

**Newton Planning Board
May 16, 2012
7:00 PM**

The regular meeting of the Newton Planning Board took place on the above date. Chairman Le Frois 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. Marion, Mr. Tharp, Mrs. Le Frois, Mrs. Diglio, Mr. Russo, Mr. Caffrey, Mr. Hardmeyer (arrived at 8:45), Mr. Torre, Mrs. Mattingly and Chairman Le Frois

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

BOARD SECRETARY: Kathy Citterbart

CONSIDERATION OF MINUTES

April 18, 2012, Regular Meeting, with corrections.

Mrs. Le Frois made a motion to approve the April 18, 2012 regular meeting minutes. Mr. Flaherty seconded the motion.

AYE: Mr. Flaherty, Mr. Tharp, Mr. Russo, Mr. Caffrey, Mrs. Mattingly, Chairman Le Frois

Recused: Mr. Flynn

Abstained: Mrs. Le Frois, Mrs. Diglio, Mr. Torre

HISTORIC RESOLUTIONS:

None

PLANNING BOARD RESOLUTION

None

OLD BUSINESS

**#BPFV-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.

(This was heard later in the meeting)

**Newton Planning Board
May 16, 2012
7:00 PM**

INFORMAL PRESENTATION

Michael Beck, Esq. of the firm Hiering, Dupignac, Stanzione, Dunn & Beck, to discuss Solar Projects for the following:

Town of Newton

Block 9.03, Lot 22, 111 Moran Street/35 Townsend Street

Newton Board of Education

Block 6.05, Lot 12, 54-56 Ryerson Avenue

Block 17.03, Lot 12, 81 Merriam Avenue

Mr. Beck gave an overview of the project at four locations. The four locations are the Newton Department of Public Works, the Newton Wastewater Treatment Plant, the Newton High School and the Merriam Avenue Elementary School.

Mr. Beck continued: Sussex County has followed the lead of other counties including Morris County and have teamed up with the professionals of Morris County and went through an open public process where they selected a participant to build out the county systems. They will be County owned systems. The solar panels are leased from the County to Sunlight General for tax purposes. The County owns the systems. They are leased because the County is funding them through bonds. The lease pays back the bonds. The County essentially is not putting out any money to do this. We see this as a win-win for the Town because they get the benefits of the reduced energy costs without any expenditure.

Mr. Soloway stated: There is a provision in the Municipal Land Use Law that deals with capital projects of public bodies/public agencies. In my opinion, this comes in under that provision. The Board's task tonight is to make a finding as to whether the projects are consistent with Newton's Master Plan.

Mrs. Le Frois stated: The Town Council has looked at opportunities for alternate energy sources not only for the taxpayers in Town but also for the municipality. We recently underwent an energy audit that provided us information on ways to save on some of our utilities expenses. This is our opportunity to bring solar panels into the Town without putting out taxpayer dollars. We are discussing four properties this evening. We had looked at many more properties in Town, but they were not compatible with the type of project that is being undertaken. The Town Council is very excited about this project.

Chairman Le Frois asked: What other municipalities are participating in this project?

Mr. Beck stated: There are somewhere between 13 to 15 municipalities participating in the project.

Mr. Torre asked: Does the County own the solar renewal energy credits?

Mr. Goodbody stated: The answer is no. We are leasing the solar systems. We are maintaining and operating those systems. We are providing electricity for those systems.

Mr. Torre asked: Will the rates of electricity that are being charged be charged back to the County?

Newton Planning Board
May 16, 2012
7:00 PM

Mr. Goodbody stated: The electricity rate is a fix number for every participant in the program. We charge a fixed rate for every kilowatt hour that we produce. The kilowatt hour is fixed. The electricity cost becomes manageable and a known commodity.

Discussion ensued between Mr. Torre and Mr. Goodbody.

Mr. Beck stated: If you would like more information you can go to the Morris County Improvement Authority website.

Chairman Le Frois asked: Can you talk about the physical improvements?

Mr. Joseph Hanrahan, of Hammer Land Engineering discussed the proposed plan at the Newton Wastewater Treatment Plant. There is one environmental issue by Morris Brook.

Mr. Beck asked: Can you tell the Board if any fencing is proposed around the proposed inverter unit for security?

Mr. Hanrahan stated: Yes there will be fencing. An 8 ft. chain-link fence will be around the photovoltaic arrays and a 6 ft. fence will be around the inverter.

Mr. Beck asked: Please tell the Board what the inverter looks like.

Mr. Hanrahan explained what the inverter looks like. The inverter will be placed adjacent to the arrays and an underground conduit will feed the inverter and from the inverter to the facility. There will be routine monthly maintenance. It will be in compliance with state and local noise ordinances. The inverters sound like idling cars.

Mr. Marion asked: Who is responsible for snow removal off the panels?

Mr. Hanrahan stated: If the sun is out it will melt the snow.

Mr. Beck stated: In Mr. Simmons report, he mentioned something on decommissioning. We have reserved funds that have been set aside for the decommissioning of the solar panels. If you would like a specific plan, we can provide that to you. It is something we would have to create if the Board made that recommendation.

Mr. Flynn asked: What is the lifespan of the solar panels?

Mr. Goodbody stated: It is a 15-year project. The panels now have a useful life of up to 25 years. Each year it would drop a ½ percent in reduction of electricity output.

Mr. Torre asked: If the price comes down on SRECS, what will happen to the project?

Mr. Goodbody stated: SRECS are a tradable commodity. The SRECS are purchased by utility companies as a way for them to fulfill an obligation for them to produce their electricity. Every year, every utility company has to buy a certain number of SRECS.

Mr. Beck stated: Mr. Goodbody confirmed that it is a commodity and it fluctuates so they assume the risk for it.

Chairman Le Frois stated: Just to clarify, our charge tonight is to confirm consistently with the Master Plan.

Newton Planning Board
May 16, 2012
7:00 PM

Discussion ensued on what would happen at the end of the 15-year time period for the project.

Mr. Beck went on to describe the proposed panels and carport at the Merriam Avenue Elementary School. We will be installing a 102.27 kw rooftop solar facility, and a 228.42 kw carport canopy solar facility.

Mr. Hanrahan stated: All existing light poles will be removed and will meet the Town's lighting and school's operation of light which is 395 kw.

Mr. Tharp asked: How are they protected if someone throws a rock or a basketball up on them?

Mr. Goodbody stated: Vandalism does concern us. The panels are very resilient. We have a supply of panels to replace broken ones. The panels have to stand up to a lot. The panels have to pass a lot of tests. We have insurance and it is our risk.

The Board raised many good questions and Mr. Hanrahan and Mr. Goodbody answered them.

Mr. Marion asked: When will this project take place?

Mr. Beck stated: Construction usually takes 6 to 8 weeks. It will be done this year.

Mr. Beck asked: Referring to Mr. Simmons report, will there be any bollards and/or fencing placed around the proposed inverters for security and safety from vehicles?

Mr. Hanrahan stated: Yes. There will be both.

Mr. Hanrahan gave an overview for the project at Newton High School. This will be similar to Merriam Avenue School but smaller. We will be installing three groupings of photovoltaic arrays located on proposed carport canopies to be constructed in the existing facility parking lot. There is also one inverter proposed to be located on a concrete slab adjacent to the existing parking lot.

Mr. Beck stated: We are working on putting on rooftop panels and it will be the same set up as previously discussed.

Mr. Tharp asked: How will you handle the long term roof maintenance?

Mr. Beck stated: As part of the evaluation process, we look at the roof, roof warranty and roof maintenance. We have eliminated some sites because they are not structurally capable of handling it or they plan on doing maintenance in the next five to six years and we don't want to disrupt that. We will only be dealing with rooftops that will not require any maintenance for the 15-year term of lease.

Mr. Goodbody stated: We don't put holes in the roofs. We do not want to compromise any maintenance warranty that is in place. The roofs must be inspected before the systems goes on.

Mr. Hanrahan explained Newton Department of Public Works location. The applicant is proposing three photovoltaic arrays located on the rooftops of the exiting DPW buildings to produce a total of 60.57 kwh of electricity. There are also four inverters proposed to be located on concrete slabs adjacent to the buildings.

Newton Planning Board
May 16, 2012
7:00 PM

Mr. Marion asked: Is the Municipal Building being looked at as a possible site?

Mr. Russo stated: The Municipal Building site was not an appropriate site; Park & Ride was looked at and found not appropriate. Any municipal facilities we looked at including the fire houses were not appropriate.

Chairman Le Frois asked if Ms. Caldwell or Mr. Simmons had any additional comments to make.

Mr. Simmons stated: Going back to the High School, I noted there are residences across Ryerson Avenue. Tonight was the first night that I heard about panels being put onto the roof area, I know the panels in the parking lot were proposed on the faculty parking area. My concern is the noise level.

Mr. Beck stated: In the plans that have been presented to the Board, page 100, you can see the proposed inverter will be located on a concrete slab adjacent to the existing parking lot.

Chairman Le Frois asked: Are rooftop units added that are not shown in the original proposal?

Mr. Beck stated: That's correct. The rooftop is still being investigated at this stage. We wanted to present it to you but we don't have that confirmation yet. The rooftop system will be going to the back of the school in the northeast section.

Ms. Caldwell stated: I did a review of the proposal and compared it with the Master Plan that has been adopted in 2008 and found it to be consistent with the environmental conservation goals that we have.

Chairman Le Frois asked: Would you be open to review by the Town Engineer on the colors and materials used?

Mr. Goodbody stated: We will be willing. There are some minimum requirements we would want. For example, we would want an 8 ft. fence to deter climbing.

Mr. Flaherty made a motion that this project is consistent with the Town's Master Plan and with the condition that the aesthetics would be subject to the Town Engineer's review so that it is consistent with the neighborhood. Mrs. Le Frois seconded the motion.

AYE: Mr. Fynn, Mr. Flaherty, Mr. Marion, Mr. Tharp, Mrs. Le Frois, Mrs. Diglio, Mr. Russo, Mr. Caffrey, Chairman Le Frois

Mr. Soloway stated: On these types of situations, I don't always do resolutions but because of the recommendation you are making, I will do a resolution for the next meeting. Would the applicant prefer this?

Mr. Beck stated: Yes. We would like to have something from the Board that we can give to the County.

Newton Planning Board
May 16, 2012
7:00 PM

Wells Fargo (#PSPA-06-2012)
Block 3.04, Lot 19
122 Water Street

Applicant is requesting amended site plan approval and any and all other variances or waivers to allow certain lighting upgrades to its existing bank facility at the site in order to comply with State Law and internal Wells Fargo ATM Lighting Compliance Program requirements.

Kristopher J. Facenda, Esq. with Nehmand, Perillo & Davis, Egg Harbor Township, NJ represented the applicant along with Michael Dipple, Professional Engineer, LZA Design, Englewood, NJ.

Mr. Facenda gave an overview of what the applicant is proposing to do.

SWORN: Michael Dipple, 60 Grand Avenue, Englewood, NJ. He gave his credentials and the Board accepted them.

Mr. Facenda requested Mr. Dipple to give an overview of the plan.

Mr. Dipple stated: He is familiar with the site and the neighboring properties and the Town's new ordinances.

Mr. Dipple stated the proposed plan.

Mr. Dipple presented **Exhibit A-1, Aerial photo from Microsoft of the site and the surrounding areas, dated May 16, 2012.** He went on to explain the photo.

Mr. Dipple explained the proposed changes in terms of the lighting fixtures.

Mr. Dipple presented **Exhibit A-2, soffits, dated May 16, 2012.**

Mr. Soloway asked: On the re-lamp and the re-lens, are you increasing the illumination?

Mr. Dipple stated: No. They will be re-lamped with 400 watt bulbs.

Mr. Soloway stated: I don't think this needs site plan approval. If the applicant is just replacing the lens and bulbs with same kind, you don't need Board approval.

Mr. Simmons stated: I looked at the site the other night and the bulbs are a white colored light as opposed to the high pressure sodium, the orange type of light. We had a meeting with TRC this afternoon and one of the questions that came up was the amount of wattage of the bulbs they were replacing. Until they checked the site plan, they were sure they would have to increase the wattage. In keeping with the theme of the Town and the streetscape to just replace the bulb and lens, I think that is the best of both worlds for everybody.

Mr. Soloway asked: Are you changing the wattage?

Mr. Dipple stated: No. It is 400 watts and it will remain 400 watts. He referred to an excerpt from the Bohler Plan and on this plan it indicates they are 400 watts fixtures and I agree with

Newton Planning Board
May 16, 2012
7:00 PM

Mr. Simmons that they appear to be metal halo light fixtures. They are a white light. The full intent is to make sure this bank complies with the standard in the New Jersey Administrative Code.

Mr. Fecenda asked: Will the pole design change at all and are they up to code?

Mr. Dipple stated: No. They will not change and they meet the code.

Mr. Fecenda asked: Referring to Ms. Caldwell's memo, can you address items 2 a, b and c.

Mr. Dipple stated: The lights will be on timers. We would consider them security lighting because the ATM is available for 24 hours and we are required by State Code to maintain foot candle levels to be on for 24 hours. Our plan focuses around the ATM.

Mr. Fecenda asked: Does 2 b become not applicable because we are not changing the pole fixture?

Mr. Dipple stated: That is correct.

Mr. Dipple stated: 2 c deals with a waiver that is required because the foot candle levels are higher than the ordinance.

Mr. Fecenda stated: Please address Mr. Simmons memo of May 11, 2012.

Mr. Dipple stated: We provided an explanation of the lamps and lens and what we intend to do. On the three new fixtures, I provided a diagram that is now obsolete. It no longer applies to what we are planning to do. The lighting levels for outdoor lights must meet State Code and I know the new ordinance refers to the IES North American Standard but I believe the NJ code would supersede that. As I indicated, the hours would not change on the approved lights.

With no questions from the Board, Chairman Le Frois opened up this portion of the meeting to the public.

With no public coming forward, this portion of the meeting was closed.

Mr. Marion made the motion for amended site plan approval and a waiver of the requirements of section 240-7.C of the code for the installation of three additional lights based on what Chairman Le Frois outlined. Mrs. Le Frois seconded the motion.

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

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

The applicant is requesting a Use Variance (the Site Plan bifurcated by applicant for later consideration) for the construction of 54 Townhouses and 6 apartments.

Mr. Simmons disqualified himself from the application.

Newton Planning Board
May 16, 2012
7:00 PM

RECUSED: Mrs. Le Frois, Mrs. Diglio, Mr. Flynn

Mr. Anthony Fiorello, Applicant's Attorney represented Martorana Enterprises.

Mr. Fiorello stated: At the last meeting, Mr. Rybek went through the positive criteria and I want to continue with the negative criteria and have him introduce two of the exhibits we have.

Previously Sworn: Tom Rybek, Architect and Planner and Mr. Greg Martorano, Principal, Martorano Enterprises.

Mr. Fiorello asked Mr. Rybek: You have been sworn as a planner. At the last meeting we reviewed with you the purposes of the Zoning Act which had to do with special reasons for this Board to grant a variance. We then began to focus on the negative criteria. Do you understand the negative criteria provide that a use variance cannot be granted without us showing that the variance can be granted without any substantial detriment to the public good? Correct?

Mr. Rybek stated: Correct.

Mr. Fiorello asked: Will this application in any way substantially depreciate and act as a detriment to the public good?

Mr. Rybek stated: No. It will not because the original approval for the site was approximately 40,000 sq. feet plus there was another 16,000 sq. feet that was remaining which included retail and storage use that is there now. The townhouse proposal is much less of an impact than the original approvals plus it becomes a natural buffer between the existing single family dwellings that are in the rear and the retail in the front.

Exhibit P12, isometric of the site being proposed, dated May 16, 2012 is presented.

Mr. Fiorello asked: What is an isometric rendering?

Mr. Rybek stated: It is a computer rendering of the actual site. It is a bird's eye view of the site. This is what the actual site will look like if the Board approves it.

Mr. Fiorello asked: What will the footprint be for single family homes in lieu of the townhomes.

Mr. Rybek stated: An average footprint for a single family would be around 1200 sq. feet. A townhouse that we are proposing will be around 870 sq. feet to 960 sq. ft. and that includes the living space and the garage.

Chairman Le Frois asked: In terms of footprint, are you referring to the sq. footage regardless of the number of stories?

Mr. Fiorello stated: That is correct. It will be the space that the building will occupy on the ground.

Newton Planning Board

May 16, 2012

7:00 PM

Mr. Fiorello stated: The Newton Town Ordinance 20-5-5.10 encompasses a concept of a provision of open space. This development enhances the utilization of the ordinance in that it provides for greater open space.

Mr. Rybek stated: It creates a greater open space because of the clustering of the units themselves. It also gives you common areas for the use by the residents, the general public and it becomes a natural buffer for the retail and the heavy traffic on the street.

Mr. Fiorello stated: Is it true you testified that this site is particularly suited for a townhouse development?

Mr. Rybek stated: That is correct.

Mr. Fiorello asked: Comparing a single family development in which this ordinance embraces, is the public good served by having single family houses abutting residential strip along Sparta Avenue as it presently exist?

Mr. Rybek stated: It would be a detriment to have that type of development closer to the retail scenario and also to the heavy traffic flow on Sparta Avenue.

Mr. Fiorello asked: The Zoning Ordinances and the philosophy expressed in the Master Plan talks about the preservation of property values within the municipality. Does the inclusion of townhouses as proposed by the application serve the public good, and if so in what way?

Mr. Rybek stated: It does because you have several things to consider. If it becomes a commercial entity, there will be a lot more parking, a lot more lighting, taller buildings, and a lot more traffic that experts have testified to. It is more of an impact and less of a buffer for the existing residences.

Mr. Fiorello asked: Is this something that is envisioned in the Master Plan of the Zoning Ordinances for the Town of Newton?

Mr. Rybek stated: Yes.

Mr. Fiorello asked: Would this proposal impair the intent and purpose of the zoning plan or would it be comply with the proposal?

Mr. Rybek stated: It would comply.

Mr. Fiorello asked: Both the zoning ordinances and the Master Plan talk about something that is engrained in the developmental philosophy and that is a provision for low income housing. In the ordinance 20-5.13.4 it envisions developments that incorporate low and moderate housing. Is this provided here?

Mr. Rybek stated: Yes.

Mr. Fiorello asked: What does low income housing accomplish?

Mr. Rybek stated: It helps the Town's development of the Master Plan and also helps the residents to afford new, modern structures. It helps older residents to be able to stay in town and

Newton Planning Board

May 16, 2012

7:00 PM

have less maintenance issues but still have openness and be close to retail in the business section. All of these things are a positive for the development.

Mr. Fiorello asked: Would this proposal absorb the existing unmet low or middle income housing needs that the ordinance's references?

Mr. Rybek stated: Most definitely.

Mr. Fiorello stated: That certainly would not be a detriment to the intent and purpose of the particular Zoning Ordinance and Master Plan.

Mr. Rybek stated: No. It would not be.

Mr. Fiorello asked: Will this development impair the property values and thus the philosophy of the Zoning Ordinance and the Master Plan to the existing single family homes that surround the West and North of the site?

Mr. Rybek stated: No. It will not. It will enhance the values of the properties as they are right now by having this residential buffer. This will act as a transition from a single family to the commercial strip along Sparta Avenue.

Mr. Rybek stated: It will enhance the public good. The one thing that we underline is that this development almost becomes a mix use where you have the retail component and you have the residential in the back. That in fact is an underlying factor of the Master Plan.

Mr. Fiorello stated: 40:55D-2D provides that the Board should consider a development that does not conflict with the general welfare of Sussex County.

Mr. Rybek stated: True.

Mr. Fiorello asked: Does the County believe that this land use type is much more compatible for this site in the neighborhood? Do you agree with that?

Mr. Rybek stated: Yes.

Mr. Fiorello asked: Do you have elevations that the Board has not seen of the rear of the proposed development?

Mr. Rybek stated: I handed out in the packet the original elevations and the satellite view that was entered in the testimony. It was Exhibit P9 and P10.

Mr. Rybek explained the elevations.

Mr. Marion asked a questions on Exhibit P9, there is a row of trees dividing the entrance and exit, and then there is a set of parking spots to the far left, with all of the trees there, I am looking at that as a safety issue.

Mr. Fiorello stated: This is a rendering of a drawing of how the development might look. The actually site plan will be the criteria.

Newton Planning Board

May 16, 2012

7:00 PM

Chairman Le Frois stated: The site plan will be at a later date. The decision tonight is on the use variance.

Chairman Le Frois opened up this portion to the public for questions for Mr. Rybek.

With no public coming forward, Chairman Le Frois closed this portion.

Mr. Bolio asked: We issued a letter dated May 7, 2012 and the Board asked us to look at the application specifically with respects to the use variance and item 1. Phasing of the project is critical to this development. Sequence should address positive criteria, in particular COAH should be complete with first market units on sale.

Mr. Fiorello stated: Phasing is typically addressed in the site plan application. This project is going to proceed from the southernmost driveway and proceed around the circle to where the affordable housing units would lie.

Mr. Soloway stated: Ordinarily the phasing aspect of an application is done with the site plan; it is a little different here and as Mr. Ferriero's report correctly states that part of the applicant's argument in favor of its entitlement to variance relief is tied into the provision of the affordable housing. That is one of the things that justifies the granting of the use variance relief they are seeking. Mr. Ferriero thinks it is tied in to suitability which is part of the positive criteria. The Board may be aware but when you bifurcate an application like this one, if the Board grants use variance approval among the conditions of the approval would be that the Board subsequently approves the site plan and in this case the subdivision application. The Municipal Land Use Law requires that when that is done the negative criteria that are required for the variance continue to apply when the Board assesses the site plans and subdivision applications. The positive criteria do not. My suggestion would be for the Board to be a little flexible and defer it to another day. If you do decide to grant this application, any approval tonight will be conditioned upon a phasing plan to the satisfaction of the acting Town Engineer and the Town Council as part of the Developer's Agreement that provides adequate assurance that the affordable housing will be built. It can be dealt with in more detail at the site plan hearing. This is the only way I can see to defer it without ignoring the issue.

Mr. Fiorello stated: Our intention is not to ignore the sensitivity of phasing. In my opinion, the best way to proceed is to have a limited development on the South side with 20 units, and then we can clear out the other units and immediately proceed with the affordable housing.

Mr. Russo stated: The answer is you don't get to Phase 2 until you have the affordable housing.

Mr. Fiorello stated: Precisely.

Mr. Torre stated: In my opinion, the affordable housing element of this is not the priority. We have a resident whose house has been affected and who has been attending these meetings on a regular basis and has been incredibly inconvenienced. If we can get the other side of the project going first, we can give him some relief. I think that is the priority and in addition to getting this developer's project going. In conjunction with the phasing they should be given a time line to when the affordable units must be in. I am more concerned with the existing residents and getting this project going than I am about the affordable housing.

Mr. Russo stated: The reality is that this is a use variance and there is positive and negative criteria that has to be met.

Newton Planning Board
May 16, 2012
7:00 PM

Mr. Fiorello introduced Mr. Donohue.

Mr. Fiorello asked Mr. Donohue about the placement of the fire hydrants and the utilization of the entire roadway.

Mr. Donohue stated that Mr. Martorana met with the fire official to clarify the placement of fire hydrants. The plans for the application indicate the water system, the location of the fire hydrants, and the turn radius for the loop roads. The fire official made a suggestion to relocate two fire hydrants that were on the plan. This information will be on the revised site plan.

Mr. Fiorello marked **Exhibit 14**, letter dated May 10, 2012 from Mr. Joe Inga.

Mr. Fiorello asked Mr. Donohue if he has had continued conversation with water and sewer.

Mr. Donohue stated: I wrote a letter to Mr. Baldwin, Superintendent of Newton Water and Sewer and he passed that information onto Harold Pellow & Associates, Inc.'s office. Mr. Simmons has stated to me verbally that there is sufficient capacity for water and sewer to accommodate this project.

Mr. Donohue described the proposed plan for Phase I and that the water and sewer services will come in from the Eastern driveway.

Mr. Donohue stated: The water line is looped as proposed. We will not make a complete loop of underground utilities in Phase I.

Chairman Le Frois opened up this portion of the meeting to the public for questions for Mr. Donohue. With no public stepping forward this portion of the meeting is closed.

Mr. Bolio asked: Do you know if anyone has spoken to the Fire Marshall and the phasing concept?

Mr. Donohue stated: No. But we will follow up with him. If the Fire Official requires the water line to be looped in Phase 1, then we will do that.

Mr. Bolio asked: When do you think the project will begin.

Mr. Donohue stated: Mid-September.

Mr. Rybek stated: The affordable housing is not an easy task. You have a commercial building and are going into a resident scenario. It is quite a bit of an investment to get that portion done. It will become very complicated. In our initial investigation, we found out there are some structural issues that need to be addressed to accommodate the residential area. An exploratory demolition will be done once the tenants move out.

Mr. Bolio stated: I will need to see the phasing plan and a separate section for storm water management.

Chairman Le Frois opened this portion of the application to the public.

Newton Planning Board
May 16, 2012
7:00 PM

First Public

SWORN: Mr. Charles Briggs, 73 Pine Street, Newton (pointed out on the plan where his house is located) and stated: I understand something has to be done. This project is better than the first. I do have some concerns with what is there. He showed photographs of what his backyard looks like. We haven't had much rain in a long time. We have just had a little bit of rain and all my property is wet back there and it is flooded. My concern is that something gets done with that prior to roads being built and buildings being constructed. In case something does happen, we won't be left with what is there now. I would just like to show the new Board members what I have to put up with for the past two years.

Chairman Le Frois stated: This Board cannot do much about that. It would be up to other departments in the Town, specifically related to code enforcement.

Mr. Briggs asked: Before this plan gets approved can't something be done that before a road gets puts in, before a pipe gets put in, let's get this graded out, let's get the trees in place and move on like other Towns.

Chairman Le Frois stated: There should not be a negative impact to your property with this project. This is a separate issue to be dealt with by the developer.

Mr. Briggs stated: I would like to see something put in place that the tree lines get done first, prior to a building getting put up and the grading gets done the correct way.

Chairman Le Frois stated: When we get to the site plan application, all of your comments will be addressed.

Mr. Briggs stated: He is in favor of the townhomes.

Chairman Le Frois stated: I will speak with our Zoning Officer to make sure these issues are taken care of as far as the current construction stands.

2nd Public

SWORN: Paul Campana, 65 Pine Street stated: I am in favor of the new townhomes going in. I speak on behalf of the residents and we would really like this to go forward. It would benefit us. He seems very willing to work with the neighbors and the Board. I hope the Board will push through and make it happen.

3rd Public

SWORN: Nanette Thomas, 7 Orchard Street stated: I was originally against the project from the beginning but I changed when I saw it was going to be townhouses. It is very important to me that this piece of property be developed. I am aware of the fact that this Town needs more revenue. As a property owner we bear the burden of everything. I think the townhouses will do better than the apartment. Most people want new. I grew up in Montclair and that is the way they do. They build the units as they sell them. I see this as an improvement. We need this revenue. I think the bigger picture is we want to see it developed so it is not a big mud pit, we would like bushes, trees anything growing and we would like to see new neighbors who will come and buy stuff.

Newton Planning Board
May 16, 2012
7:00 PM

Chairman Le Frois closed this portion of meeting.

Mrs. Caldwell stated: There are legal findings that the Board needs to make in order to grant the use variance. The legal findings will be the special reasons, the positive criteria and the negative criteria. You need to prove general welfare for the public. You have to show that there is not substantial detriment to the public good. That it does not impact the surrounding neighborhoods in a negative way. Another finding is that this proposal does not impair the Master Plan. If all these findings can be met, than a use variance can be granted.

Chairman Le Frois asked the Board members to give their input on the proposal.

Mr. Flaherty stated: I think it has been beneficial to the community and the surrounding neighbors. I think it does not present a detriment to the public good and I don't think it impairs the intent to the Zoning Ordinance and the Zoning Plans. I look upon this very favorably. I think they do have to address the concerns of the neighbors in terms of the grading, shrubs and trees.

Mr. Marion stated: I concur. I think once we get to the site plan application, we work in conjunction with helping the neighbors with the shrubbery and berms in the back as part of Phase I.

Mr. Tharp stated: I agree with Mr. Flaherty and Mr. Marion. As far as the use variance, I am in favor. When we get to site plan, I am going to put your feet to fire as far as what I would like to see.

Mr. Russo stated: I think this application is far superior to the commercial application that we approved. It meets the positive and negative criteria and from a municipal standpoint, it will be beneficial to the community.

Mr. Caffrey stated: I agree with Mr. Russo's comments. I am very excited about it and looking forward to moving forward with it.

Mr. Torre stated: I agree with all the comments.

Mr. Mattingly stated: I agree with all the comments.

Chairman Le Frois stated: I concur with the testimony of the applicant. It does provide a good buffer. It is consistent with the overall intent of the Town's Master Plan.

Mr. Soloway stated: The motion is to allow 54 townhomes on the rear undeveloped portion, to convert the existing office building to a community center with six low to moderate income apartments on top and to demolish the existing warehouse self-storage buildings that are behind the office buildings. Based on Ms. Caldwell's report it would be a D5 Density Variance to allow 7.66 per acre in lieu of the 4.8. This is what we will be approving for the use variance.

Mr. Soloway continued: The site plan application is subject, by statute, to the subsequent approval by this Board of the site plan that it is consistent with what we have been shown and a subdivision. Both of those applications would have the negative criteria applicable to them. Because they have been bifurcated, they would be assessed under the new ordinance rather than the old ordinance which is what applied on the initial filing. Based on the discussion of Mr. Ferriero's report this approval would be conditioned upon the applicant presenting a construction phasing plan or schedule satisfactory to the Board, the acting Town Engineer and the Town Council if the Council requires a Developer's Agreement.

Newton Planning Board
May 16, 2012
7:00 PM

Chairman Le Frois stated: This is for assurance that it will be constructed but not for a specific time. The thing I am a little nervous about is specifying a time that would cause a hardship.

Mr. Soloway stated: It would be difficult for the Board to spell out a phasing plan tonight. We just want to make sure the affordable housing gets built. All details of this application will be incorporated in the site plan. No decision will be made tonight on any of that.

Mr. Torre asked: Will that include the interaction of Mr. Donohue and the Fire Marshall?

Mr. Soloway stated: Yes. If the Board approves this application along the lines that I outlined, it is not an approval to build anything. It is a finding that the applicant has met the criteria to build the use as it is proposing.

Mr. Torre asked: Will the site plan come back to us?

Mr. Soloway stated: Yes.

Mr. Flaherty made a motion to approve the motion that Mr. Soloway outlined. Mr. Tharp seconded the motion.

AYE: Mr. Flaherty, Mr. Tharp, Mr. Russo, Mr. Caffrey, Mr. Torre, Mrs. Mattingly, Chairman Le Frois

ADJOURNMENT

Mr. Torre 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 10:30 PM. The next regularly scheduled meeting will be held on June 20, 2012, at 7:00 PM in the Council Chambers of the Municipal Building.

Respectfully submitted,



Katherine Citterbart
Planning Board Secretary

**Newton Planning Board
May 16, 2012
7:00 PM**

Exhibit Page

Wells Fargo

Exhibit A-1, Aerial photo from Microsoft of the site and the surrounding areas, dated May 16, 2012.

Exhibit A-2, soffits, dated May 16, 2012.

Mariorana Enterprises

Exhibit P12, isometric of the site being proposed, dated May 16, 2012 is presented.

Exhibit 14, letter *dated* May 10, 2012 from Mr. Joe Inga.