

# **City of Northfield**

## **Planning & Zoning Board**

**1600 Shore Road**

**Northfield, New Jersey 08225**

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Minutes: July 19, 2007

Notice of this meeting had been given in accordance with Chapter 231 Public Law 1975, otherwise known as the Open Public Meetings Act. Notice of this meeting has been given to The Press, posted on the bulletin board in City Hall, and filed with the City Clerk, stating the date, time and place of the meeting and the agenda to the extent known.

The regular meeting of the Northfield Planning & Zoning Board, held on Thursday, July 19, 2007 in Council Chambers, City Hall, Northfield, was opened by Chairman Richard Levitt at 7:29 p.m. and the following members were present:

Dr. Richard Levitt-Chairman  
Clem Scharff-Vice Chairman  
Mayor Frank Perri  
Jimmy Martinez, Councilman  
Jeffrey Bruckler, City Administrator-absent  
Ron Roegiers  
Nick Droboniku  
Pete DaPrato  
Henry Notaro  
Guy Schlachter  
Lou Milone-absent  
Jason O'Grady-absent

Thomas Subranni, Esq.- Solicitor  
Matt Doran, PE-Engineer

There were three items on the agenda for this evening. The first item was an informational presentation from Atlantic County Division of Facilities Management. Anthony Pagano, Esq., Andy Schaeffer, PE, and Marty Blumberg, the architect gave the presentation. The County is going to expand the Voting Machine Warehouse located in the County Government Complex on Dolphin Avenue. The existing structure is 425 ft. from Dolphin Avenue and is adjacent to Meadowview Nursing Home. It is a one-story masonry structure that is 10,404 sq. ft. and is currently used to store and service voting machines. The County will be expanding the building an additional 10,000 sq. ft. This will include two bathrooms and a classroom for poll worker training. The project is exempt from application of the City's Land Use Ordinance. Mr. Schaeffer described the site plan to the Board and Mr. Blumberg described the new building. Dr. Levitt asked if any shrubbery was being removed and Mr. Schaeffer commented that any shrubbery removed would be replaced.

The second item on the agenda was a discussion between the Board and Matt Doran concerning the Proposed Tree Removal and Protection Ordinance that was drafted by Mr. Doran. The draft is a 19-page detailed document requested by The Governing Body and is based on Galloway Township's Ordinance since theirs is the most extensive. Dr. Levitt began by commenting that there have been incidents in the City where developers have clear cut lots of significant trees and have thus changed the character of certain neighborhoods. He would like Mr. Doran to update the draft after tonight's discussion and hopefully vote on the ordinance at the next meeting. Dr. Levitt asked that no cutting of trees in a public right of way without a permit be added to the ordinance. Mr. Scharff asked about measuring trees. Mr. Doran stated that trees are measured at 4 ½ ft. above the highest elevation around the tree to accommodate sloping of certain trees. Mr. Scharff added that an exemption would be needed for Birch Grove Park rangers to be able to remove dead trees from the public park. The Ordinance will address restrictions for developers and homeowners separately. Council will need to set fees for permits and fines. An exemption will need to be added for trees in the way of energy saving devices. No one from the public wished to give opinions on the ordinance draft. Discussion will resume at the next meeting.

The third item on the agenda is Palombo's Med-Rite Pharmacy which was remanded back to the Board by Judge Perskie. Dr. Levitt, Nick Droboniku and Councilman Martinez recused themselves for various reasons. Vice Chairman Scharff took over the meeting. Nick Talvacchia, Esq. represented Palombo's. The following witnesses were sworn in: Aldo Palombo, Jr., owner of the pharmacy, Jon Barnhart, Licensed Planner and Engineer, and Al Litwornia, Traffic Engineer.

Mr. Talvacchia began by asking the Board for an interpretation on the current pharmacy use being authorized by prior land use approvals. The first two hearings were October 20, 2005 and January 19, 2006. The Board needs to determine if the use today is different in nature and intensity from 1996 when the last variance was granted, as far as the zoning ordinance is concerned, to require a variance at this time. Mr. Talvacchia discussed court cases, namely "Stop & Shop". He stated that what has changed from 1996 is the amount of delivery generated from the increase in the amount of business that Mr. Palombo is doing. The use was a pharmacy in 1996 and that use is still a pharmacy today. Mr. Palombo stated that his testimony is the same as previous hearings. Mr. Talvacchia told the Board that in 1996 the store was 70% delivery and 30% walk-in. Today, the differences are an increase in business and employees and the pharmacy is now almost 100% delivery. Mr. Talvacchia stressed the Mr. Palombo has a retail pharmacy license and does not have a wholesale license. The State of NJ has separate rules and laws for each type of license. Mr. Palombo testified that he services group homes and nursing homes and fills individual prescriptions for specific patients. Each prescription is labeled individually for patients. They do not bill the nursing home as a whole, but bill Medicare, Medicaid, and insurance companies. Mr. Palombo delivers to the nursing home since the majority of the patients do not have the ability to pick up their own medications. In 1996 the business operated the same way and he has chosen to eliminate the walk-in business because it is difficult to maintain and compete with the large retail chains.

Mr. Barnhart gave his qualifications to testify as a professional witness. He is a licensed Planner and Engineer who has appeared before the Board on numerous occasions. His task was to create an analysis of past approvals and the court order. The case was remanded to compare uses in 1996 to today. In 1996 the pharmacy was an existing non-conforming use (retail business) which did not conform to R-3 residential. He referred to 12 conditions listed in the 1996 Resolution. This Resolution showed that the Board acknowledged the retail use including the 12 conditions for "D" variance approval. He believes the use today is the same retail use. Mr. Palombo did change the business. He is only doing better business, which is not a more intense use and he feels the Board cannot take away the use variance just because Mr. Palombo is more successful. There has been no deviation from the 12 original conditions. Mr. Barnhart looked at how this would be

treated in other zones and referred to the Department of Labor's definition of a drug store. This use is permitted in three other zones.

Mayor Perri spoke about the beauty parlor and said it should have been removed in 2005 when complaints were filed. Mr. Talvacchia answered that Mr. Palombo did eventually buy out the salon and lost a lot of money in the process.

Mr. Subranni gave his interpretation and believes that the Stop & Shop case does not apply here. The case did not involve non-conforming uses. The stores were allowed in the zones and the case involved a section of parking that was in a residential zone. In the Palombo's case, the entire site is in a residential zone. He stated that the issue is whether the character of the business has changed and if the use has sufficiently intensified. Mr. Talvacchia argued that the Belville-Parrillo's case that Mr. Subranni referred to applies to grandfathered uses not uses granted by variances. The two lawyers continued to compare case law.

Mr. Scharff opened the public session with a reminder that this portion of the hearing deals with the Interpretation issue.

Norm Wilson of 14 E. Oakcrest Avenue, Block 153, Lot 24 spoke first. He has lived in Northfield for 25 years and supports the Palombo's. He doesn't understand why the Board wants to chase businesses out of Northfield. He lives directly across the street and feels Aldo Palombo is a good neighbor and has helped the City. He presented a petition to the Board with 30 signatures in support of the Pharmacy. He believes the parking issue has been resolved. He also mentioned that he has concerns with the House & Garden site which he feels is an injustice.

William Meade has been an employee of Palombo's for 20 years and has been a resident of Northfield for 10 years. He has four children and has only good things to say about Mr. Palombo and his business.

Aldo Palombo, Sr. works with his son and feels he has deep concerns for his employees and cares for the welfare of his customers. The parking problem has been eliminated and the business is important to the community.

William Neely is a retired employee who was very happy working for Mr. Palombo. He believes Mr. Palombo has tried to conform to everything he has been asked to do and feels it is important to keep this taxpaying entity in the City.

Don Kelly has lived in Northfield since 1962 and feels the Palombo's are great people and bring revenue into town. He wants the business to stay.

Mr. Scharff closed the public session and entered the petition as an exhibit to the file as exhibit A-1. A letter from Our Lady's Multi-Care Center is labeled exhibit A-2. The letter states they have done business with the Pharmacy continuously since 1988.

Mayor Perri commented that the main issue is the parking as it relates to the use. The public has complained in the past that ambulances were blocked due to the over-parking. He agrees that Mr. Palombo has addressed and fixed those problems and the beauty parlor has been eliminated. He agrees the use is similar and circumstances are better than before. There is no longer parking in the right of ways on municipal streets. In the past there was a large public outcry and the Board has no guarantees that if the Board agrees that the use is the same, that the parking issue will not return to again create safety issues.

Mr. Roegiers commented that decisions need to be based on the criteria for each case. He posed the question-Does a more successful business create an intensity of use? He said Palombo's is a one-step retail distribution pharmacy.

Mr. Schlachter agrees that Mr. Palombo's business has created a more intense use and has increased traffic and employees. He compared the business to Ventura's which has also increased its business, but feels this has not had a negative impact on the City and is not a detriment.

Mayor Perri asked for clarification as to what the motion will be. Mr. Scharff answered that the motion would be that the Board agrees the existing use is retail pharmacy and is similar to the use in 1996. Mr. Subranni further clarified that the issue is whether the use is substantially the same as permitted by the 1996 variance and that no expansion or change in character exists. A 'yes' vote would be in favor of the applicant and a 'no' vote would move the application into a variance phase. Mayor Perri made the motion and Mr. Schlachter seconded.

Mr. Talvacchia and Mr. Subranni discussed the motion and clarified the motion for the Board. Mr. Subranni stands on his interpretation. Mr. Talvacchia quoted the County Court and said the Board must decide whether the uses are sufficiently different in nature.

Mayor Perri added that there are similarities in the uses today and in 1996 and the operation does fit the footprint of the building. He feels Palombo's has conformed to the 12 points specifically noted in the 1996 resolution.

Mr. DaPrato commented that since being appointed to the Board, he feels this is the toughest application he has been involved with. He noted that he has heard nothing but positive things about Mr. Palombo.

The following Board members voted yes: Mayor Perri, Mr. Scharff, Mr. Roegiers, Mr. DaPrato, Mr. Notaro, Mr. Schlachter.

There were two resolutions to memorialize for Crystal Aikens and Melvin & Kathleen Thompson. Mayor Perri made the motion and Mr. DaPrato seconded. All voted in favor with Mr. Roegiers and Mr. Schlachter abstaining. A voice vote was all in favor.

Mr. Roegiers made the motion to close the meeting and Mr. DaPrato seconded. Vice Chairman Scharff closed the meeting at 9:29 p.m.

Respectfully submitted,

Robin Atlas, Secretary to the Board