

City of Northfield Planning & Zoning Board
1600 Shore Road
Northfield, New Jersey 08225
Telephone (609) 641-2832, ext. 127
Fax (609) 646-7175

Minutes: September 17, 2009

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 had 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, September 17, 2009 in Council Chambers, City Hall, Northfield, was opened by Chairman Richard Levitt at 7:00 p.m. and the following members were present:

Dr. Richard Levitt-Chairman
Clem Scharff-Vice Chairman
Mayor Vincent Mazzeo
Jimmy Martinez, Councilman
Chief Robert James-absent
Lou Milone
John Clifford
Ron Roegiers
Henry Notaro
Jim Shippen
Linda Dyrek

Norman Zlotnick, Solicitor
Matt Doran, PE-Engineer

There were two applications to be heard this evening. The first was from 2800 Shore Road Co. LLC for Block 152, Lot 1, located in the R-1 Zone. The applicant was before the Board for an interpretation with conditions if necessary. They were denied a Certificate of Business by the Zoning Official for a non-conforming wholesale retail office from a previous non-conforming pre-existing office professional site. Chris Baylinson, Esq. of Perskie Mairone Brog & Baylinson of Linwood represented James F. Portock the owner of the property. Mr. Baylinson began by stating that a wine importer would like to purchase the property which currently is a pre-existing non-conforming professional office which has been used as an accounting office since 1971. The proposed business is less intense and less detrimental than the previous accounting practice. Mr. Baylinson said the applicant is appealing the action of the City's Administrative Officer. Dr. Levitt asked if they had advertised for any variances. Mr. Zlotnick clarified that the interpretation applies to the particular use the applicant is intending today and that each case in the future will stand on its own. Dr. Levitt said any other use would have to apply for an interpretation or variance. Mr. Baylinson said the Zoning Officer would require it. He added that another accountant would have been fine, but in this case, it will simply be used as an office, but as a different type of business.

Mr. Baylinson called his first witness, Jim Portock and he was sworn in. Mr. Portock explained that he is a licensed accountant and his business had been located at 2800 Shore Road since 1991 when he purchased the practice from Carmen Barone, CPA. He continued to operate there until two years ago. He had eight employees on site. For eight months out of the year hours of

operation were 7 p.m. to 6 p.m. and the other four months were more intense due to tax season. The business would then operate seven days a week including nights and weekends and they would utilize all eight parking spaces in the parking lot. Clients visiting the practice would have to utilize street parking. He said there were no complaints from neighbors when he had his business at this site. Mr. Portock said he has an agreement of sale with Jon Shiekman who operates a wholesale wine company. Mr. Portock added that he could rent his building to another accountant, but he would rather sell the property to the wine company.

Dr. Levitt asked about the square footage of the building. Mr. Portock said it is approximately 3200 sf and this includes the basement, which is not completely finished. The basement has been used for storage. Mr. Portock summarized by saying the wine business will be a lot less intense than an accounting practice.

Mr. Baylinson called his second witness, Jonathan Shiekman, the principal owner of Margate Wine and Spirit Company, LLC, currently located in Atlantic City. He was sworn in. Mr. Shiekman testified that he sells wine around the country from a warehouse located in South Kearny in North Jersey. He is a wine importer and sells to wholesalers from Europe or South America and does not take possession of the product. His father started the family business in 1967. Their current office is located in Atlantic City and the neighborhood has changed. Mr. Shiekman lives in Linwood and he feels the proposed location would be both ideal and safe. He has a staff of two people and himself. He described the business operation as basically calling the wineries in places such as Argentina or France and placing orders. The wine is then shipped to wholesalers or to the warehouse. No product will be distributed through Northfield and there will be no wholesale wine deliveries for resale. The site will be used as a small administrative office. Mr. Baylinson added that they would not be delivering any wine to customers and business would be conducted by internet, fax, and telephone and the work would be administrative paperwork. Hours of operation would be 9 to 4:30 and they would not work any nights, weekends or holidays. There will be no customers at the property and his customers normally want him to go see them. Mr. Shiekman is the only salesman and there will be no delivery vehicles other than those delivering office supplies occasionally. Mr. Shiekman plans to discontinue use of the existing sign and won't be utilizing the school system, but will be paying taxes. Dr. Levitt asked why he needs a building of this size for only three employees. Mr. Shiekman said he is getting a good deal on the property. Dr. Levitt reminded that the business would be very restricted to the type and intensity to what was testified here tonight if he plans to sell in the future.

Chairman Levitt opened the public session. Pat McGowan of 2005 Shore Road was sworn in. He wanted to make sure that there will be no deliveries or trucks and that this will be included in the resolution. Mr. Baylinson said there will be only UPS deliveries of typical office products. The public session was closed.

Mr. Baylinson provided Mr. Zlotnick with a copy of Section 68 of the Land Use Act which recognizes pre-existing uses to be permitted as long as they do not expand on the previous use. Changes of use of such offices are permitted if the use is to another office which is less intense. This meets the criteria for the definition of a change in use in the ordinance.

Mr. Scharff made the motion for an interpretation to allow a permitted continued use subject to some conditions. There would be no storage or deliveries of wine product. Mr. Baylinson said there may be single bottle samples on site. Mr. Scharff continued that there would be no distribution, major truck deliveries or warehouse storage. Chairman Levitt added that the number of employees and hours would be part of the resolution to compare future uses in terms of intensity. Mr. Shippen seconded the motion.

The roll call vote was as follows:

Mr. Clifford-no vote as 2nd alternate-9 voting members present, Mrs. Dyrek-yes, Chief James-absent, Councilman Martinez-yes, Mayor Mazzeo-yes, Mr. Milone-yes, Mr. Notaro-yes, Mr. Roegiers-yes, Mr. Scharff-yes, Mr. Shippen-yes, Chairman Levitt-yes. The motion for the interpretation for a continued pre-existing use with conditions carries.

The second application was a continuation from August 6, 2009 for T-Mobile Northeast, LLC, for the location of 2605 Shore Road, Block 78, Lot 14. The applicant is requesting a "D" variance and minor site plan. Revised plans were submitted September 1, 2009 showing the rooftop equipment array relocated to the interior of the existing commercial building and the steel frame platform for the stealth flagpole structure re-located so as not to interfere with the solar panel array installed by the property owner.

Warren Stilwell, Esq. was present as the attorney for the applicant. He is with Cooper Levenson of Atlantic City. Mr. Stilwell stated he had no objection to Mr. Scharff taking part in the hearing since he listened to the recording of the first hearing.

The professional witnesses were sworn in by Chairman Levitt at the previous hearing and remain affirmed under oath. The witnesses were: James Miller, Professional Planner, Glen Villanueva, Radiofrequency Engineer, Petros Tsoukalas, Professional Engineer, and Larry Washington, Site Acquisitioner and Zoning Manager. Mr. Stilwell said testimony was heard from Dr. Kenneth Foster, a health and safety expert and Mr. Villanueva at the initial hearing. Mr. Stilwell re-introduced Mr. Villanueva who has since performed a drive test. He showed the results on Exhibit A-4. The green areas show in-building coverage and the yellow areas show in-vehicle coverage. To perform the drive test he had a computer and phone hooked up in a vehicle and he plotted areas of unreliable service showing a series of black dotted areas. Exhibit A-5 is a statistics sheet showing dropped call data which is a call in-progress that does not go through. He noted over 2000 dropped calls over a one month period. The data for 911 calls over a period of one year showed 659 dropped calls, approximately two per day in areas being serviced by surrounding site towers. The third area of data collected was customer complaints which numbered at one hundred. Mr. Villanueva said these kinds of reports say T-Mobile needs to provide more reliable coverage to the area. He added that no other tall structures are available. Mr. Stilwell mentioned that the synagogue is not available and that their application was previously withdrawn and was hotly contested.

Larry Washington, a zoning manager for T-Mobile, who also has a law degree and has testified over 500 times, was accepted by the Board as a professional witness. He noted that the search area is heavily residential and they did contact the Methodist Church for use of their steeple, but they were not interested. They investigated public lands and it was determined that the bird sanctuary has an existing deed restriction attached and the land cannot be used for development. Other municipal property would be City Hall and that site is not an option.

Petros Tsoukalas is a Professional Engineer with Dewberry Goodkind of Mount Laurel who was hired by T-Mobile to prepare the plans. He has worked with Dewberry-Goodkind for nine years as a telecommunication and structural engineer. His qualifications were accepted. Mr. Tsoukalas said they have removed the equipment from the roof and have re-located it inside the building. Only the pole will be located on the rooftop. The existing lot is 2.25 acres and the roof contains solar panels and the proposed pole. Exhibit Z-1 with a revision date of August 29, 2009 is now part of the application package. He exhibited the roof plan showing the 40 ft. tall monopole located and supported on a steel frame. Loads will run through the building to the foundation. There will be six antennas which will be housed within the monopole and will not be visible. All equipment will be indoors. The structural analysis will be a condition of approval and will be registered with Matt Doran. The equipment will be monitored by remote station and locked at all

times. Access will be by the owner and T-Mobile only. There will be no water or sewer necessary and traffic will be generated by only one technician every four to six weeks during normal business hours unless there is an emergency repair needed. The system has a battery backup similar to a car battery and there is no generator proposed. Mr. Tsoukalas referred to page Z-3 of the plan showing the Shore Road elevation. The top of the pole is at 67.5 ft. with the six antennas staggered within the pole between 63.5 ft. and the lowest at 54 ft. Dr. Levitt asked if the pole would be cylinder or taper. Mr. Tsoukalas said it has not been designed yet, but will likely be a 3 ft. cylinder. Dr. Levitt requested the cylinder be as narrow as possible. Mr. Tsoukalas commented that the pole is shown galvanized, but could also be white or blue. He added that galvanized steel is less obtrusive.

Mr. Tsoukalas discussed a photo simulation (Exhibit A-6) showing himself on the roof holding a very large pole while his colleague drove around the site and took pictures. He described the photos and noted that the pole was visible in three out of four pictures (at 500 ft., 400 ft., and 1,400 ft. from the site). The fourth photo was taken at Wabash Avenue and Ridgewood Drive and the pole was not visible. The engineer said that wind specs will be included in the structural analysis. They use TIA and EIA specs and the most stringent REV G which uses gusts up to 115 mph. The building and tower will withstand the forces required. Mr. Scharff commented that the working parts of the antenna are usually only 8 inches wide and 4.5 ft. long and Mr. Tsoukalas said T-Mobile commonly uses 13 inches wide and 4.5 ft. long. Mr. Stilwell added that they are required to comply with all regulations.

James Miller, a Professional Planner from Moorestown, NJ testified next. He has testified for over 200 other Boards and has been a certified planner since 1971, both public and private. His qualifications were accepted. He said that he has reviewed the plans, visited the site, and researched and reviewed the ordinance and zoning maps. He described the site as being in the R-3 zone and added there is a cluster of commercial uses in that area including churches, a synagogue, along with residential dwellings located in both the Northfield and Linwood areas.

Mr. Miller described the nature of the relief they are requesting. He said they are seeking a D1 and D6 variance and the criteria he will speak of apply to both. The D1 variance is for use and the D6 variance is necessary due to the height exceeding the parameters for a "C" Variance. He said this use has extensive case law to back it up and is well-suited by both a radiofrequency and zoning standpoint. He described the current use and the character of the site and the reasons the site is well suited for the pole. Mr. Miller said the property is occupied by a large building and the applicant can locate the structure in the middle of the building. He said the size of the building mitigates the view of the structure, they can minimize visibility of support structures and commercial sites are more appropriate sites to use. Mr. Miller said this is the best location available to T-Mobile and the stealth-like structure will have less impact than other types. The antennas are internal and the small diameter shaft on the rooftop will allow for minimal impact. Since a rooftop is available, a lattice type or similar structure will not have to be built from the ground up. He added that rooftops are normally used for mechanical purposes as is already being used in this case with the solar panels. The simple column is relatively thin and blends with the sky. Mr. Miller testified that the pole will not be detrimental to the community and will blend in and people won't be aware of it. This is the least intrusive means of providing service and the carrier has looked into all other options. The pole will appear part of the original structure and is a superior alternative use. This application advances the objectives of the City's telecommunication ordinance by using an existing structure rather than creating a freestanding structure, and it minimizes visual impact and reduces the need for a new tower.

Mr. Miller said prompt and reliable communication is important and necessary today and has evolved into important data transfer that affects businesses, field engineers, populations for lifestyle reasons, parent-children communication, outdoor recreation and 911 services. Three in

ten households are using wireless, 20% of households are exclusively wireless, and over 50% of 911 calls are originated using a wireless system. Wireless is also important to E911 which allows emergency personnel to track the location of an emergency call.

Mr. Miller addressed negative criteria. He said the adverse impacts are low with the primary impact being visual. The carrier will be using a stealth structure to minimize the visual impact and has also moved the pole back from the edge of the building. They chose a building of this size for minimum impact. Mr. Miller concluded by saying in comparing the benefits to the negatives, the benefits far outweigh any diminutive impact the structure might have on the community and satisfies the balancing test. Mr. Stilwell added that the negative impacts do not outweigh the positives.

Mr. Roegiers noted that the public inquired about a tree type pole. Mr. Miller said this could be done, but it would be more intrusive to have a tree standing in a parking lot and it would be more visible. He said they don't really look like authentic trees unless they are placed within a grove of trees approximately of the same size. He doesn't feel this would work in this situation and would be very intrusive and offensive. Conventional monopoles are more common and are not as memorable when seen whereas artificial tree poles are less common and more memorable.

Mr. Martinez asked if the testimony is that a 40 ft. pole on top of a building would be less of an impact than other possibilities. Mr. Stilwell said the church steeple is not available and the synagogue project would have been more of an impact on the neighborhood. He added that the testimony is that the pole will blend in. Mr. Miller said for a rooftop installation, this project is unobtrusive.

Dr. Levitt had a few general questions. He asked Mr. Tsoukalas if the structure would accommodate other carriers. He answered they could design it that way. Dr. Levitt asked if additional carriers would be located inside the pole. He said they would have to be 10 ft. lower. Mr. Stilwell said he believed they could be 5 ft. lower and he added that they are required to permit other carriers. Dr. Levitt asked if at the 30 ft. level, would other carriers find co-locating attractive and feasible. Mr. Villanueva said there would be a point where the signal would be level with the trees. Mr. Clifford said the design is not conducive to co-locating other carriers. Dr. Levitt asked about the time frame of the lease. Mr. Washington said the lease is initially for five years with 4 or 5 renewal periods covering 25 years. This would carry over to any subsequent owners of the property. A discussion developed about the drive study and dropped calls.

Mr. Doran addressed his engineer's report. He said they did a thorough job concerning the radiofrequency co-location studies. If the Board approves the application there are bonds that need to be posted in case they discontinue the use, for the time frame involved, and guarantees on removing the tower if it is shut off. Mr. Stilwell said they agree to all the conditions in the report. Mr. Doran said the applicant has provided testimony and the Board must decide if it is adequate. Dr. Levitt added they provided evidence that there is lack of coverage, they cannot co-locate on existing city property and they have testified that they will comply with city RF ordinance conditions.

Dr. Levitt asked if anyone from the public wished to speak. Pat McGowan was sworn in from the initial hearing. He said that the building is already non-conforming and the cell pole will make this situation worse. He said there is an ordinance in place that says cell towers cannot be 500 ft. from another structure and 250 ft. from residential areas. This is to prevent things from falling off towers and damaging property. Mr. Tsoukalas said that if the tower were to fall, it would land within the commercial property. He added that he is unaware of structural failure from wind loading. Mr. McGowan asked if there were any lateral supports. Mr. Tsoukalas said there will not

be any guy wires. Mr. McGowan referred to the photo exhibit and noted that the photos show trees with leaves on them and that the photos will only look like this six months out of the year since the trees are deciduous. He added that he feels the Board cannot consider the application tonight since there is no structural report. He wants to know before the structure is approved that the roof can accommodate the pole. Mr. Stilwell reminded that they will not get a building permit without the report. Dr. Levitt added that final site plans are submitted after approvals and during the inspection process. Mr. McGowan asked why only T-Mobile has problems in this area. Mr. Shippen said he has experienced problems with Sprint as well. Mr. Villanueva said this can be due to the radiofrequency assigned and he noted that T-mobile wants reliable coverage for its customers in Northfield and Linwood. Mr. McGowan asked what if the Coastal Design building wasn't there for their use. Dr. Levitt said that is a hypothetical question since the building does exist and the ordinance lists a hierarchy of sites that are preferable and this is a commercial building which meets the ordinance stipulations.

Joan Brennan of 116 Dolphin Avenue was sworn in. She explained that she has a lap top with her and has been on-line during the hearing. She checked the T-mobile website and it says they have the best coverage available. She feels that cell phone and cell tower effects are really dangerous to children and seniors. She said microwaves can travel 2.5 miles and penetrate walls. She feels there is not one good thing about encompassing the entire town with radio waves. She doesn't see the benefit to anyone. Mr. Stilwell said that they anticipate these types of comments and said there is a difference between the marketing arm and radiofrequency studies and data. Mr. Villanueva referred to the disclaimer which says that maps are approximate and vary from location to location. They also refer to outdoor coverage not in-building coverage. Dr. Levitt added that the radiofrequency professor was here at the last hearing and testified that the waves are non-ionizing waves, not microwaves. Mr. Zlotnick advised the Board that people are naturally afraid of what they perceive to be radiation and the Board should not focus on that issue. He referred to the Smart case, a 1998 NJ Supreme Court case, which says that the Board cannot give credence to the perception of neighbors that EMF radiation admission can cause long-term effects. This took place over ten years ago and there has been no scientific evidence to prove that. Mrs. Dyrek asked what about ten years from now. Mr. Zlotnick said that today is ten years from then and the Radiation Act and Telecommunications Act preempt local consideration of EMF radiation admissions and that they fall within accepted governmental levels. The Smart Company introduced uncontroverted evidence with regard to radiation. He added that the Board must concentrate on what is appropriate. Dr. Levitt said to focus on the testimony set forth by the RF expert and the Planner and to concentrate and weigh the positive and negative criteria and the effects on the public good. Mr. Zlotnick said radiation is not part of the balancing test and would be unsustainable in court. Dr. Levitt said this is settled law.

A discussion over co-location began and whether they would have to come back before the board if they wanted to make the pole higher for co-locators. It was decided that co-locators must be placed lower on the pole.

Ray Adams of 238 Mt. Vernon Avenue was sworn in at the last meeting. He asked about the equipment within the building and if they would be using wet or dry batteries. Mr. Tsoukalas said he thinks they are dry and the room will be self-concealed. Mr. Stilwell thought gel batteries were used and added that they would provide containment. Mr. Adams had concerns with wet batteries and leakage. Mr. Tsoukalas said they have a monitoring system and an alarm would be set off if there was leakage and someone would be dispatched. Mr. Adams asked if there would be fire protection within and Mr. Tsouskalas said it is a 2-hour fire rated room at this time. Dr. Levitt closed the public session seeing no one else wished to speak.

Mr. Stilwell summarized that their Planner has done a good job and feels the Board is focused on the issues. He feels the balancing test has been met and that it tips in favor of the positive.

Chairman Levitt asked for a summarization of the variances. Mr. Zlotnick referred to Mr. Doran's report which he said summarized the variances well. The variances include a D1 variance for a use that is not allowed in the R-3 area. The D6 variance is for the height of the pole and is part of the D1 consideration. The tower is not allowed to be closer than 250 ft. from a residence and they are proposing 180 ft. This is a "C" bulk variance. There has been no Environmental Impact Statement (EIS) and a waiver will be needed or it must be supplied. A Structural/Wind Loading report will be submitted and is forthcoming. The applicant will supply a letter of commitment with regard to excess lease space within the site at prevailing rates. Dr. Levitt said the "D" variance consideration is a weighing test of the ample testimony of positive effects of improved telecommunication against the negative impact of the structure which is taller than the permitted heights. Mr. Zlotnick agreed that the weighing test of the positives against the negatives is important in considering granting the variance without creating substantial detriment to the public or to the City of Northfield. Chairman Levitt concluded by saying that it is important to understand that these are very tested waters and conditions showing the need and showing that everything is being done to mitigate the need, and that there is not a health hazard, has been shown in these types of hearings many times. The Board must be careful to comply with what case law has shown or it could cost the city a lot of money. But, still within the realm of the city's ordinance and positive and negative criteria, the Board does have a choice.

There were three separate votes for this application. The first was for the "D" Variances. Mr. Scharff made the motion and Mr. Roegiers seconded.

The roll call vote was as follows:

Mr. Clifford-no, Mrs. Dyrek-no, Chief James-absent, Councilman Martinez-no vote as an elected official, Mayor Mazzeo-no vote as an elected official, Mr. Milone-yes, Mr. Notaro-yes, Mr. Roegiers-yes, Mr. Scharff-yes, Mr. Shippen-yes, Chairman Levitt-yes. The motion for the "D" variances carries.

The second vote was for the "C" bulk variances. Mr. Doran described the two variances. The first is for the distance from the property line along the back of the building which is required to be the height of the pole at 67.5 ft. They are proposing 39 ft. The second is for the distance to a residence where the requirement is 250 ft. and they are proposing a residential setback of 180 ft. Mr. Scharff made the motion and Mr. Shippen seconded. Mr. Scharff mentioned during the discussion phase that as a co-author of the original RF ordinance, the 250 ft. requirement from a residence was installed for the possibility of a pole falling over. In this case, if the pole fell over, it would not leave the rooftop.

The roll call vote was as follows:

Mr. Clifford-did not vote, 9 Voting members present, Mrs. Dyrek-no, Chief James-absent, Councilman Martinez-abstained, Mayor Mazzeo-yes, Mr. Milone-yes, Mr. Notaro-yes, Mr. Roegiers-yes, Mr. Scharff-yes, Mr. Shippen-yes, Chairman Levitt-yes. The motion for the "C" bulk variances carries.

The third vote was for the minor site plan, preliminary and final. Mr. Scharff made the motion and Mr. Shippen seconded. The motion includes a waiver for the Environmental Impact Study, a Structural report must be submitted, the pole must be as narrow as possible, there will be containment for wet batteries if used, there will be proper venting and alarms, and the pole will be grey in color and made of galvanized steel.

The roll call vote was as follows:

Mr. Clifford-did not vote, 9 Voting members present, Mrs. Dyrek-no, Chief James-absent, Councilman Martinez-abstained, Mayor Mazzeo-yes, Mr. Milone-yes, Mr. Notaro-yes, Mr. Roegiers-yes, Mr. Scharff-yes and added that he is voting in light that this entire apparatus will be less in height than the standard electric pole on Shore Road, Mr. Shippen-yes, Chairman Levitt-yes. The motion for the minor site plan carries.

Chairman Levitt said the application is approved. He re-assured the public that there is no risk, he added that the Board has done what it could to make this as unobtrusive as possible and unfortunately, this is one of the un-pleasantries of modern life.

There was one resolution to memorialize from the September 3, 2009 meeting for Doris Dougherty for an extension for a major subdivision for one year at 730 Mill Road, Block 34, Lot 16. Chief James (absent), Jim Shippen and Ron Roegiers abstained. The voice vote was all in favor of memorializing the resolution.

Chairman Levitt closed the meeting at 9:10 p.m. with a motion from Mr. Scharff and a second from Mrs. Dyrek.

Respectfully submitted,

Robin Atlas, Secretary to the Board