

**Newton Planning Board  
April 18, 2012  
7:00 PM**

The regular meeting of the Newton Planning Board took place on the above date. Chairman LeFrois read the Open Public Meetings Act and requested Mrs. Citterbart to call the roll. Board Secretary Mrs. Citterbart stated there was a quorum.

**FLAG SALUTE**

**MEMBERS PRESENT:** Mr. Flynn, Mr. Flaherty, Mr. Tharp, Mrs. LeFrois, Mrs. Diglio, Mr. Russo, Mr. Caffrey, Mr. Hardmeyer, Mr. Torre(arrived at 8:35), Mrs. Mattingly and Chairman LeFrois

**EXCUSED:** Mr. Marion

**PROFESSIONALS PRESENT:** David Soloway, Esq., Board Attorney, of Vogel, Chait, Collins & Schneider and David Simmons, Board Engineer, of Harold Pellow & Associates and Jessica Caldwell, Town Planner, Steve Bolio, PE, Ferriero Engineering, Inc., Betsy Dolan of Dolan & Dean, Traffic Expert.

**BOARD SECRETARY:** Kathy Citterbart

**TECHNICAL REVIEW COMMITTEE**

Mr. LeFrois appointed himself and Mr. Russo. Barbara Mattingly will be the alternate. The TRC will meet monthly in advance of the formal Planning Board meeting to provide an opportunity to review applications with applicants mainly for completeness prior to the formal meeting. It will meet on the same day as the formal meeting at 3 PM, however if Mrs. Mattingly needs to participate, it will be 1 PM.

**CONSIDERATION OF MINUTES**

March 21, 2012 Regular Meeting

**Mr. Tharp made a motion to approve the March 21, 2012 regular meeting minutes. Mrs. Diglio seconded the motion.**

**AYE:** Mr. Flynn, Mr. Flaherty, Mr. Tharp, Mrs. Diglio, Mr. Caffrey, Mr. Hardmeyer, Mrs. Mattingly, Chairman LeFrois

**HISTORIC RESOLUTIONS:**

**#HPC-02-2012-DFJH Real Estate Holdings, LLC  
65-67 Spring Street-Block 8.03 Lot 12**

**Mrs. LeFrois made a motion to approve the Resolution. Mr. Flynn seconded the motion.**

**AYE:** Mr. Flynn, Mr. Flaherty, Mr. Tharp, Mrs. LeFrois, Mrs. Diglio, Mr. Russo, Mr. Caffrey, Mr. Hardmeyer, Chairman LeFrois

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**PLANNING BOARD RESOLUTION**

**#PBPV-01-2012- Weis Market #143  
Block 9.03, Lot 16 (Formerly Block 803, Lot 48.03  
119 Water Street  
Block 10.01, Lot 4 9 (Formerly Block 803, Lot 48)  
121 Water Street**

Resolution to approve construction of a new 853 square feet exterior vestibule using existing front sidewalk area.

**Mr. Flaherty made a motion to approve the Resolution. Mrs. Diglio seconded the motion.**

**AYE:** Mr. Flynn, Mr. Flaherty, Mr. Tharp, Mrs. Diglio, Mr. Caffrey, Mr. Hardmeyer., Mrs. Mattingly, Chairman LeFrois

**OLD BUSINESS**

**NONE**

**NEW BUSINESS**

Informal Presentation

Dr. Kennedy Greene introduced a capitol project that the Newton School Board is embarking on for a new turf field and lighting project at Newton High School.

Dr. Greene introduced Donna Snyder, Business Administrator, Robert Walsh, Chief Engineer from El Associates and two Board members, Ed Caffrey and Nanette Thomas.

Dr. Greene stated: El Associates conducted a Facilities Assessment which was presented last spring to the Newton Board of Education. One of the recommendations that came from that meeting was looking at our athletic facilities and how can we take what we have and significantly improve it. We are in a very unique position where we are able to apply a significant portion of the operating budget to the project.

Mr. Walsh gave an overview of the project and stated the field will be stripped for football, soccer, lacrosse and field hockey.

Mr. LeFrois asked Mr. Simmons if he had anything specific to address.

Mr. Simmons stated: I received a set of plans. It is basically refurbishing the field, same foot print as existing, no lighting there now; proposed light to be on 70 foot poles.

Mr. Simmons stated: Will there be an impact from the illumination to the residents, is there any shielding?

Mr. Walsh stated: The hours of operation will not be after 9:30 PM.

Ms. Snyder stated: All the plans have been submitted to Soil Conservation as well.

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Discussion ensued on the 70 foot light poles.

**Mrs. LeFrois made a motion that the Newton Board of Education proposal is not inconsistent with the Town of Newton's Master Plan. Mr. Flaherty seconded the motion.**

**AYE:** Mr. Flynn, Mr. Flaherty, Mr. Tharp, Mrs. LeFrois, Mr. Russo, Mr. Caffrey, Mr. Hardmeyer, Mrs. Mattingly, Chairman LeFrois

**#PBPFV-04-2012 Martorana Enterprises, LLC**  
**Block 22.05 Lot 13**  
**104 Sparta Avenue**  
**(Formerly Block 1201 Lots 5 & 5.03**  
**100-110 Sparta Avenue**

The applicant is requesting Preliminary & Final Site Plan and Use & Bulk Variance approval for the construction of 54 Townhouses and 6 apartments.

Mr. Lefois stated: Mrs. LeFrois and Mrs. Diglio are recused because they are elected officials and unable to hear the application since it is a Use Variance. Mr. Flynn is recused due to a conflict with the engineering firm he works with and Mr. Hardmeyer is recused because he lives within the affected property of the subject application.

Mr. Soloway stated: This property and this application went before this Board on another application. This is a separate application to be dealt with on its own merits. I am noting this because Board members, applicants and witnesses may assume there is a familiarity with certain attributes of the site. I would suggest to the witnesses that this is a separate record and new record. If you want something on the record you need to say it tonight. The other thing to be noted is when you look at the plans you see an intention to have a subdivision, and to have two lots; one with the townhouses and one with the existing commercial building. That is the intention but that is not part of the application tonight. The applicant will talk about the two separate lots that will be dealt with at a different time other than tonight and will not be in connection with this application. We will be talking about a use variance tonight.

Mr. Soloway continued with an explanation of what a use variance is and if applicant is entitled to use variance relief. The applicant must satisfy what is called the positive and negative criteria. Mr. Soloway went through what the positive and negative criteria are.

Mr. Fiorello Esq. represented Martorana Enterprises stated: We are going to proceed on the basis of an application for a use variance with a preliminary site plan. In order to do so we cannot ask you to consider a use variance without showing you what this application consists of. We have had our engineer plan out for us what this application will look like in terms of driveways, parking, etc. They will be in a finalized version if you deem this application or use variance to be acceptable when we come before you again for a subdivision. This certainly is not final. It is preliminary in nature. We are going to bifurcate this application.

**SWORN:** Mr. Gregg Martorana, Prinicpal, Martorana Enterprises, Thomas Donohue, Site Engineer, Dan Desario, Traffic Engineer, Tom Rybeck, Architect and Planner and Lisa Fairclough, Realtor.

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Mr. Martorana gave an overview of the proposed project. He stated: a year ago the Board gave him the ok for two retail buildings. He also stated a few neighbors approached him and asked if he would consider changing his plan from commercial to a townhome development.

Mr. Fiorello stated: Mr. Soloway I would like to offer this as evidence.

Mr. Soloway stated: In case law, petitions are not allowed as evidence. It is ok to talk about it because you asked him what motivated him to bring the application but it is not evidential.

Mr. Fiorello presented for identification **Exhibit P1**, signatures of the 29 residents within the 200 foot radius indicating their approval. **Exhibit P2**, Memorializing Resolution adopted on April 21, 2010. **Exhibit P3**, Site Plan which references the memorialized resolution, dated July 2, 2010 and **Exhibit P4**, architectural rendering of the two commercial buildings, July 30, 2010.

Mr. Donohue provided his qualifications to the Board and they were accepted.

Mr. Fiorello asked Mr. Donohue: Is this the site plan in connection with this proposed application?

Mr. Donohue stated: Yes, with one exception. There is a revised Title Sheet which now references the current lot and block number with a revision date of April 16, 2012 and should be marked as **Exhibit P5**. **Exhibit P6**, is a colorized version of the Landscape Plan, sheet 5 of 8.

Mr. Donohue gave an overview of the Site Plan in particular, sheet 2 of 8, and he summarized what the applicant is proposing to do and the parking area. There will be 20-feet of driveway and a 4-foot bike path.

Mr. Donahue stated: There will be a Community Center for use by the townhome owners.

Mr. Fiorello asked: Is there parking designated for the six affordable housing units?

Mr. Donahue stated: We are proposing 12 parking spaces adjacent to the building.

Mr. Fiorello asked: Will there be parking nearby if visitors want to visit the renters?

Mr. Donahue stated: Yes. Adjacent to Building 9, there are 7 visitor parking spaces. We are also going to devise a sidewalk from those parking spaces over to the adjacent 12 spaces.

Mr. Fiorello asked: As it presently exists there would be cars that would be parked but would have to pull out to Sparta Avenue.

Mr. Donahue stated: In front of the office building there is direct pull off from Sparta Avenue. That area would be removed and those parking spaces will be removed. This would be changed to a lawn area with a concrete sidewalk.

Mr. Donahue went on to describe the open space, which is not pavement or building coverage.

Mr. Fiorello asked Mr. Donahue to talk about the garbage pick-up.

Mr. Donohue stated: We are proposing four locations for the townhouse area. They are sporadic throughout. They are 12' x 15' in size. They will have roll out dumpsters where the

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garbage truck will drive up to the dumpsters. The idea was to have the dumpsters closer to the townhouses rather than a central location.

Mr. Donahue discussed the parks. There will be five parks throughout the site. Along with the loop road, there will be a paver sidewalk. This will provide pedestrian access from the retail area along the center loop road area and then back out either to the Community Center or out to Sparta Avenue. Along the pathway will be seats and some additional landscaping will be provided.

Mr. Donahue spoke about the buffering area and the potential for gravel or mulched walking path. To the west there is a 30-foot area which will have some additional plantings of evergreens and a 6 foot high vinyl fence which will be along the property line on the western side.

Mr. Donahue stated: Building 6 which is the northern most building is 50 feet off the property line, Building 4 is 64 feet off the property line and Building 3 is 64 feet off the property line. This does comply with the rear yard setbacks in the Townhouse Ordinance.

Mr. Donahue addressed the parking spaces. We will modify the parking for Unit 10. The four extra spaces will go on the opposite side of the original 12 spaces proposed. The site plan has been modified to reflect that.

Mr. Fiorello asked: Does Martarano Enterprises have a Letter of Interpretation (LOI)?

Mr. Donahue stated: Yes. We have a LOI from the DEP, which indicates there is a requirement for a 50 foot buffer area adjacent to the wetlands. In order to reconfigure the driveway, we are required to obtain a permit from the DEP.

Mr. Fiorello presented **Exhibit P7**, Fresh Water Wetlands Letter of Interpretation dated, February 3, 2010 and **Exhibit P8** GP10A, dated August 23, 2010.

Mr. Donahue stated: The LOI continues what was previously required and the NJDEP has approved it.

Mr. Fiorello asked: Have these plans been presented to the Sussex County Planning Board?

Mr. Donahue stated: No, they have not.

Mr. Fiorello asked: Do you understand that whether it is a subdivision or site plan, the Sussex County Planning Board will have to rule on this since they have jurisdiction on Sparta Avenue.

Mr. Donahue stated: Yes. I believe there has been some discussion with them.

Mr. Fiorello presented **Exhibit P9**, Memorialization of the discussion with the Sussex County Planning Board. Does that reflect their comment regarding their proposal for townhouses as opposed to a commercial development?

Mr. Donahue stated: Yes.

Mr. Donahue read part of the letter. "Martarano Enterprises and the County met to discuss a proposed multi-county development on the site of a previously proposed storage facility. The

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County believes that this land use type is much more compatible for the site and neighborhood."

Mr. Fiorello submitted this as **Exhibit P9**, Letter from the Sussex County Planning Board, November 30, 2011.

Mr. Donahue discussed the number and size of bedrooms within the plan, the storm water system and the infiltration systems, the lighting plan, the landscaping plan, and the soil sediment and the control plan which will be submitted to the Sussex County Soil and Conservation Service for certification, which is the necessary step for site plans.

Mr. LeFrois asked: Just to confirm, the preliminary site plan would not need to meet the requirements of fire department nor water and sewer requirements?

Mr. Fiorello stated: They would be subject to as a condition of the approval of the application.

Mr. LeFrois asked: If there are any modifications to the quantity of townhouse or anything like that is required, would you have to come back and address them?

Mr. Fiorello stated: Yes.

Mr. LeFrois asked: Will there be a Phasing Plan?

Mr. Donahue stated: The buildings will be constructed in groups of two or three.

Discussion ensued on the construction of the roadway and utilities prior to the construction of the units.

Mr. Soloway asked Mr. Bolio: Would your office recommend, in the event the Board approves the site plan, there be a condition making it subject to approval of the construction phasing schedule?

Mr. Bolio stated: I strongly recommend that as a condition.

Mr. LeFrois stated: One of the details for the light fixtures is not consistent with what we have seen around the Town.

Ms. Caldwell will provide the applicant with what the Town would like to see in terms of the lighting.

Mr. Flaherty asked: What is the line of site by the shrubs?

Mr. Donahue stated: It is 80 feet back. The line of site will not be blocked by the shrubs.

Mr. Flaherty stated: My concern is when someone is making a left hand turn.

Mr. Donahue stated: The shrubs that will be on the center island are a foot or two-feet in height and they will be very low to the ground as well on the western side.

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Mr. LeFrois stated: I think our engineer made a general comment about those five-foot medians probably not being able to support much growth and maybe being a nuisance more than a help.

Mr. Donahue stated: The medians can be eliminated. If we do, we will provide the trees adjacent to it and have more green area on the outside of that travel area.

Ms. Caldwell stated: I have a concern with the sidewalk along the southern portion of the retail building of proposed Lot 1. If the median was taken away you would have more space.

Mr. Donahue stated: We will provide a sidewalk at the retail area to the street sidewalk and it will connect with the loop road.

Ms. Caldwell stated: I have a concern with the bike path. It seems a bit narrow to be useful. Would it make more sense to have a sidewalk on the other side of the street since you are only providing a sidewalk on one side of the street?

Mr. Donahue stated: It is a 4-foot wide bike path. I think a double sidewalk for this application would be overkill. The loop sidewalk area provides a means for anyone to travel around the development. If you would like to eliminate the bike path, that is your choice. We included that as a suggestion.

Ms. Caldwell stated: Having sidewalks on both sides is typical for Newton.

Mr. Tharp stated: I do agree.

Mr. Donahue stated: In order to accommodate that, some of the units will have to be modified slightly.

Mr. Bolio asked: Are you agreeable to putting in both sidewalks?

Mr. Martarano stated: Yes.

Discussion ensued on the buffering.

Mr. Donahue went through Mr. Ferriero's Storm Water Management Report.

Mr. Bolio stated: My concern is the basin may be too small. I don't know if you have the room to increase it and also with the infiltration basins, you have not provided the soil testing in accordance with the storm water requirements. We do have some questions with the storm water management measures and it is unclear whether it is going to impact the layout they are proposing. This is something as the Board you need to consider. Since you are being asked to vote on preliminary site plan, do you want some of these issues resolved prior to voting or are you comfortable proceeding tonight with a vote.

Mr. Donahue stated: Previously we have done some soil logs throughout the property which are indicated on the plan and the actual logs themselves. Some areas adjacent to the existing warehouse areas had some rock outcropping but beyond that we had some good soils when we went down in certain areas 6 to 10 feet. We would have to provide soil and infiltration percolation rates prior to construction or shortly after this application to make sure they will function properly. The basin itself, we will look at the height of the berm.

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Mr. Tharp asked: Can we split it up so we can approve a use separately from the site plan?

Mr. Soloway stated: The statute makes it the applicant's option not the Board. The applicant has elected to do that with the subdivision but not with the site plan. It is a good idea to do as much as you can in one proceeding. To meaningfully assess the use variance you need to have a site plan illustrating exactly where everything will go. I don't know how you can accurately assess it without all the information.

Mr. Fiorello stated: We would like to bifurcate the site plan.

Mr. Soloway stated: I would suggest to Mr. Ferriero's office that they look at the report in the context of a bifurcated application to assess what needs to be reviewed now as opposed to later.

Mr. Soloway asked: What will be demolished?

Mr. Donahue stated: The warehouse, the storage buildings, and the one masonry building.

Mr. Flaherty asked: Where will the snow be removed to?

Mr. Donahue stated: The snow will be placed at the ends of the drive aisles or visitor spaces depending on how active they are. If the snow needs to be removed from the site it will be removed.

Mr. LeFrois opened this portion of the meeting up to the public specifically for questions of Mr. Donahue.

### 1<sup>st</sup> Public

Matthew Foran, 22 Orchard Street asked: What will the grade be? Wouldn't it make more sense to level the lot and add a retaining wall to stop the erosion?

Mr. Donahue stated: No that would be too severe of a disturbance for the entire property. We would have to blast the site. We would have to provide a large retaining wall. There is existing vegetation and grass that will stabilize the soil throughout the site. The Soil Conservation unit will come out too and provide certification that it is all stabilized.

### 2<sup>nd</sup> Public

Charles Briggs, 73 Pine Street asked: Will the fence be 10 feet off the property line or are you moving it into a larger buffer?

Mr. Donahue stated: The fence is going to go on the property line itself.

Mr. Briggs stated: It can't be right on the property line. It has to be 10 feet off.

Mr. Tharp stated: It needs to be one foot off the property line.

Mr. Briggs questioned the spacing of the evergreens.

Mr. Donahue stated: It is about 15 feet. It varies so that the trees can grow from center to center. We will also provide a double row going down.

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Mr. Briggs stated: On your last project; snow was getting dumped into the wetlands and I have pictures of it.

Mr. Donahue stated: It was never getting dumped into the wetlands. That was not part of the application.

Mr. Briggs asked: Will the mess that is there now, get cleaned up before this project starts?

Mr. Donahue stated: During construction, that area will be stabilized.

Mr. Briggs stated: For the past two years all that was there was a large dozer pushing large boulders, tree stumps and everything else and if I didn't complain hard enough the silt fence would not have gotten up.

Mr. LeFrois stated: The comments you are making now are part of the previous application that was approved.

Mr. Briggs stated: Let's clean up the old one first and start fresh.

Mr. LeFrois stated: Comment noted.

**3<sup>rd</sup> Public**

Kent Hardmeyer, 70 Pine Street, asked: On the apartment complex that is going to be converted to the low end housing, who will end up owning that?

Mr. Fiorello stated: The Condo Association will own it and provide maintenance. A charter has not yet been formed because we don't have a project to perform on.

Mr. Hardmeyer stated: Newton Commons, which is right in town, only has sidewalks on one side of the street. I would hope that any trees that are planted be on the side of the houses and not the sidewalks.

Mr. Fiorello stated: There is a notation that we stay away from certain types of trees. We are not looking to create a problem.

Mr. Hardmeyer stated: On the landscaping plan, you have pear trees.

Mr. Fiorello stated: I also saw a comment that we will use a comparable tree to the pear tree.

Mr. Hardmeyer stated: I think a lot of thought should be given to make some type of connection made to Pine Street Park. A path leading to the park would be a nice idea. I think there is enough dry land to give it some consideration.

Mr. Donahue stated: We could provide something to the wetland buffer.

Mr. LeFrois closed this public portion of the application.

Mr. Soloway stated: My request is if you are seeking any R.S.I.S de minimis exceptions, you are required to make a written request, itemizing what the exception is you are requiring and, why you are entitled to it. I am asking you before the next hearing to the extent you are seeking any, could you please do that?

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Mr. Donahue stated: Yes.

Dan Desario, Traffic Engineer, gave his qualifications and the Board accepted them.

Mr. Desario gave an overview of his traffic analysis. He referred to **Exhibit A6** and stated: The two-story masonry building currently houses office space on the top and a mix of office and retail on the bottom floor. That building will be converted to a Community Center if the Board grants the approval. The existing commercial building on the East side of the site along Sparta Avenue is all retail. It is about 2,000 sq. feet of vacant space. So the 2,000 sq. feet of vacant retail space in the commercial building from a traffic perspective is a wash because we are removing uses on the site. In terms of net difference of the plans before you, the increase in traffic at this site is going to be solely attributed to the proposed residential units of the 54 townhouses, and 6 apartment buildings. If you look at the trip generation that will be associated with this residential proposal, it is not a significant amount of traffic. In my opinion, when you look at the traffic splitting between east and west along Sparta Avenue, you will not be able to notice any noticeable changes in terms of area traffic operations.

Mr. Desario stated: We are here before you asking for a use variance. Typically with use variance applications you take a look at permitted uses in the zone vs. what is being requested as it relates to the use variance. In this particular instance there is an approval on the site for a permitted use. The approved plan for a 40,000 sq. foot building of retail as it relates to additional traffic along Sparta Avenue if that were ever to be constructed would generate a lot more traffic. From a traffic perspective, this new proposal is a better use of the property than the existing approval for the retail.

Mr. Desario stated: In the previous proposal there was going to be angled parking spaces. This new proposal does away with the angled spaces which is a benefit for the motoring public.

Mr. Fiorello asked: Is the 24 feet width of the road way an acceptable width from your opinion?

Mr. Desario stated: Yes it is.

Mr. Fiorello asked: At the internal turns, are the radii sufficient to enable safe and proper turns for the residential users as well as the use of emergency vehicles?

Mr. Desario stated: They are typical in what you find in these types of residential developments.

Mr. Fiorello asked: Would you anticipate during the course of a day that during peak hours the commercial utilization might generate more traffic in and out for those commercial establishments as opposed to residential?

Mr. Desario stated: Yes.

Mr. Fiorello stated: Would you say this is a less intensive use of the property as it relates to traffic in and out all day?

Mr. Desario stated: Yes.

Mr. Desario referred to the traffic report dated April 2, 2012, page 4 of 7. Table 4 is a comparison of the previously approved retail which is a little over 40,000 sq. feet as compared to proposed

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residential units. The net decrease would have a reduction of 51 total trips in the morning peak hour in and out and a total of 220 trips in the week day peak hour.

Mr. Fiorello stated: This would be during the one hour period of highest concentration. Is that correct?

Mr. Desario stated: Yes.

Mr. Fiorello stated: There will be 51 less cars in and out of the site in the morning peak hours and 220 less in the evening peak hours. That is a significant less intense traffic generation.

Mr. Desario stated: Yes.

Betsy Dolan, Dolan and Dean asked about the driveway movement and pass by trips from the former retail approval.

Mr. LeFrois asked: Can you define pass by trips?

Ms. Dolan defined pass by trips and stated that based on her calculation there would not be a reduction of 220 driveway movements but half that, 97 trips.

Mr. Desario stated: The trip generation is what you see at the driveways.

Ms. Dolan stated: My concern is with the eastern driveway design not only with the boulevard but with the wider entrance radius. There is inappropriate transition into the in-bound lane as well as into the left turn exit lane. With the elimination of the boulevard treatment and other modifications, do you think those transitions can be corrected?

Mr. Desario stated: Yes.

Ms. Dolan asked if a one-way orientation could be placed there in lieu of the stop bar to help control the conflicting movements so close to Sparta Avenue.

Mr. Desario stated: We will take a look at it. I don't see it as a large concern as it relates to the queuing.

Ms. Dolan questioned the dumpster locations. Some of them might be blocking site distances at the on-site locations.

Mr. Desario stated: We will look at those.

Ms. Dolan stated: In terms of the numbers, I concur with the findings that there is a dramatic reduction from what has been approved. The retail component that is to remain will exist up front and even though there is a vacancy next to Quick Chek, there are other occupancies that offset that, so the report in terms of number crunching is appropriate.

Mr. LeFrois opened up this portion of the meeting regarding traffic circulation or traffic impacts relative to this application.

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### 1<sup>st</sup> Public

Andrew VanOrden, 1 Linmor Avenue asked: Should this be zoned light industrial based on the new Master Plan and Zoning Ordinances? Would Thorlabs be considered light industrial?

Mr. Desario stated: I don't know how Thorlabs is classified but it could be similar.

Mr. VanOrden asked: Can you give me an example of what light industrial use would be?

Mr. Desario stated: A flex building where you have multiple tenants in it and one tenant might have a small assembly business receiving materials or a warehouse distribution where they receive a bunch of goods and distribute them out to various users.

Mr. VanOrder asked: How would you relate the traffic flow for the proposed variance to that type of facility?

Mr. Desario stated: Without having a specific plan but taking a look at a seven-acre site, you could put a light industrial type business on it with the associated parking that either generates similar or more traffic.

### 2<sup>nd</sup> Public

Mr. Charles Briggs, 73 Pine Street asked about the turning radius. He wanted to know if it has changed from the original proposal.

Mr. Desario stated: It is still the same.

Mr. Briggs stated: So the wheel base is 64.

Mr. Desario stated: Yes.

Mr. Briggs asked: How many trips.

Mr. Desario stated: 40 trips in the morning.

Mr. LeFrois closed this portion of the meeting to the public.

Ms. Caldwell, Newton Town Planner introduced the positive and negative criteria and the proof that needs to be provided relative to the use variance. With the positive criteria you have the special reasons which are addressing the Municipal Land Use law, the purposes of zoning and at least one or more describes how those purposes are met through this application. Another portion of the positive criteria is general welfare. Part of the general welfare is to say why this site is suited for the use that is being proposed. In terms of this site, single family residences and duplexes are contemplated and permitted within the C4. Really the burden of proof is to show that townhouses and apartments are particularly suited for this site. There is a two prong negative criteria that needs to be addressed. The first part is that there is a substantial detriment to the public good. The importance of the criteria is that it is a substantial detriment. We are looking to see if the impact can be mitigated so that they are not seen as a substantial detriment. The second part is to make sure the proposal does not impair the Master Plan of the Zoning Ordinance and that it is an enhanced improvement and to show this proposal is not inconsistent with the intent and purposes of the Master Plan and Zoning Ordinances of the Town. The courts have held that they prefer to see zoning done through ordinance rather than use variance so that could somewhat enhance the burden of proof.

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Mr. Fiorello introduced Mr. Rybak.

Tom Rybak gave his professional qualifications and the Board accepted them as an expert Planner for Martarano Enterprises.

Mr. Rybak presented two exhibits in addition to what was submitted.

Mr. Fiorello marked them as **Exhibit P10**, Satellite view of the surrounding site and its surrounding properties. It also shows the existing retail operation, existing office and the proposed development and neighboring properties across the street and the residential houses that are surrounding it. **Exhibit P11**, an artist rendering of one of the clusters showing the existing material that are being proposed that meet the development's requirements from the Master Plan.

Mr. Fiorello asked: Do you feel this site is suited for townhouses?

Mr. Rybak stated: Yes. This development on several levels meets the criteria of the Master Plan and also impacts on a positive level the neighboring properties. The retail component that is on the edge of the property reinforces the residential units that are in the back. The residential units become a buffer between the main streets which is Sparta Avenue and then you have a lesser of an impact where the existing proposed townhouses are being designed and many are near the existing houses in the back. The proposed plan becomes a soft development for the residential units in the back. It enhances their property value by introducing more residential into that space rather than a retail/office complex that was proposed originally. The other thing this application does is it enhances the sound transition in the neighborhood. It softens the traffic flow from Sparta Avenue. The vegetation that is being added compared to the original proposal is night and day. It helps on various levels in this development.

Mr. Fiorello asked: Does this help the general welfare of the surrounding areas in particular the residential uses to the North and West of **Exhibit 10**?

Mr. Rybak stated: This development is a major plus right now. You have a vacant piece of land that really is not occupied. There is some storage units and retail. This development will reinforce the streetscapes that are in the town and help in the overall of the spirit of Newton development.

Mr. Fiorello stated: One of the purposes of zoning is the appropriate use and development of land in a manner to promote public health, safety and general welfare. Considering this application as proposed, do you feel that proposal accommodates that principal for the use of zoning?

Mr. Rybak stated: Yes. It does.

Mr. Fiorello asked: With this proposal, there is significant more open space than with what was proposed of the two commercial buildings with asphalt all around. Is that true?

Mr. Rybak stated: That is true; however it depends on what your definition of open space is. Before you did have a lot of open space but a lot of open space was designated by parking lots. Now you have privacy, noise control and vegetation. This site is becoming the lungs for this little neighborhood. The openness is now giving you more of an advantage.

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Mr. Fiorello stated: Another purpose for zoning is the appropriate population density that will contribute to the well-being of persons and neighborhoods, communities and regions in addition to the preservation of the environment. In terms of the neighborhood do you feel this proposal accommodates and accomplishes that particular part of zoning?

Mr. Rybak stated: Yes. Even though it is a townhouse development, the amount of units there and the amount of acres you have in this development coincides with what the requirements are.

Mr. Fiorello stated: Can you address the impact on the environment.

Mr. Rybak stated: There are several impacts on the environment that are positive with this site plan. The first one is the increase of the green areas which basically give you a cooler environment. The trees will provide shade for the neighborhood.

Mr. Fiorello asked: Do you believe the provision of the six units of affordable housing contributes to the general welfare?

Mr. Rybak stated: This reinforces the requirements in the Master Plan and it helps in opening brand new developments to affordable housing.

Mr. Fiorello stated: Another purpose of zoning is to provide sufficient space in an appropriate location for a variety of residential uses in open space to meet the needs of all citizens state wide and in a DEP area. Do you believe the plan accomplishes that?

Mr. Rybak stated: Yes. You have the flexibility of affordability. You have the impact of the amount of vehicles you will have on the site by having the two car garage.

Mr. Fiorello asked: Is there a beneficial relationship between mixed uses on a 10-acre parcel like this?

Mr. Rybak stated: The most successful developments currently are the ones that have mixed uses where you have the reinforcement of retail, commercial and residential on the same site or close to the given site. The old application had just a single use scenario. If a residential component was added to that proposal it would have been more of a positive scenario. With this application having the commercial on the property and adding the residential, it reinforces the neighborhood concept and is very important to the vitality of this neighborhood.

Mr. Fiorello asked: Another purpose of zoning is to promote the visual environment. Do you feel this development enhances that purpose?

Mr. Rybak stated: Yes it does on several levels. Not only effectually but site wise you have the sloping hill of the site itself and the different levels of the residences and everything else will help to enhance that concept.

Mr. Rybak continued: In addition, the vegetation becomes the visual filter and sound proofing for a person walking through the site.

Mr. Fiorello stated: Do you feel this proposal accomplishes a more sufficient use of the land?

Mr. Rybak stated: Yes I do.

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Mr. Fiorello asked: Do you believe this proposal would be of any detriment to the public good?

Mr. Rybak stated: In looking at this development and what I have described and listened to with the other testimonies we heard tonight, I do not see any negative detriment to the neighborhood.

Mr. Fiorello asked: Do you feel this proposed type of development will substantially impact the integrity and purpose of the zoning plan in the Master Plan?

Mr. Rybak stated: No. It will not. As described before, the use is not a hard use. We are addressing what is required for this site in the Master Plan and the positive criteria outweighs the negative criteria.

Discussion ensued on the COAH requirement.

Mr. Rybak stated: We are using an existing building and we are trying to reuse what is there rather than knocking it down. We will be putting into commercial space residential units. We can do some changes on the inside to increase the square footage of the apartments. I do not think that is much of an issue.

Mr. LeFrois opened this portion of the meeting up to the public for questions for Mr. Rybak.

With no one stepping forward, Mr. LeFrois closed this portion of the meeting.

Mr. Fiorello questioned Ms. Fairclough.

Ms. Fairclough is a licensed real estate agent in the state of New Jersey. She is familiar with this site.

Mr. Fiorello asked: Do you feel this project will cause any detriment to the values of the contiguous property owners?

Ms. Fairclough stated: No. It will enhance the values.

Mr. Fiorello asked: Would you say most of the homes in Newton are owned or rented?

Ms. Fairclough stated: I believe at this time there is about 50% rental ownership in Newton. This project is going to skew it more towards ownership which is better for the town. Frankly, with Thorlabs coming into town and other business coming in there is nothing to sell these people. We are losing them. They are going to Andover and Sparta. We need to keep them in Newton.

Mr. Fiorello asked: If you keep them in Newton you can anticipate them utilizing the commercial masonry building?

Ms. Fairclough stated: Absolutely. I think they will be able to walk to Spring Street. It will help to re-vitalize Spring Street and help the Town in general.

Mr. Fiorello asked: Do you see any disadvantage for this development in terms of its use.

Ms. Fairclough stated: No. It will only enhance the property.

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Mr. Flaherty asked: How will this impact the schools?

Ms. Fairclough stated: Typically people that buy townhomes have smaller families. They are smaller units. They are not for families with lots of children. They are typically single professionals, young couple professionals or older couples. I can't guarantee that but that is what is typical.

Ms. Caldwell stated: Based on the studies, they show that townhouse will generate less kids in the schools.

Mr. LeFrois opened this portion of the meeting to the public for questions for Ms. Fairclough.

**1<sup>st</sup> Public**

Andrew VanOrden, 1 Linmor Avenue, asked: Are townhomes in the price range of \$250,000 moving. I know the market is very lean. How do you justify these units being sold?

Ms. Fairclough stated: There is no guarantee; however, there is a great demand. A lot of this demand is coming from Thorlabs. These people want to live in Newton. There are not many units for sale and what is for sale is multi family.

Mr. VanOrdern asked: What is the anticipated municipal school tax that one of these units would generate?

Ms. Fairclough stated: I will have to research that. It will be 54 units multiplied by whatever the rate is.

Mr. VanOrdern stated: It does cost about \$12,000 to educate one child provided they are not a special needs child. If you have one house with a child you are talking about a deficit to start with.

Mr. Fiorello stated: Those children that will populate your schools will also play on your sports teams; they will shop in your shopping centers. I don't know what is good planning whether to eliminate seniors because they need more medical care or youngsters because they populate the schools.

**2<sup>nd</sup> Public**

Joanne Rimes, 69 Pine Street stated: If these units do not sell, what is Plan B?

Ms. Fairclough stated: We are going to build to suit which means as we sell them we are going to build them.

Ms. Rimes asked: Will there be subletting allowed?

Mr. Fiorello stated: The homeowner buys it and has a mortgage. It will not be a bad investment.

Mr. LeFrois stated: I think the answer is there is not a rule prohibiting subletting.

Mr. Tharp stated: It would be up to the condo association. Since there is no association, the question cannot be answered yet.

Mr. Hardmeyer, 70 Pine Street, stated: I think you are a little over optimistic with what you think these things will sell for. I was at breakfast today with a long time resident at the Newton

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Commons and she says there are five or six available and they are going for \$150,000 to \$175,000 and they all have basements. I don't know how you are going to sell something smaller than Newton Commons for \$250,000. I don't think there are that many people in Thorlabs looking for homes. They all had homes before they moved to Thorlabs because they didn't move very far to begin with. If this doesn't go then what are we stuck with? We have already torn this apart for commercial that never materialized now we do the same for condos that might not materialize.

Mr. Caffrey stated: I can contest that there are people being relocated from other facilities of Thorlabs to Newton. I have my house for sale right now and a gentleman came to my house yesterday that has relocated from Thorlabs who is looking for a house. There are people looking.

Mr. Hardmeyer asked: Who is going to be paying for the upkeep of the condo? And if they are low to moderate income, will they be able to pay the \$300 to \$400 Condo Association fee? I think the people moving in need to know they could be subsidizing a low to moderate income building.

Mr. Fiorello stated: The rental for low to moderate income building is really controlled by the State. There are specific guidelines on who is qualified, number of people, their income, etc.

Mr. Soloway stated: Mr. Hardmeyer you are asking very intelligent questions, but the applicant has not thought this part through. If this all gets approved, one of the conditions will be to create a Homeowners' Association, the documents will get reviewed by the appropriate Town Officials and as part of that review one of the things that will get looked at is making sure there is adequate provision for maintenance of the common element.

Mr. Fiorello stated: Mr. Martarano said to me \$230,000 and I rounded it up to \$250,000. It needs to be competitive and they need to sell. They will not build something that will not sell.

Ms. Fairclough stated: The difference between these and Newton Commons is that these are brand new. The Newton Commons are old.

**2<sup>nd</sup> Public**

Charles Briggs stated: If this is going to be done in phases, what is the first phase?

Ms. Fairclough stated: We are going to presale. Mr. Martarano will make that decision.

Mr. Fiorello stated: We will start on the eastern side and will consist of all your road improvements, drainage and storage, curbing and paving.

Mr. Briggs asked: Will you clean up first?

Mr. Fiorello stated: Yes.

Mr. LeFrois stated: We have received a lot of information in a short period of time. Our professionals need the time to perform sufficient review on the reports and to provide their professional opinions regarding the use variance based on the technical information they need to review and what impact that may have on granting the use variance. We want our decision to be well documented and technically sound. I am suggesting that our professionals continue to review the information that has been provided. I think as a Board we generally like what we are hearing about the use variance. I think there are sound planning reasons to make the change but I want to ensure that our professionals from engineering, traffic and planning have

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taken the time to identify all the issues and have them addressed to some degree so we can make a sound decision on the use variance. I am recommending that we not have a vote on the use variance tonight and address it next month to allow more time and allow public comment on the application.

Mr. Soloway stated: I think it would be useful to have Mr. Ferriero's office look at the report and figure out what if anything needs to be provided to them to make a meaningful recommendation on the use variance only. I would also recommend that Mr. Donahue take another look at RSIS and any exceptions put them in writing.

Ms. Caldwell stated: Even though we are bifurcating the site plan, I think it is still important with the use variance to be somewhat certain that the layout of the development is not going to change drastically. If the Board is inclined to have a number of units put in for the approval that could be impacted if the site plan does change or if fewer units are able to be put on the site. Some of the issues should be nailed down more before you make your vote.

Mr. Fiorello stated: We would prefer to have a vote tonight but we understand your decision to have your professionals review things.

Mr. LeFrois stated: As I said before, we want to make the most sound decision we can make and we want to make sure our professionals have the time to go through the information and make sure that even if a use variance is granted any impact from the technical reports are taken into account and we need to hear from the public.

Mr. Soloway stated: This will be carried to May 16, 2012 at 7:00 PM no further notice is required.

**ADJOURNMENT**

**Mr. Flaherty made a motion to adjourn the meeting. Mr. Tharp seconded the motion. The meeting was adjourned with a unanimous "aye" vote. The meeting adjourned at 11:15 PM. The next regularly scheduled meeting will be held on May 16, 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**

**Exhibit P1**, Signature of the 29 residents.

**Exhibit P2**, Memorialized Resolution adopted on April 21, 2010.

**Exhibit P3**, Site Plan which references the Memorialized Resolution, dated July 2, 2010.

**Exhibit P4**, Architectural rendering of the two commercial buildings, July 30, 2010.

**Exhibit P5**, The new Title Sheet, revision date is April 16, 2012

**Exhibit P6**, Colorized version of the Landscape Plan, sheet 5 of 8.

**Exhibit P7**, Fresh Water Wetlands Letter of Interpretation dated, February 3, 2010.

**Exhibit P8** GP10A, dated August 23, 2010.

**Exhibit P9**, Memorialization of the discussion that with the Sussex County Planning Board.

**Exhibit P10**, Satellite view of the surrounding site and its surrounding properties and it also shows the existing retail operation, existing office and the proposed development and neighboring properties across the street and the residential houses that are surrounding it.

**Exhibit P11**, Artist rendering of one of the clusters showing the existing material that are being proposed that meet the development's requirements from the Master Plan, dated April 18, 2012.