

City of Northfield Planning Board
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Minutes: January 6, 2011

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 re-organization meeting of the Northfield Planning Board, held on Thursday, January 6, 2011 in Council Chambers, City Hall, Northfield, was opened by Dr. Richard Levitt at 6:58 p.m. and the following members were present or absent as noted:

Dr. Richard Levitt
Clem Scharff
Mayor Vincent Mazzeo
Councilman Steven Vain
Chief Robert James
Lou Milone
Ron Roegiers
Henry Notaro
Jim Shippen-absent
Linda Dyrek
Jimmy Martinez-absent

Matthew Doran, Professional Engineer
Norman Zlotnick, Solicitor

Mayor Vince Mazzeo read the Oath of Office for Linda Dyrek, who was reappointed as a Board member for a new term of four years. Councilman Steve Vain also read the oath as the City Council liaison to the Board. Jimmy Martinez will be sworn in at a later date. He was absent this evening due to an illness in his family.

Dr. Levitt proceeded to reorganize the Board for 2011 with the nominations for the one-year appointments. Mr. Scharff nominated Dr. Levitt to serve as Chairman of the Board and there were no other nominations. A voice vote was all in favor. Mr. Milone nominated Clem Scharff to serve as Vice Chairman and Mrs. Dyrek seconded. A voice vote was all in favor. Mr. Scharff nominated Robin Atlas for Secretary and Mr. Roegiers seconded. A voice vote was all in favor. Mrs. Dyrek nominated Norman Zlotnick as Solicitor to the Board. Mr. Scharff seconded. A voice vote was all in favor. Lastly, Mr. Vain made the motion to nominate Matthew Doran as the Board Engineer. Mr. Milone seconded the motion. The voice vote was all in favor.

The first application was a carryover from the December 2nd meeting. The application for T-Mobile Northeast, LLC was presented by Michael C. Learn of Cooper Levenson in Atlantic City. The site is in Block 78, Lot 4 at 2605 Shore Road in the R-3 Zone. Mr. Learn addressed the Board and said approval was granted by this Board in 2009 for a rooftop wireless telephone pole installation. Minor site plan approval along with "C" and "D" variances approvals are being sought again due to the necessity of locating the pole in a different location. Mr. Learn said most of the Board members present tonight sat through the initial application when they proposed the height

variance and minor site plan approval in 2009. He noted that there is a full compliment of the Board present tonight and elected officials will not be eligible to vote. Mr. Learn said the building is a 27 ft. structure and the pole is 40 ft. for a total of 67.5 ft. The initial approval was subject to final structural analysis to make ensure that the roof was able to support the pole.

Mr. Learn presented Exhibit A-1 which is the original resolution approved. He noted that the original D&R approval is bound into the future and he has with him the same professionals used in the previous application. Glenn Villanueva, a Radio Frequency Engineer, Petros Tsoukalas, a Professional Engineer and James M. Miller, a Planner were all sworn in by Chairman Levitt. Mr. Learn said Mr. Vilanueva presented exhibits and testimony previously and has said the application is in compliance with all FCC regulations. No testimony has changed since then. Mr. Learn stated that he wants to focus on why they are back before the Board and why they couldn't construct the monopole as proposed. The equipment will still be stored inside the building as previously proposed. The new plans propose moving the monopole from the center of the roof of the building to the loading dock area behind the building. There will be an approximate 30 ft. shift. The new location will be less intrusive and less visual. By shifting the location back behind the building, the pole will be more covered up by buildings and trees. Mr. Learn said he is prepared to call any of the professionals if the Board asks for further testimony.

Petros Tsoukalas was called first. Dr. Levitt said the technical aspects were all gone into in detail and he asked the Board to address Mr. Tsoukalas with any additional questions. Mr. Tsoukalas said he did the original calculations and investigations himself and testified about the location of the equipment inside. He said the sole change they are proposing is the relocation of the tower structure. The height is the same; it is simply being moved laterally to the west 30 plus feet. He stated that the structural analysis was not complete at the time of approval. The analysis involved visually looking at the roof beams and connections through the entire building as well as the history of the building and it was concluded that the connections between the columns and beams could not handle wind loading. The entire building would result in a shift. This was seen in computer models and would create a deflection of the building.

Dr. Levitt asked about the monopole being self-supporting and if the monopole could be supported through the building. Mr. Tsoukalas said it has to be mounted in concrete and they would need to rebuild the entire roof and the foundation to support the pole on the roof. The location on the roof they were proposing is in the middle of a hallway in the building. They would have to open a hole in the roof, rebuild the entire roof, and dig up the entire foundation. They do not know if the foundation is in the form of a big mat or if it has footings and they would have to drill a 30 ft. to 60 ft. deep hole, 6 ft. to 7 ft. in diameter. The original design was to have the pole supported by the building and the frame of the building would take the loading from the monopole. The landlord does not want a big hole in the roof and is not amenable to these changes. The monopole deflects and they would need to install a big boot inside at the roof level. They would need to rip out new wall finishings that were recently renovated.

Mr. Learn said the existing steel frame and existing pillars would need to support the weight of the pole and they would basically need to rebuild much of the building with no guarantee that the foundation could support the pole and to rebuild the foundation of an existing building would be a steep task. The practical solution was presented as Exhibit A-2 which is the new plan dated 8/16/10. Mr. Tsoukalas focused on the changes. Page Z-1 showed the location of the building and the location of the pole on the roof. Page Z-2 showed the equipment location and at the rear of the building, the new location of the 67.5 ft. pole. It will be placed 10 ft. from the rear of the building surrounded by a 7' x 8' fenced area made of PVC or a matching fence. The 7' x 8' compound is all that will be necessary since most of the equipment and cables are inside the building. There is also a generator and air conditioner condenser and this is not a change from the original application. The will be a 5 ft. gate to access the compound from the parking lot area

and this will not affect any Coastal Design deliveries. The facility will un-manned as originally proposed and utilities will remain the same. The nature of the foundation and how the pole is mounted will be completed by Geo techs based on wind loading numbers at 115 mph. The foundation design will be constructed accordingly and a hole will be drilled for the foundation with the addition of fill or sand depending on what is found underground. The foundation will include a cage or rebar and will be anchored with concrete. They are confident they can design a foundation for the pole and do not foresee any technical issues.

Mr. Tsoukalas continued showing the plans. Page Z-4 showed a view from Oakcrest Avenue at the rear of the building as well as a drawing of the underground foundation. They do not know how deep they will have to dig or which fence design they will go with. He presented Exhibit A-3 which was a Structural Analysis Report dated 4/15/10 and was also signed by Mr. Tsoukalas. Exhibit A-4 contained 5 photo simulations taken by Javier Rohas, supervised by Mr. Tsoukalas, showing the initially proposed and new locations of the monopole and how it will be viewed from different locations. The photos were taken in the summer and it was noted that less of the monopole will be seen due to shielding from the building. Exhibit A-5 showed photo simulations and the view of the monopole was virtually the same unless viewed from Oakcrest Avenue. Simulations of the white PVC fencing or green slat fencing were also shown with this exhibit. Mr. Tsoukalas ended his testimony.

Mr. Learn called James Miller, Planner and Glen Villanueva. Mr. Learn said the application originated due to a lack in coverage for T-Mobile's cellular service. Mr. Learn noted as stated by Mr. Zlotnick in the original resolution, they are obligated by FCC licensure to provide seamless coverage to their customers as upheld by the Fairlawn decision in the NJ Supreme Court as the foundation for special reasons. Mr. Villanueva verified that nothing has changed in coverage and the need is still the same. Mr. Miller testified as to positive criteria and said the site is the only non-residential area for development in this area at which the structure would work. Mr. Miller described how the structure will be viewed and said the benefits and negatives remain the same. There is only a slight impact change in how the structure will be viewed and it is diminimous. Mr. Learn added that the lateral shift makes the view less intrusive from most areas.

The fencing was discussed. Mr. Miller said a matching fence would eliminate further impact. Mr. Roegiers agreed and asked what color the pole would be. Mr. Miller said white. Mr. Scharff said he thought the pole was to be a standard grey stealth pole with no flag. Mr. Miller said it essentially will be a flagless flag pole. Mr. Scharff recalled from the previous hearing that a flag would interfere with the solar panels on the roof by creating shadows. Mr. Miller said the pole could be off-white or galvanized and that the elevation at the top is the same and won't affect radiofrequency coverage. Mayor Mazzeo added that he recalled the coverage was over a four block radius. Mr. Villanueva said the coverage area is the same and Mr. Learn said it covers generally the areas between Mill Road, Zion Road, and into Linwood near the Country Club.

Dr. Levitt asked if there was anyone from the public who wanted to speak on the matter and hearing no one, he closed the public session.

Mr. Learn gave a brief summary. He stated that the plan presented this evening is a reasonable alternative with somewhat better visual impacts due to a 30 ft. lateral movement and a base that goes to the ground like most towers. Nothing else is changed except for a minor modification with lateral benefits.

Mr. Roegiers made the motion to include the conditions that the pole color is a subdued off-white galvanized hue and that the fencing will match that which is existing. Mr. Scharff seconded the motion.

The roll call vote was as follows:

Mrs. Dyrek-yes, Chief James-yes, Mr. Martinez-absent, Mayor Mazzeo-No vote-elected official, Mr. Milone-yes, Mr. Notaro-yes, Mr. Roegiers-yes, Mr. Scharff-yes, Mr. Shippen-absent, Councilman Vain-No vote-elected official, Chairman Levitt-yes. The motion for the "D" variance carries.

The second application of the evening was for APMP LLC, Block 76, Lots 19 & 20 and Block 78, Lots 18 & 19, 2617 Shore Road and Oakcrest Avenue for a "D" variance and waiver of site plan. The Palombo's were represented by Nicholas F. Talvacchia of Cooper Levenson of Atlantic City. John Barnhart, a licensed Planner and Engineer, was sworn in.

Mr. Talvacchia began by stating that there are amendments to the original application. They will not be seeking a broad use variance or a parking variance. They will be more focused on specific uses narrowed down. Mr. Talvacchia gave a history of the pharmacy and resolutions were granted in 1991, 1993 for Esthetica Beauty Salon, and in 1996. Resolutions were entered as Exhibit A-1 (1991), Exhibit 1993 (A-2) and Exhibit A-3 (1996). Mr. Talvacchia noted that the Board had previously found that the pharmacy use and beauty parlor use were acceptable uses at the site. They are now asking to expand the uses confined to the Neighborhood Business Zone uses including offices, retail and restaurant uses. The applicant feels these are comparable uses as they have 30 available parking spaces for a 6000 sf building which supports a lot of uses. The city has protection for any future uses in that any potential new tenant has to see the Zoning Officer for a business occupancy permit and must prove to the Zoning Officer that they meet the parking ratio for that particular use. This is a common function of zoning officers.

Jon Barnhart addressed the Board to give justifications for the variance and his qualifications as an Engineer and Planner were accepted by the Board as he has testified before the Board on many occasions. Mr. Barnhart feels this is a nice opportunity for their clients, the Board, and the community to have a nice commercial use at the site with possibly two tenants and they believe there is ample parking. Mr. Barnhart said the site, located at the corner of Shore Road and Oakcrest Avenue, is zoned residential, but has operated as a commercial pharmacy since 1942. He described the area using Exhibit A-4 which is a dated aerial photo showing House and Garden under construction. Exhibit A-5 is a rendered drawing of the site plan submitted, showing a 7000 sf bifurcated lot. Palombo's Pharmacy is on Lot 18 and is 3108 sf, Lot 19 is another commercial lot at 1559 sf, and the two story warehouse, built in the 1990's, is 1382sf. The Pharmacy and other commercial building are both one story. The adjacent lot is a stand alone lot and is not owned by the Palombo's, and currently is the site of a pet grooming business. Mr. Barnhart described the 8000 sf parking lot across the street as having 28 parking spaces with access on Shore Road and Oakcrest Avenue. It was noted that the lot will have to be re-stripped to adjust the spaces to bring them out of the right of way and two spaces at the front will have to be removed due to being in the County right of way. There is also a small employee parking area behind the warehouse which has fit six vehicles in the past, but they will have four vehicle stalls in this area. This totals 30 parking spaces. The site is zoned residential, but there are many commercial uses in the area. Mr. Barnhart commented that the area is zoned residential, but is not built residential. There currently exists Palombo's Pharmacy, the other commercial lot, the pet grooming business, 2605 Shore Road (Coastal Design), a church and a synagogue.

Mr. Barnhart noted that operating the pharmacy has created parking concerns and the Palombo's have sold the business, consolidated, and relocated it out of the city. The building is now vacant. Mr. Palombo's business had become very successful, but this is not a situation that is likely to occur again. They would like to have two tenants occupy Lots 18 and 19. Mr. Barnhart said that any new tenant would require a use variance. In today's market, potential tenants are not willing to wait to go through the process. They want to make the situation marketable for the Palombo's and viable for the community.

Mr. Barnhart presented Exhibit A-6 which described the proposed uses compatible with the NB zone. They are as follows:

N-B Zone-Neighborhood Business zone

- Misc. Retail
 - Drug & Proprietary stores
 - Florists
 - New Dealers
- Banking & Credit
- Personal Services
 - Beauty
 - Photography
 - Child Care
 - Dry Cleaners
- Health, Legal Professional Services
 - Legal
 - Engineering, Architects, Surveyors
 - Accounting & Bookkeeping
 - Physicians, Dentists & Health Practitioners
- Eating & Drinking Establishments
 - No drive-thru service
 - No fast food service
 - Small café approx. 25 seats
- Administrative Offices

Mr. Barnhart continued by saying the parking ratio is one parking space per 200 sf, but this does not include eating establishments or medical as these types of uses require a different parking ratio. Since they are not asking for a parking variance, they are giving the Zoning Office complete control over making sure they will meet the ordinance for parking for the use. Dr. Levitt commented that there is not complete control since conditions such as hours of operation or cooking smells that come from restaurants, and other items cannot be reviewed by the Board. Mr. Barnhart answered that the property has operated as commercial for 70 years and the surrounding community is accustomed to the site being a commercial facility. Dr. Levitt said that may be so, but they are accustomed to the site being a pharmacy, and it has been shown that they were not accustomed to the level of parking that was generated there. The Chairman further stated that with an existing non-conforming use that is being proposed to be changed, the applicant comes before the Board for a variance. It seems that in this case, there is a zoning change to NB that is being sought. The Board can only make recommendations to Council for zoning changes and only Council can change the zoning for a particular district. He felt it was not within the jurisdiction of the Board to make zoning changes through a variance application. Mr. Talvacchia said he is familiar with the case law and what constitutes an impermissible zoning change. He cited the Dover Case and said one of the criteria is that a substantial area is needed to constitute an impermissible zoning change. He said the area in question is too small to be considered as such and he believes this is not a legislative act. Mr. Talvacchia compared this application to approvals received by House & Garden which involved approved office space which was never at the location before as well as a range of retail uses. He said the Board has the authority to impose reasonable conditions in the context of a variance application. Dr. Levitt questioned how the Board can hear an application without knowing what use will occur. There is a parking issue here since the parking is not on the same lot as the use. This is an Ordinance requirement. Dr. Levitt questioned the possible child care use and the situation where children would have to cross the street to get to the parking area. Referring to possible restaurant use, Dr. Levitt said a restaurant has never been located at this site. He felt the Board needs to use discretion. He referred to the Master Plan requirement to maintain the existing residential character of Shore Road. Dr. Levitt said he understands that there are some scattered

commercial uses on Shore Road that have been compatible with the residential nature of Shore Road, but if a blank okay is given by the Board, it would be unknown if any future use would be compatible as required by the Master Plan. Dr. Levitt said this is not a Neighborhood Business zone such as the areas along Tilton Road and Route 9 which are much more of a commercial type of zone. He said the Board would welcome an applicant with a specific use in mind. He added that discretion should not be given to the Zoning Officer who should be verifying if parking meets Ordinance requirements. There are too many variables and parking is not the only issue.

Mr. Talvacchia said he understands this position, but he believes the Board has the authority to grant relief. Mr. Zlotnick said he has discussed the issues with Mr. Talvacchia and doesn't believe either of them has found a specific case that embraces this kind of approval. Mr. Talvacchia said there is no case that says you can't grant the approval. They have the right to ask for a variance and the Board can grant it. Mr. Zlotnick noted that the Board Engineer has concerns and he quoted from Mr. Doran's letter that the applicant must provide special reasons for a use variance to be granted and variances in general need testimony as to a particular use and it must be uniquely suitable to the location and not be inconsistent with the intent of the Master Plan. Mr. Zlotnick said because uses allowed at the site are akin to N-B zone uses, the applicant thinks they are entitled to a variance for all of the N-B uses. Mr. Talvacchia said the Board has the authority to grant the variance. Mr. Zlotnick said the Board is being asked to find that N-B zone uses are applicable to this property and Mr. Talvacchia said they feel some of the uses are applicable.

The discussion between the attorneys and Chairman Levitt continued. Mr. Zlotnick said he felt legally troubled by the issues and Mr. Talvacchia said he felt the Board approved the same application in 2005 for the adjacent lot and that is a reason why they are before the Board tonight. Dr. Levitt said given the size and range of that project, the Board found it uniquely suitable for the types of uses approved. But for a small use with parking on a separate lot, it is difficult to say any of these uses are uniquely suitable. Mr. Zlotnick added that the applicant showed suitability of that location for particular uses and they were proven. The building is large and is a multi-use facility and there are factual differences. The Board could be specific in that case and tailor specific uses to that site. Dr. Levitt added that the testimony was that no single use was feasible to fill the entire department store building and the city would be left with a big white elephant. This was the reason why multiple uses had to be approved to make the site viable. The situation is not the same here with at most two uses and is different in both scale and project. He doesn't think this application can be compared with House & Garden. Mr. Talvacchia said he understands there are some factual differences, but he felt different arguments are being made. He disagreed with the statement that the Board has no legal authority to grant the variance and in his judgment, the Board has the authority to hear the application and make a decision. Mr. Talvacchia said he feels that minds are already made up. Dr. Levitt disagreed and said he wants to hear all the testimony before he brings the application to a vote. He is only asking why they are here and these are the answers he hopes can be brought out in the testimony. Mr. Talvacchia said he felt House & Garden got their approval for uses without knowing was going in. The applicant wants to address any concerns. Dr. Levitt asked Mr. Zlotnick if the Board has jurisdiction to hear this application. Mr. Zlotnick said the Board has to hear it. The Board cannot deny an applicant the right to be heard. When a use variance is being sought, the zoning aspects kick in. The Board has the power to hear the application but the question is such---Is this an appropriate exercise of the Board's power? Mr. Zlotnick understands Mr. Doran's concerns in his letter which states that in the granting of a "D" variance, particular suitability of the property is involved.

Mayor Mazzeo commented that historically, parking has been a problem at this site, but a different kind of use may improve the parking situation. He does not want to see a vacant building. Mr. Talvacchia said the issues are not black and white and each type of use can be discussed and decided upon. The courts teach that Boards can impose reasonable conditions that

deal with the circumstances of any case such as hours of operation and closing times. The applicant wants some flexibility to market the property. It is difficult to have a potential tenant go through the zoning process which can take 3 to 4 months. If they can tell a tenant that they have an approval for a number of specific uses, it makes the property easier to market. Their concern is that the building is sitting vacant with no foreseeable use with its current zoning. They feel hamstrung by the zoning. The purpose of the Board is to grant relief when warranted by proof. The Board has legal discretion and obligation without personal opinions to grant relief when warranted. Issues can be discussed and conditions applied. Otherwise the property will continue to be a white elephant.

Councilman Vain asked if there was more testimony to be heard since things seem to have gotten off track. Mr. Roegiers agreed and said testimony should move forward and discuss limiting the types of uses. Mr. Talvacchia said the Board has the authority to do that. Mr. Barnhart continued his testimony.

Mr. Barnhart said the general impacts of all types of commercial properties are similar. They involve traffic circulation, parking, proper lighting and trash removal. The surrounding residents in this area are accustomed to the commercial property. He next discussed parking. He said they are not proposing a parking variance because they do not feel it is needed. The site has 6049 gross sf of building which would require 30.2 parking spaces. Mr. Barnhart gave a number of different parking scenario examples using different types of commercial businesses including Doctor's offices, restaurants and retail uses in different combinations, and all would meet their specific parking ratio numbers according to his calculations. He said it is the Palombo's responsibility to find the tenants and he needs flexibility. He thinks this could be a winning situation for everybody. The site could house two tenants and parking requirements would be met as well as meeting the impact requirements of the zoning ordinance.

Mr. Barnhart submitted Exhibit A-7 which will assist him in discussing the use variance, justifications for special reasons and negative criteria. Mr. Vain asked how many employees Mr. Palumbo had on site at any one time. He noted that the parking lot was full during daytime hours. Dr. Levitt swore in Mr. Palumbo. He said that he had 90 to 100 employees at any given time. Mr. Vain said with the proposed application the parking will probably be more staggered. Mr. Barnhart said the situation is a completely different scenario now. Mr. Palumbo said he started out with five employees and the business grew. The site had been a pharmacy since 1942 with many people coming and going, some in wheelchairs. He said the nature of the business had become 80% geriatric in nature. Dr. Levitt said that he had no objection to any single use. The problem is in not knowing the impact of the use since the specific use is not known. The Board wants to be able to control issues such as trash pick ups and hours of operation. Every use that has been granted a variance has been given conditions to be followed. He said the current applicant is asking for carte blanche without any review.

The Board recessed for five minutes at 8:47 p.m. to allow Mr. Talvacchia to confer with his clients. The Board reconvened at 8:52 p.m.

Mr. Talvacchia said the current proposal is to seek a use variance and he feels it is appropriate to address the concerns of the Board. He said the Board can grant the use variance and they can tell any prospective tenants that for any give use, they must come back before the Board for any site issues such as access, dumpsters, hours, noise, and fumes. This is a normal process and gives the Board control over specific uses. Dr. Levitt asked what happens if the applicant gets a blanket approval but the Board doesn't agree with the proposed use when they come back in. Mr. Talvacchia used examples and said if the use is too intense, it becomes a parking issue and the Board can control specific site plan issues. Dr. Levitt said once a use variance is granted, the burden of proof is higher to say the use is not suitable. Mr. Talvacchia suggested that the Board

can also allow an interpretation. Dr. Levitt said the Board does not want to see an unoccupied building as this is degrading to the neighborhood and the Board also does not deny reasonable uses. Mr. Talvacchia said the applicant wants some certainty and flexibility for the property owners and they want to be able to market the site successfully. They would like to ask for comments and a vote. Dr. Levitt said he has no objection to any single use on the list. He encouraged them to bring any use before the Board that is on their list. If reasonably adaptable to the site, the Board would favor it. Once the Board says it is a permitted use as defined, it handicaps the Board to control conditions. Mr. Talvacchia said the Board can require restrictions. Dr. Levitt asked if the Board were to grant the variance for all the uses on the list, and a potential tenant comes in with one of the uses and the Board thought that use was inappropriate, aren't their hands tied since the Board previously said the use was permitted? Mr. Zlotnick said yes. Dr. Levitt used the drug store as an example. A neighborhood pharmacy with three or four employees behind the counter with people coming and going is not the same use as a drug store delivery service with 100 employees. Without specific testimony, there is no control. The Board cannot give a condition for every possible use such as a medical office or restaurant; this would be beyond the scope of what the Board can perceive. Mr. Talvacchia said he felt controlling site plan issues will allow plenty of control. Dr. Levitt said once a use is permitted, discretionary powers are lost. Mr. Talvacchia did not agree.

Mr. Zlotnick said a question going through his mind is whether or not a change in permitted use triggers a site plan requirement. Mr. Doran referred to the Ordinance and said a use change, not a "D" variance, of a building, of equal to or less intensity, is not considered a change of use. If a greater intensity exists, it is a change of use and site plan approval is required as determined by the Zoning Official. Mr. Talvacchia said they are suggesting that any user as a condition would be subject to this. Mr. Zlotnick said from a legal standpoint, if an applicant comes in for a site plan, there are discreet requirements of the Ordinance in regards to the site plan and if the applicant satisfies the requirements, the Board cannot turn the applicant down. Mr. Talvacchia added that the Board can impose conditions to address specific concerns. Dr. Levitt said the danger is in setting precedence in granting non-conforming uses. Things could get out of control if this is granted to anyone with a building up for rent. Dr. Levitt noted that it had been said that the building is not marketable since it would take a long time for them to come before the Board and for the process to be complete. Dr. Levitt pledged that the Board will work to expedite the process with special meetings if need be and would bring applicants before the Board as timely as possible. Mr. Talvacchia said they will ask for specific uses and are amenable to reasonable conditions and agree to come in for site plan approval. He noted that time is an issue and they are sensitive to the time line since use variances are subject to appeal. The appeal process involves a 45 period after the resolution is adopted, the resolution is usually adopted 30 days after the hearing, and then there is public notice. There is usually an 80-day period after the public hearing before you know if the use variance has been appealed. Mr. Talvacchia and Dr. Levitt discussed the noticing process further.

Mr. Doran read his report noting items in the general review. Mr. Doran summarized by stating that he has sat on many Boards and noted that with House & Garden, they have a new building and a big site. A use variance is very specific to a particular piece of property. It is also the highest variance a Board should grant. The law puts a higher standard on a use variance. Mr. Doran said he has seen no testimony as to visual environment. He asked Mr. Zlotnick if he could possibly write a resolution based on so many different uses and conditions and then expect the Zoning Official to be able to enforce it. Mr. Zlotnick said it would be difficult. Mr. Doran said he doesn't feel he could enforce such a litany of uses and asked for example, what about signage and what criteria would be used for it. Mr. Doran suggested they pick one or two similar uses that don't need a lot of site changes. Every use that has been brought up brings up many questions and would be a two or three hour Planning Board meeting for each particular use. He noted that it would be difficult to give reasonable conditions to this variance. Mr. Zlotnick said

that this may be considered spot zoning. Mr. Talvacchia suggested eliminating the restaurant and medical uses as the applicant would like something he can market after tonight. Dr. Levitt said he doesn't want to restrict them and a medical office may very well be appropriate for this site and possibly a restaurant could also work. Mr. Talvacchia said for the purposes of this application tonight and to also address Mr. Doran's concerns, they can look for office professional and broader retail approval and with the condition they will come back for site plan approval. Mr. Palombo commented that it is very difficult to market his building without knowing what it can be. He has had three calls and they have all asked what the business can be. He doesn't know what to tell them. It has been very difficult and he needs something he can work with. He said he has fixed up the parking lot and asked what more he can do. Dr. Levitt said that he can promise that if they have a possible tenant, he will have them come before the Board within six weeks and will allow an informal meeting or a special meeting if needed so the applicant can get a feel for the Board's concerns. Then they can come back with a site plan addressing the Board's concerns. Mr. Palombo said at this time a new tenant can come in with a pharmacy or a beauty shop. Dr. Levitt said the law states it can be either of those types of businesses because the Board has granted the variances for them and they are now considered permitted uses.

Mr. Talvacchia said that their amended proposal is for Miscellaneous Retail and Professional Offices. Dr. Levitt referred to an example of a problem with professional offices on Tilton Road. The office is next to Sunshine Cleaners and became a stockbroker's office which grew to have 40 to 50 employees and the parking overflowed onto Wabash Avenue. Mr. Barnhart referred to the Ordinance and the Professional Office requirement of one space per 200 sf unless there is an intensive work force in place which is then left to the discretion of the reviewing agency. Dr. Levitt said that is the whole point. With this application, the Board is being asked to give up that discretion. Mr. Talvacchia stated that control can be at the site plan review. Dr. Levitt asked the Board if they had any objection to any items on the list. Mr. Roegiers said he may object to child care at the site. Dr. Levitt said the Board doesn't know what conditions would exist without a review process. Dr. Levitt said he might not object to child care if vehicles were to drop children off at the door. Chief James said this wouldn't be possible since Oakcrest Avenue is in a no parking zone at the site in question. Again Dr. Levitt said that these types of issues need to be looked at specifically.

Dr. Levitt opened the public session. Derek Rowe of 2610 Shore Road was sworn in. He lives across the street from the site and he felt that the application was vague. Some of the proposed uses are potentially beyond what has been at the site and when that happens, neighborhoods deteriorate. Mr. Rowe said the use should not exceed the scope and scale from what has previously been there. The use should not impact the quality of life to the residents who live there.

Aldo Palombo, Sr. was sworn in next. He said he is the former Mayor of North Wildwood and the applicant's father. He has been retired for five years, but he noted that his town was not encouraging businesses and since then, things have changed. He said the neighborhood liked his son's business and it was a successful retail business. Mr. Palombo, Sr. said he was also a Pharmacist by trade and there will never be another pharmacy at the site due to insurance costs. Jobs and businesses need to be created and he felt the Board is disregarding someone in the community who has demonstrated his philanthropic abilities. He said his son is a good guy and feels the Board should bend a little bit. The City does not need another empty store. He noted that the former House & Garden site is 70% to 80% empty and the City should not want to see more of that.

Dr. Levitt said the Board is in agreement and will make every effort to hear any potential tenant within 6 weeks and will work with any applicant to expedite filling the building, but the Board

cannot give up their heart and soul to do that. Dr. Levitt closed the public session seeing that there was no one else who wished to speak.

Mr. Talvacchia repeated that the amended application is for Miscellaneous Retail and Professional Business Office uses.

Mr. Barnhart discussed the justification for the use variance for the record. He said the site is well suited in scope and scale to the narrowed down uses. Retail has been at the site previously and professional office uses are very similar in terms of intensity. General welfare is advanced and the site is surrounded by commercial development with consistent uses and would be identical to the uses at the House & Garden site. Their application had less parking available for their size, and the Palombo's site is now 100% conforming for parking. The site has received prior use variances and it has been a commercial use for over 70 years. The parking lot meets the ordinance requirements and promotes the free flow of traffic and they will amend the striping and have the appropriate amount of spaces. He discussed negative criteria and said there is no substantial detriment to the public good and is 100% compatible to neighboring uses. The public is accustomed to the commercial use and intensity. There is no substantial impairment to the Zoning Plan and Ordinance as the site is not compatible to a residential use. It is a commercial use as is the surrounding sites. He believes the Board has the authority to grant the relief requested.

Mr. Milone asked Mr. Barnhart to go over the uses specifically. Mr. Barnhart said the Miscellaneous Retail includes a drug store, miscellaneous shopping goods store such as a clothing store, light retail, florists, news dealers and newsstands and Professional Office includes engineering, legal, accounting, architecture, surveying and bookkeeping offices. Mr. Doran asked if the parking lot could be sold as a separate lot on its own. Mr. Talvacchia said no, the lot is legally tied to the lots across the street. Chief James clarified that if potential tenants come before the Board, the Board would still have the right to say the use is too intense and if it is, a "D" variance would be added to the site plan. Mr. Milone clarified that if approved, it will forever change the use at the site. Mr. Zlotnick recommended making the motion in the affirmative to avoid any confusion.

Mr. Roegiers made the motion as stated by Mr. Zlotnick to grant the use variance for Miscellaneous Retail and Professional Office uses to include the specific uses previously mentioned and to include the condition with site plan approval. Dr. Levitt commented that in his 30 years on the Board, the precedent has always been that if a variance is desired, an applicant comes before the Board and is interviewed, the range of the variance is determined and the Board makes conditions appropriate to granting the variance. He felt that the process should not be changed. Mr. Milone seconded the motion.

The roll call vote was as follows:

Mrs. Dyrek-Yes

Chief James-Yes

Mr. Milone-In the past the Board has had people come in to ask for an opinion on what would be allowed or what the Board's thoughts were and this seems like it turns that completely upside down-No

Mr. Notaro-Yes

Mr. Roegiers-Yes

Mr. Scharff-By voting yes, it would set a negative precedence for use variances and would be contrary to the Master Plan-No

Chairman Levitt-He noted that he had been accused of being prejudicial and chose to abstain.

Mr. Talvacchia said if he had known that, he would have asked for a continuance. He wanted seven voting members. He would have had the opportunity to request a transcript and have any absent Board members read it and vote at the next meeting. This is common procedure.

Dr. Levitt voted no. Mr. Zlotnick said that removes Mr. Talvacchia's issue. There were four votes in favor and three against. Five affirmative votes are necessary, so it fails.

Mr. Talvacchia thanked the Board.

Dr. Levitt encouraged the applicant to bring any perspective applicants before the Board for an informal hearing and he said the Board will try to get the applicant through the process as quickly as possible.

There were two resolutions to memorialize. The first resolution was to approve the meeting dates for the Planning Board for 2011 for publication in The Press. The second Thursday of the month will be scheduled if necessary. The voice vote was all in favor. The second resolution was for Coastal Sound Shop, Inc.-One Stop Car Audio, Block 109, Lot 32 for "C" variances for a Reader Board sign and a setback from the lot line which was granted December 2, 2010. Abstentions were Chief James and Jim Shippen. The voice vote was all in favor.

An e-mail reminder will be sent to the Ordinance Committee members concerning the meeting January 12, 2010 at 7:00 p.m. to finalize the Ordinance changes.

The meeting was closed by Chairman Levitt with a motion from Mrs. Dyrek and a second from Mr. Notaro at 9:50 p.m.

Respectfully submitted,

Robin Atlas, Secretary to the Board