, the reduction of the 300 vehicles per parking and then the trips that they are coming in and out of the 28,000 sq. feet in comparison to coming in and out of your home once or twice a day.

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Mr. Fiorello stated: The suggestion of the Sussex County Planners was that the central driveway which is the most northerly driveway is now to be eliminated.

Discussion ensued on the driveways.

Lisa Fairclough gave an overview for the need for townhomes. She stated that this piece of property is unique because it borders on a residential area and the front portion of it is a commercial area. Ideally it would be nice to have a transition area which would be the townhomes. The demographics for Newton right now are 50% rental units and 50% owner occupied units. This townhouse project would help shift the demographics. It could help the town especially with Thorlabs coming in. If you look at this design and all the amenities there is no comparison to the commercial development that was going to go up. We are talking about 75% less cars going in and out of there every day.

Mr. Fiorello, Esq. stated: I did a quick calculation concerning the price point and number of units. You are talking about approximately \$14 million dollars' worth of ratables. It would generate around \$400,000 to \$500,000 worth of taxes.

Tom Donohue of Donohue Engineering gave an overview of what was approved for the commercial development. He compared the approved rendering with the proposed townhouse rendering.

Mr. Donohue went over the proposed rendering in detail.

Mr. Donohue stated: Yes. We would be using the same types of trees and pavers.

Mrs. Le Frois asked: Would these properties be subject to the same property maintenance code?

Mr. Russo stated: It would be the same property maintenance code. Since I am not interested in taking on more roads to be responsible for it would be a private development and an association.

Mr. Fiorello stated: There would be maintenance fees.

Discussion ensued on various maintenance and site plan details.

Mrs. Le Frois asked Lisa Fairclough that in her opinion at this price point would it provide an option that currently does not exist based on the inventory on the town.

Lisa Fairclough stated: It would also increase the value on the current homes.

Mr. Russo stated: If you market these well, I think they will sell very well at that price point.

Paul Ferriero stated: The idea of a pedestrian walkway to Pine Street is a very good idea to this plan. I think one of the advantages to this project is the buffer to the rear. There are a lot of details that do need to be worked out. As the Board knows, when you have a D variance there is a whole different standard that you have to look to for the relief.

Mr. Soloway stated: It is a very tough standard that the applicant would have to satisfy as a D1 variance. A big part of the applicant's argument is that this is better than what is out there that has been approved.

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Mr. Ferriero stated: This is a big planning project. A lot of discussion will revolve around the planning aspect. There are many steps to this project. There needs to be a thorough traffic report that compares the peak traffic generated from the site and the surrounding road ways. The traffic is a very integral part of this and that is where it will all come together.

Mr. Soloway stated: In terms of non-use issues, the Town is in the process of changing its entire ordinance. The law changed about a year ago to the ordinance in place. When you filed governs and you can't change that anymore. Based on the timing of this, I don't know which ordinance they will come under. We don't know when the new ordinance will be completed. I don't think it is a permitted use under either ordinance. If the applicant does decide to proceed, I suggest that they look at the new ordinance and the Master Plan.

Mr. Ferriero stated: It is probably in the applicant's best interest to do an entire site plan.

Discussion ensued on timing of plans and other redevelopment going on through the Town.

Mr. Donohue stated: The question to ask is how is this project different from the ones out there, what sets it apart and why is it adding to the spectrum of housing opportunities in this Town?

Mr. Russo stated: The answer is these are a different style, a less intensive use; it is a better price point. Hicks Avenue is more intensive. They are 1,200 sq. foot townhouse or condos. These are 2,000 sq. ft. townhouses. You are talking night and day with clientele, price point, and timing.

Mr. Le Frois went around the Board to see if they would be interested or not interested in this project.

Mr. Flaherty: I find the concept interesting. I have a concern with the gravel driveway being turned into a road, etc. The basic concept of residential vs. commercial has some merit to it.

Mr. Marion: My main concern is the traffic issue.

Mr. Russo agrees with Mr. Marion's concerns regarding traffic. I would like to look into the COAH and I would cut the units down to 52 units in lieu of 54. From a ratable standpoint it will be great for Newton. I want to be realistic with the time frame. Conceptually, I think it is a good plan and I think it will be good for the Town.

Mr. Torre: I think it is a great addition for what we have going on in Newton right now. I would like to see them take advantage of the momentum right now. I think the concept fits for the direction the County is going into. I think this is a winner for the Town of Newton.

Mrs. Mattingly: I like the concept.

Mr. Tharp: I am a little cautious because a lot of what I am hearing tonight is very similar to what we heard about Abelour. I am going to reserve my final comments until I hear more.

Mr. Le Frois: I feel the residential concept is an idea worth considering. There are a lot of details that need to be worked out and I think they can be worked out. To sum it up there have been a lot of positive comments.

Mr. Le Frois opened up this portion to the public.

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First Public

Nanette Thomas: 7 Orchard Street, I was one of the 15 people who said yes to this. I have been coming to these meetings for the past 5 years. I like this because what I am looking at right now is not pretty. This plan has a lot less traffic. I think you should go a little lower than \$229,000. I think the houses are more around \$180,000 to \$190,000. I think this plan is good, they will work out details.

Second Public

Rite Piano, 67 Pine Street, got together with the neighbors and discussed townhouses over commercial. They like the townhouses. I am optimistic that we could go forward with something like this.

Third Public

Paul Campana, 65 Pine Street, Rita is my neighbor. Rita and I were responsible for getting our neighbors together. Mr. Martorana has permission to put a commercial building up now which I thoroughly oppose. What he wants to do now will greatly benefit me and my neighbors. The buffering and fence will really improve my property. I would like to see something put there that will benefit the neighborhood. I wanted nothing there. They have a right to build what they want. It is your job to make sure they build something that is productive and proper for the Town and will benefit the Town. I think this will work.

Mr. Le Frois closed the public portion of the meeting.

ADJOURNMENT

Mrs. Le Frois 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 11:18 PM. The next regularly scheduled meeting will be held on January 18, 2012, at 7:00 PM in the Council Chambers of the Municipal Building.

Respectfully submitted,



Katherine Citterbart
Planning Board Secretary

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Exhibit Page

George M. Miller, III/George's Salvage Co., Inc.

Exhibit B1, Mr. Simmons survey referencing the water line easement dated 12/21/11.

Exhibit B2 is a half scale drawing entitled Retaining Wall study at George's Salvage and Memory Park, Dated December, 2011.

Thorlabs Urban Renewal

Exhibit A-1, color rendering of the site plan, dated December 21, 2011.

Exhibit A-2, dated 12/21/2011, photographs and mechanicals for the tank and the vaporizer unit.

Exhibit A-3, colorized version of sheet CS 101 entitled Site Plan, dated 12/08/2011.

Foodshed Alliance & SpringBoard Shoppes, L.L.C.

Exhibit A-1 dated 12/21/2011, Interior Site Plan