

City of Northfield
Planning & Zoning Board
1600 Shore Road
Northfield, New Jersey 08225
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Minutes: January 19, 2006

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, January 19, 2006 in Council Chambers, City Hall, Northfield, was opened by Chairman Richard Levitt at 7:35 p.m. with the following members present:

Dr. Richard Levitt
Mayor Frank Perri
Guy Schlachter, Councilman
Jerry Nuzzolo, Construction Official & Inspector
Art Barrera
Clem Scharff-absent
Lou Milone
Ron Roegiers
Nick Droboniku
Pete DePrato
Henry Notaro

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

Chairman Richard Levitt opened the meeting at 7:35 p.m. The first application is from Aldo A. & Mary Pat Palombo who own Palombo's Pharmacy located at the corner of Oakcrest and Shore Road, Block 78, Lots 18 & 19 and Block 76, Lots 19 & 20. The Pharmacy is located in the R-1 zone. Aldo Palombo appeared before the Board on October 20, 2005 for a 'Use Interpretation' but was asked to return on this date with a complete application. The hearing of this application is considered a new submission and therefore, the new Board members for 2006 are eligible to vote. The Palombo's are represented by Steven D. Scherzer, Esq. of Cooper Levenson in Atlantic City and he began his presentation by asking that resident's comments from the last hearing that were of a positive nature be incorporated into these minutes. Chairman Levitt asked the Secretary to reference these comments into these minutes and they are as such:

Norm Wilson of 14 E. Oakcrest Avenue, a resident of 22 years, was sworn in. He feels that once the hair salon vacated, the parking problem was solved. He believes Palombo's to be a good neighbor who fulfills an important need. He is confident the parking problem is fixed.

Kathy Greist, who lives at the corner of Oakcrest and Shore Road, was sworn in. She agreed that the parking problem has been solved. She can now get her boat trailer out of her yard safely. She is pleased that the parking problem is no longer an issue.

Chairman Levitt swore in Aldo Palombo, Steven Scherzer and two witnesses, William M. Meade III, the facilities use manager representing the United Methodist Church in Linwood and Pete Burrough, the Solicitor of the Linwood Zoning Board. Mr. Scherzer gave an overview of the application and situation including a description of the pharmacy, the vacated beauty salon parking issues, neighbor's problems with the parking and House and Garden. A retail pharmacy has been at the site since the 1940's and the Palombo's have been operating a pharmacy at the site since the early 1980's. Mr. Scherzer stressed that although the site is now in the R-1 residential zone, the location is not suitable to residential occupancy. He agrees the neighbor's had a right to complain about the parking problems and the applicant's attempted to solve the problem with the buy out of the beauty salon lease for \$5,000. The space remains empty. No rent has been collected for about a year and Mr. Palombo is losing \$1,500 per month. His employees were also told they could no longer park on any streets or they could be fired. Space has been leased at House & Garden which allows the employees to park there. This will no longer be an option when House & Garden completes their renovations as the parking will be needed for their office/retail expansions. The Palombo's have since contacted the United Methodist Church at the corners of Central Avenue and Shore Road in Linwood about using a dirt/grass parking lot located at Marvin Avenue and Shore Road. The Church has agreed by letter to allow Palombo's employees to park in the lot Monday to Friday, but at this time, no formal agreement has been made. The lot holds 55 to 65 cars. Mr. Scherzer commented that the Palombo's were sited about a year ago for what he believes to be parking issues and instead of pursuing the issue in court, the applicants decided to come before the Planning Board to try to solve the problem.

Chairman Levitt stated that the applicant's are here this evening at the request of Judge Henry Broome to appear before the Board for an interpretation since they have been cited by Northfield's Zoning Official for a change of use and for failure to provide on-site parking. The question that needs to be determined is whether or not this change of use exists. Dr. Levitt referred to the last meeting with the applicants when Tom Subranni cited case law in which a change of use may be considered such if the nature of the business or the intensity of use increases even though the actual type of business does not necessarily change. The Mayor provided copies of the citations for the record. Dr. Levitt noted that parking is also a major issue and the applicants need to show that the parking will be adequate and that the issue is resolved. Jerry Nuzollo questioned whether we are considering a "C" or "D" variance. The use change refers to the "D" variance and the "C" variance refers to the parking. Mr. Subranni clarified that the first consideration is the decision as to whether or not an expansion of a non-conforming pre-existing use exists, therefore requiring a "D" variance. If it is not an expansion of use, the Board would not need to consider a "C" or "D" variance. If the expansion is due to greater activity or the change from retail to wholesale, a "D" variance would be necessary as well as a "C" variance for parking which also would need to be proven to be adequate. Dr. Levitt commented that if a change in use does not exist, the Board does not have the authority to demand more parking.

Mr. Scherzer reiterated that the business is not a wholesale business and that Mr. Palombo is not licensed for wholesale which requires a different type of license altogether. Mr. Scherzer provided as evidence a copy of Mr. Palombo's current license and it was labeled A-1 and admitted to the applicant's file. Mr. Palombo said that his retail license is a State-issued license and that a wholesale license is Federal. Mr. Palombo discussed the changes that have undergone in the Pharmacy market. Privately owned pharmacies are dwindling. He stressed that he has always serviced nursing homes, filling individual prescriptions and does not sell in bulk form. He has found the need to specialize his pharmacy operation in order to stay and business. He wants to keep his business in Northfield and feels he is an asset to the community.

Mr. Scherzer continued his presentation and questioning of Mr. Palombo. He noted that House and Garden have not put them on notice to vacate their parking lot and that he does not feel the pharmacy provides noise or disruption to the surrounding neighborhood. They do anticipate House and Garden to discontinue their parking agreement and they are looking into other options, namely the United Methodist Church. The pharmacy is willing to fill prescriptions to individual Doctors should they come into the pharmacy and need a prescription filled in an emergency. Mr. Palombo stated he has 12 to 13 delivery vehicles. Councilman Schlachter asked about hours of operation and was told they are open from 8 to 6 but they do emergencies and at least 3 people work until 10 p.m. They are open 7 days a week with Sunday hours from 8 a.m. to 12 noon. They do not need overflow parking on weekends. Mr. Scherzer noted that the business has indeed grown but the number of public visiting the store is greatly reduced.

Mr. Scherzer questioned his witness Bill Meade, a volunteer facilities manager at the Central United Methodist Church in Linwood. He previously was a member of Linwood City Council and served as council liaison to the Planning Board for a few of those years. 4 to 5 months ago, Mr. Meade spoke with Aldo Palombo about his parking situation and said that the church had parking available at the Marvin Avenue lot during the week. Dated January 4, 2006, Mr. Scherzer provided a letter which was added to the application from W. Donald Brown, Board of Trustees Chairman at the church which stated the approval for Palombo's Med-Rite Pharmacy employees to park on their lot Monday to Friday. This was pending the preparation of an agreement by the church's attorney. The approval is dated September 20, 2005. Mr. Meade continued by stating that his lot can hold 60 to 70 cars. Mr. Scherzer stated that his clients would be willing to come back before the Board if the church parking situation changed in the future.

An additional witness, Pete Burroughs spoke next. He is the Zoning Board Solicitor with the City of Linwood. He stated for the record that as long as the lot can sustain the parking, Mr. Palombo would not need to apply to Linwood Zoning for approval. Linwood doesn't have an issue with one owner allowing another owner to park on site. Linwood doesn't regulate unless an insufficiency exists. Mr. Burroughs feels parking problems are a police issue. Mr. Scherzer stated that his client would be willing to go before the Linwood Board for site plan approval if required by this Board.

Chairman Levitt opened the public session. Gordon Lawson, who lives on Marvin Avenue, was sworn in. He stated that he has heard no testimony about what the Building Occupancy Requirement is for the Pharmacy site. He feels that with so many employees, there may be a fire safety issue. He is concerned about the parking and the number of cars coming and going and the effects on traffic and safety. He stated that he feels there has been no testimony as to the benefits to the community. He noted that the Marvin Avenue parking lot is an unpaved, dirt lot that is dusty and full of pot holes. If it is to be used for daily parking, it will only worsen the conditions. He also stated that the land is now used for a non-profit institutional use and if parking is allowed, it would become a commercial use. He continued by saying that Ted Ridgeway, Esq., a neighboring attorney's office, currently has an easement which allows the attorney, employees, and clients a right of way through the lot to get to the office. Mr. Ridgeway maintains the lot. Dr. Levitt intervened with a statement that the quality of parking is not the issue here and is not within the Board's jurisdiction. There is no site plan application filed. This Board is concerned with the adequacy of parking. Mr. Lawson answered that the Board should be assured that no fire code is being violated before granting a variance. Mr. Scherzer gave surety that the Palombo's would abide by any fire laws.

Mr. Nuzollo commented that the Building Dept. does not have a CO under Mr. Palombo's name and therefore the building wouldn't have been inspected for fire violations. Mr. Scherzer again assured the Board that his client agrees to abide by all fire and safety regulations.

Dan Palombo, a pharmacist, was sworn in next. He described the building used as the pharmacy as being 5,000 square feet and the property, including the vacated salon, as 8,000 square feet. He said the company serves many counties and provides an important service and benefit to the community.

Leonard Rataski, Jr. was sworn in and stated he lives at 108 W. Oakcrest Avenue. He feels the impact on the neighborhood has increased and intensified greatly since the Palombo's began their delivery business. He said it operates like FED EX or UPS. The negative issues on the neighborhood include traffic problems and parking issues. The business operates until 11 or 12 at night. The noise and traffic occur too late in the evening. He does not feel the business is a benefit to the surrounding neighborhood and feels they create a safety issue for children.

Pat McGowan next wished to be heard and was sworn in. He is concerned with two congestion areas- Palombo's Pharmacy and the church lot if used for daily parking. There will be too many cars and people moving about due to the increase in the Pharmacy's business.

Seeing that no one else from the public wished to speak, Dr. Levitt closed the public session.

Mr. Scherzer summarized his client's case and reminded the Board of the positive testimony heard at the October meeting. He stated that it would not be feasible to return to an R-1 use on Shore Road today. Mr.

Nuzzolo commented that a summons was issued on January 11, 2005 for failure to obtain a CO prior to a change in use. The floor plan of the Pharmacy was changed and no approvals were sought. Mr. Palombo commented that everything in the Pharmacy is on wheels.

Mr. Subranni instructed the Board to make a determination of intensity of nonconforming use first. Jerry Nuzzolo made a motion to vote on an interpretation of current use. Art Barrera seconded. Tom Subranni gave an explanation of the vote at hand and cited the Cox Manual. The Solicitor explained that if a member is to vote yes, the applicant's would need a "D" variance and a no vote would mean that the voter believes a "D" variance is not needed. The Board needs to interpret if an illegal expansion of non-conforming use has occurred. The Mayor commented that the law reads that non-conformity protection is for the original use and in this case, the non-conforming use was for the operation of a Drug Store. This non-conforming use was permitted. Dr. Levitt added that the current Land Use Laws permit non-conforming uses to exist and continue but the use may not be expanded or enlarged or they will be in violation. Mr. Subranni summarized with an interpretation from the Cox manual on page 281 citing a quote from the Belleville v. Parrillo case. He stated the NJ Supreme Court has upheld that quantitative analysis is improper. The focus must be on Quality, Character and Integrity of use in totality and the overall effect on the neighborhood and zoning plan.

A roll call vote for determining if the current use is indeed a violation of an illegal expansion of non-conforming use was unanimous. All members voted yes.

The applicants felt that it was unnecessary to further their case concerning variances. They feel they have done that satisfactorily. The applicants have properly advertised for variances. Mr. Scherzer stated that his clients wish to satisfy the Board regarding the off-site parking.

Mayor Perri and Mr. Schlacter had to recuse themselves from voting on the "D" variance as elected officials and it was determined that a majority vote of 5 in favor was needed to approve the variance. The motion was made by Nick Droboniku to vote on a "D" variance to allow the Palombo's to continue with the current use of a delivery pharmacy business as described by testimony at tonight's meeting. The roll call vote was as such:

Mr. Nuzzolo-NO
Mr. Barrera-NO
Mr. Milone-NO
Mr. Roegiers-YES
Mr. Daprato-NO
Mr. Notaro-NO
Mr. Droboniku-YES
Chairman Levitt-YES

The vote did not pass. It was not necessary to consider the "C" variance for a vote since the "D" variance did not pass.

Mr. Scherzer asked for time to move the business without getting sited again. Mr. Subranni advised to take the issue up in Municipal Court with Judge Broome. The Judge must determine the time allotment regarding citing. Dr. Levitt will comprise a letter to the Prosecutor requesting the applicant be given reasonable time to relocate or scale business to what it was previously.

Mr. Scherzer closed with saying that he does not know what will become of this property or business considering the Board's decision.

Chairman Levitt called for a 5-minute recess.

The meeting reconvened at 9:48 p.m.

The second hearing of the evening is Group Land Development, LTD who appeared before the Board on December 1, 2005 for an explanation as to why they removed most of the trees from their subdivision at Shore and Mill Roads (Block 85, Lots 19.01 to 19.08, which includes the Hanson sign lot) which was against specifications memorialized in the Resolution. At the previous meeting, the Board demanded that Group Land come back before the Board within 45 days with a grading and re-forestation plan for each individual lot and to also provide a professional arborist. They were also instructed to submit deed restrictions for each lot which are to be filed with the County as per the original resolution. They were also required to re-notify residents within 200 feet and to be represented by Counsel. They were required to submit amended site plan fees and escrow for professionals.

Tom DiPilla, Esq. of Moorestown, legal representative, Mitchell Zbik, Vice President of Operations, Steve Volkert, Vice President in charge of Development of this particular project, and Addison Bradley, Planner and Landscape Architect were sworn by the Chairman. Dr. Levitt gave a brief overview for the new Board members.

Mr. DiPilla testified that Group Land recorded the required deed restrictions with the County. The previous owner, as well as Mr. Hanson, never recorded the deeds. They submitted the deeds through Congress Title in Cherry Hill and recorded the Resolution as well. The Landscape Architect also revised the plans twice.

Mr. Bradley described his credentials. He has a Masters Degree in Landscape Architecture from Rutgers University and was a Professor there for 5 years. He has been in private practice for many years as a licensed Planner and Landscape Architect in New Jersey. His credentials were accepted by the Board and he proceeded to describe the plans. There will be a hedge separating Hanson's Margate Bridge sign lot from the residential lots. Hanson will maintain his own lot. Trees will divide the lots down the middle leaving spaces for decks, etc. if the new homeowners should choose to construct them. The planner noted that the current neighbors have communicated that they do not want White Pine trees as they can grow too wide. The developers are willing to use another type of tree in place of the White Pines. The planner described a type of Evergreen hedge for privacy.

Dr. Levitt spoke about his disappointment with the Hanson lot. The large, old trees were removed and the developers are proposing to replace them with Pear trees. He would like to see larger Oak trees as replacement trees. Mr. Bradley commented that they cannot replace the old Oak trees. He is more interested in replacing with eye-appealing landscaping. The corner lot will contain over 560 plants. Ole Hanson has approved this as per a letter. The Planner will need to check with him about adding Oaks. Dr. Levitt expressed an issue with Red Maples. He has experienced root problems with these trees. The roots also tend to lift sidewalks as they grow. Sprinkler systems can be difficult to place with this type of tree and without sprinklers, the sod will not grow. Red Maples are also insufficient to grow as street lining trees. Chairman Levitt suggested Red Scarlet Oaks as an alternative. Mr. Bradley expressed that 3-inch trees are the largest that can be transplanted safely. Older trees are difficult to relocate. They will go into shock and will have stunted growth for years. They will just sit there and lose leaves. Three inch trees will grow substantially in 2 years.

Mr. Henry Notaro, Chairman Levitt and Mr. Bradley discussed moving trees and different available tree types. Mr. Notaro likes the idea of Pin Oaks since they are aggressive growers and move more easily than others. Mr. Bradley has experienced problems with moving larger Holly and Oak trees and advised that if larger trees are used and they die after two years or out of the Maintenance Bond range, the community will not be compensated. Dr. Levitt wants the public satisfied with some substance.

Dr. Levitt opened the public session. Councilman David Notaro was sworn in. He favors the proposed plan. He offered a few suggestions and suggested the addition of Grape Myrtles and Pin Oaks. Mr. Bradley commented that the Pin Oak branches tend to droop and do not do well on residential lots. He does not favor Myrtles. Concerning street trees, the Mayor added that he wants put back what was taken down. He stated that Black Oaks were removed and he prefers to see Black Oaks instead of Red Oaks as replacements.

Pat McGowan, still sworn in, spoke next. He would rather see healthy 3-inch trees instead of larger trees that may die. He asked how long the trees would be guaranteed. Mr. Zbik answered that the trees are bondable until they go to Maintenance Bond-probably 3 years. They are deed restricted at this time. This includes any old and new trees. The new owners cannot cut them down. Mr. McGowan wants proper site lines maintained at his property line and driveway. He asked if sprinkler systems would be installed for the new homes. Mr. Zbik said no. It is at the option and expense of the new owners. Mr. McGowan asked about Landscape packages for the new lots and was told by Mr. Zbik that they are offered. He asked if the trees would be planted after construction and was answered yes.

Mary Altobelli was sworn in next. She is a resident on the Merritt Drive side. She is concerned with the present dirt situation and wonders if the new ground will be elevated, causing her property, which borders the new development, to experience flooding problems. Mr. Volkert answered that they are sticking with the original grading plan which has approval and is under Matt Doran's review. He believes no runoff will exist. Mr. Doran noted that the Developer's need to address more clearly the fact that there are some grades flowing toward her property. Mr. Volkert said they will correct any grading problem or runoff that affects her property. Mr. Doran stated that individual grading plans are needed for the Building Department and they must be approved by Mr. Doran himself. Ms. Altobelli commented that currently puddles exist and she is concerned with standing water. Dr. Levitt commented that puddles will be eliminated as they occur and that weeks of standing water puddles will not be tolerated. Ms. Altobelli commented that huge trees with deep root systems were removed. The yellow-bowed trees were not to have been cut. She asked how the new little trees would be able to accommodate water. Mr. Volkert answered that the water will be directed off the site at a pitch of one foot and the water will be directed toward the Merritt Drive storm drain. Mr. Altobelli asked when the road would be completed and whether there would be curbing. Mr. Volkert stated that what exists now is how it will be. The street would be repaved and the street will actually be enlarged. There will be a new drain on Merritt Drive. Ms. Altobelli asked about sidewalks. Mr. Volkert assured her there would be sidewalks installed. At this time, Dr. Levitt intervened and stated that these types of questions are site plan issues and that only landscaping issues should be presently addressed.

The Chairman expressed doubts that Mr. Hanson would be installing sprinkler systems on his lot and he asked the developers what plans existed to take care of the new plants on that lot. It was stated that Mr. Hanson would be maintaining and watering the plants on the lot and that the new plants were drought resistant.

Mr. Volkert summarized by stating that they will be providing wells around the trees to prevent any runoffs from drowning new trees.

Councilman Notaro addressed one last issue before the public session closed. He asked that heavy equipment be kept off the root systems of the remaining trees. He asked Mr. Volkert how he could take care of this. Mr. Volkert stated that they will add yellow snow fencing around the center section to protect the remaining trees.

Dr. Levitt closed the public session seeing that no one else wished to speak. The Chairman stated that the comments and additions heard this evening will need to be revised and given to Matt Doran. The grading plans are in Mr. Doran's possession as of this date and will be carefully reviewed by him. The tree revisions requested by the Board are as such:

The Sugar Maples will be increased to 4 inch diameter.
White Pine will be not be used and Leyland Cypress will be substituted.
Black Oaks will be substituted for Red Oaks.
Street trees will be changed from Red Maples to Red Scarlet Oaks.

Mr. Zbik questioned what would happen if Mr. Hanson does not approve of the tree type changes. The Board hopes that as long as the view of the sign is not obstructed, Mr. Hanson will approve of the changes. The Mayor suggested changing some of the pines behind Hanson's lot to Black Oaks. Dr. Levitt agreed and stated that he wants to see the Oaks on the corner so that the public will see them.

Councilman Schlachter questioned the sod and is concerned about owners not maintaining their back yards. If the grass is not maintained, there could be flooding problems. Mr. Zbik commented that they will be installing sod at the front and sides of the new homes and will seed the rear. He believes people who buy expensive homes will maintain them properly. Dr. Levitt commented that the Board has never required rear sod.

Mr. Zbik stated that they are awaiting final deed restrictions (recorded) and will forward them to Mr. Subranni when received. These restrictions must include the requirement that the homeowner cannot remove any existing trees and must replace any trees that die. Mr. Zbik assured the Board that he will disclose this in Point of Sale Contractual Obligations to the buyers.

Chairman Levitt summarized with an explanation of further restrictions. Any screening at the cornering would be appreciated. If approved tonight, current construction restrictions are considered to be removed. But, these are subject to arrival by Matt Doran, the Board's Engineer. They are no longer restricted to building only the sample home. A CO can be issued per lot if the landscaping is approved by the Engineer. If the time of year is not favorable to planting, such as in winter, only a temporary CO may be issued until the landscaping can be completed and approved. Chairman Levitt questioned the placement of trees on property lines. The Chairman and Mr. Subranni advised the Developers to plant the trees on one side of the property line or the other to avoid problems with which homeowner is responsible for caring for or replacing the tree if it should die.

The Chairman asked for a motion for Block 85, Lots 19.01 to 19.08, including the Hanson lot on the corner, to accept the revised landscape plan. The motion was made by Art Barerra and seconded by Lou Milone. The Board voted unanimously for approval with some reservations from Mayor Perri and Mr. Schlachter.

The Mayor is not pleased that the beauty of that area cannot be replaced, but he commended the efforts of the Developers. Mr. Schlachter echoed the Mayor's sentiments and feels that the planting of smaller trees may not make enough of a difference.

There were no Resolutions to memorialize this evening.

Jerry Nuzzolo made the motion to adjourn the meeting and Henry Notaro seconded. The meeting was adjourned at 10:44 p.m.

Respectfully submitted,

Robin Atlas-Clinton,
Planning Board Secretary

