

City of Northfield Planning Board
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Minutes: November 1, 2012

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, filed with the City Clerk, and posted on the City website, stating the date, time and place of the meeting and the agenda to the extent known.

The regular meeting of the Northfield Planning Board, held on Thursday, November 1, 2012 in Council Chambers, City Hall, Northfield, was opened by Dr. Richard Levitt at 7:01 p.m. and the following members were present or absent as noted:

Councilman Greg DeWees-absent
Linda Dyrek
Denise Kintish
Dr. Richard Levitt
Mayor Vincent Mazzeo
Lou Milone
Sgt. Paul Newman
Henry Notaro
Ron Roegiers
Derek Rowe
Clem Scharff
Jim Shippen

Matthew Doran, Professional Engineer-Deborah Wahl substituted for Mr. Doran who could not be present due to Hurricane Sandy
Norman Zlotnick, Solicitor

There was one application on the agenda this evening from Joseph & Jacqueline DeRosa who reside at 10 Jack Sloan Court, Block 40, Lot 18.04. They are before the Board because they want to construct an in-ground swimming pool and a new paver patio. The project will require "C" variances. Zoning for the property is R-4.

Dr. Levitt swore in the DeRosa's as well as their Engineer, Jon Barnhart who has appeared before the Board on many occasions. Mr. Barnhart

addressed the Board and stated the property as being on the right side of Jack Sloan Court and the property has an 80 ft. frontage and a depth of 110 ft. He displayed Exhibit A-1 which is a color version of the plan submitted to the Board. The existing home is a two-story single family dwelling with front plantars. Other improvements include a frame deck in the rear with a mostly grass area. The plan is to relocate the existing rear stairs and move them to another location and install a 10 ft. x 10 ft. utility shed and a pool. The pool dimensions will be 32 ft. in length and 15.8 ft. in width. They also propose to install concrete or a paver patio around the pool along with associated pool equipment around the side as shown on the plan.

Mr. Barnhart testified that there are three variances required. The first is distance of the pool from the existing structure. Ordinance requires a swimming pool distance to be 8 ft. from the main wall of the home and they are proposing 6 ft. This is due to the small depth size of the rear yard. They want to construct a functional pool, and to meet the Ordinance, the pool would only be 9 ft. wide which would be too small. The deviation area only affects a small area with the stairs being located 10 or 12 ft. from the pool. The setback area for half of the pool will be over 20 ft. The second variance is a rear yard setback where 10 ft. is required and 5 ft. is proposed. This is due to the location of the property. An overgrown wooded drainage swale for storm water exists behind the property. This creates an effective setback to the rear neighbors of more than 35 ft. Dr. Levitt verified that the swale is owned by the City of Northfield and not the Burton Estates Community Association. Mr. Barnhart discussed the lot coverage variance. 40% is required and they are proposing 49% which does not include the open frame deck. Mr. Barnhart added that storm water grades towards the swale at the rear of the property. He knows this works as he lives in the community as well and has observed this. He said this will not create a negative. In his opinion the improvements will be a dramatic aesthetic enhancement to the neighborhood and a community investment. He added that the project will not negatively impact any of the neighbors. The property is compatible to other lots in the neighborhood who have added pools and other development and similar applications to this one from this neighborhood have been brought before the Board.

Dr. Levitt asked Ms. Wahl about the air-conditioning units. She said they appear to comply at 10 ft. Mr. Barnhart agreed and said they have almost 15 ft. on one side. Mr. Roegiers asked the applicants if their next door neighbor has any problems with the air conditioning units creating any noise at the side of the property. Mrs. DeRosa said any noise will not be increased and the units will be separated from the neighbors by a fence. Mr. Roegiers also asked about the drainage swale and if this was the same

swale that the neighbors have complained about in the past. Mayor Mazzeo said the City has invested money to improve the swale and there is now a pump station there which has improved the situation. After the last storm, he has observed the area and it is now draining fine. Mr. Barnhart said the issue was that Pasadena Drive would flood and the City added a pump station and used City-owned land to add a force main that comes across Burton Avenue which basically solved all the issues. The swale itself and infiltration of it works very well. Mayor Mazzeo questioned the fencing. Mr. Barnhart said there is a 6 ft. high vinyl fence existing with gates on either side.

Dr. Levitt opened the public session and seeing no one who wished to speak on the application, he closed the public session. Mr. Shippen stated that the rear yard setback requirement of the pool is 10 ft., but to the structure it is to be 25 ft. Mr. Shippen noted that the deck is closer than 25 ft. and suggested a variance would be necessary. Mr. Barnhart said the deck is existing and they are simply relocating the stairs. Mr. Shippen said that would extend the setback on the deck by the width of the stairs. Mr. Barnhart agreed. Dr. Levitt asked if the applicant sufficiently advertised for any and all variances required. Mrs. DeRosa said she did. Mr. Barnhart noted that the applicant is also requesting a rear deck setback of 18.5 ft. to the proposed relocated stairs.

Dr. Levitt commented that the pool is shoehorned in a bit, but what has swayed him is the swale in back. If there were neighbors at the rear of the property, this may have been a problem. He noted that the size of the swale will mitigate any issues.

Mr. Scharff made the motion for the four variances for lot coverage and the rear yard setbacks for the pool and the deck to the stairs, as well as distance from a structure. Mr. Roegiers added that they must enclose any mechanicals. Dr. Levitt asked that if there were any noise complaints, would they be willing to add more fencing. Both Mr. and Mrs. DeRosa noted that they would. Mr. Shippen seconded the motion.

The roll call vote was as follows:

Councilman DeWees-absent, Mrs. Dyrek-yes, Mrs. Kintish-no vote; 9 voting members were present, Mayor Mazzeo-yes, Mr. Milone-yes, Sgt. Newman-yes, Mr. Notaro-yes, Mr. Roegiers-yes, Mr. Rowe-no vote; 9 voting members were present, Mr. Scharff-yes, Mr. Shippen-yes, Chairman Levitt-yes. The motion for the "C" variances carries.

Dr. Levitt opened up a discussion concerning action taken by City Council by First reading and Publication of Ordinance No. 11-2012 which amends Ordinance 8-2008, an Ordinance amending the 1986 Land Use and

Development Ordinance, with revised language regarding Tree Removal and Protection. He began by giving a history of the Tree Ordinance of 2008. Dr. Levitt said the main impetus behind the Ordinance came about after approval was given for a subdivision which created buildable lots at the corner of Shore Road and Mill Road. Trees were shown on the original subdivision plan and the developers came in and clear cut the entire lot of trees. They even removed trees in areas that were well away from setback lines, power lines and hazards. There was a lot of community anger after this. City Council and the Planning Board responded with the Tree Ordinance. There was also another subdivision on Rosedale Avenue which was a beautifully wooded lot and to this day, is still a bare vacant lot with no foliage and it stands out in the neighborhood.

Dr. Levitt continued by saying the recommendation by City Council is simple. They are requesting that the Ordinance be amended to exclude single family residential lots, whether improved or unimproved, from the provision which limits the number of trees which can be removed (3 trees in any consecutive 2 year period, between 8 and 12 inches, within the building setbacks area). Dr. Levitt felt that this would gut the entire Ordinance, but he felt it would be possible to make revisions to the Ordinance.

Dr. Levitt said there are conflicts which would be hard to resolve. The City has had a Landscape Ordinance for many years requiring two shade trees and even in looking at the application tonight and in Mr. Doran's comments, he was able to waive the shade trees as required by initial site plan review. Part of the Ordinance states that trees can't be removed as required for site plan applications and this creates a conflict. He has a problem with a blanket exemption.

Dr. Levitt said with the storms we have had, everyone who has lost a tree or had damage wants to remove the trees. He said it is a bad time to be a tree in Northfield. He said the purpose of the Tree Ordinance is for the benefit of the trees and he referred to the preface under 'Findings and purpose' of the Ordinance. Basically it states that it is the belief of City Council that inadequate tree density whether by natural causes, removal, or destruction, causes increased drainage control costs, increased soil erosion and sedimentation, decreased fertility of the soil, degradation of water resources, decreased groundwater recharge, increases in carbon and dust in the atmosphere, an impact on aesthetic character and value, and a decrease in property values. He noted that the Ordinance is aimed at preserving specimen trees and large trees of 8" to 12" caliper. He stressed that the Ordinance does allow three trees to be removed over a two year period and he felt that the Ordinance is liberal to this extent. To exempt single family homes would only leave commercial sites and these

properties do not normally have large trees for the most part. We would no longer have a tree protection ordinance at all. This would also create a conflict for the Zoning Officer to enforce and resolve. For example, if trees were required by the application process and resolution, and then trees can be cut for any reason; he would not know what would hold sway-the resolution or the ordinance.

Dr. Levitt opened the issue for discussion by the Board. Mrs. Kintish asked if a tree removal permit is required. Dr. Levitt said a permit needs to be filed, but there is no charge for this.

Mayor Mazzeo gave the background behind the amendment. He said that residents have come to him after the recent storms. Ridgewood and Shepherd Drives were hit especially hard after the derecho. The Ordinance would have been impossible to enforce. There were 40 to 50 trees cut on Ridgewood Drive alone. He said people came to him and were scared. Now with Hurricane Sandy, people have had enough and he doesn't feel the City can tell them they cannot cut trees on their properties. He felt that people and homeowners have common sense about it. The storms caused this and residents came to him about enforcement which was difficult for the Zoning Officer to impose under these circumstances. The Mayor also noted that the fines are large. Mrs. Kintish asked what would happen if a resident wanted to cut down a tree and Zoning said it won't fall and it does. She said this could be a problem. Dr. Levitt said that it is not a problem to cut down a tree that can potentially cause damage. Mayor Mazzeo said that he felt that the Shore/Mill clear cutting was an isolated issue. Dr. Levitt said he agreed the Ordinance could be loosened up a bit and a compromise is needed, but the City cannot allow clear-cutting of lots and he has seen it happen. He understands that health, safety, and welfare issues should be addressed regarding trees that can cause damage, but he does not agree with appealing the important aspects of the ordinance. He referred to the Rosedale Avenue lots where a Dutch Colonial house was next to a wooded lot. This lot was subdivided and a home was built on one of the lots. The other was clear cut of every tree and twig and remains vacant to this day. He noted that beautiful oaks and holly trees were destroyed. Mayor Mazzeo agreed and has seen this occur on Wabash Avenue as well but he said that after tree cutting occurs on a weekend, it is difficult to enforce.

Dr. Levitt stressed that rather than quickly pushing the amendment through Council, there is a need to look more closely at this issue. Protections are necessary concerning clear cutting of lots and this is to include not just towering oak trees but also holly trees and bushes. Dr. Levitt added that he has lived in Northfield for 35 years and storms such

that we have seen this year with trees crashing down are not usually common. These storms were unprecedented and no one knows if they will become more frequent or not. He feels a lot of thought and effort went into the Tree Ordinance. To throw out the entire Ordinance due to the exemption would not be right. He felt the issue needed more consideration.

Mr. Shippen stated that he went to the Zoning Officer with concerns about a neighbor who cut down every tree in his yard. Some of the trees would not have harmed the property. Mr. Shippen felt that the removal of the trees changed the character of the property. He said this is hard to enforce after the trees are cut down because the neighbor said the trees were damaged and it can't be proven after the fact. Mr. Shippen said the circumstances of the derecho made enforcement that much more difficult.

Dr. Levitt said he would ask that City Council table the Ordinance amendment until it has been thought through to see if both the Zoning Officer and residents can be satisfied. Mr. Shippen suggested a subcommittee. Dr. Levitt agreed that the Mayor, members of Council and the Planning Board should discuss the issue. Mayor Mazzeo said that the problem comes back to enforcement. Dr. Levitt felt the issue needs more thought, but he agreed enforcement has been a big problem in town. He gave as an example the LED sign issues. If enforcement existed and is consistent throughout the City, the few that are fined will get the word out. Enforcement will be effective if those that break the rules are sited. Mayor Mazzeo felt that it would not have been good to site people after a type of storm such as the derecho. Dr. Levitt noted that residents are permitted to remove damaged trees. Mayor Mazzeo said that after this type of storm, some people were so afraid that they removed all their trees. Mrs. Kintish said this is understandable if they can prove the trees are a hazard. They should obtain a permit and then there shouldn't be a problem. Dr. Levitt said a revision of the Ordinance would be acceptable and it should be clear in the Ordinance that trees that create a threat to property can be removed. Mr. Scharff said that people who live on wooded lots are suddenly afraid that all the trees are dangerous. More wind damage can be done to property if all the trees are removed. Dr. Levitt agreed that one tree standing alone can be more of a target.

Discussion continued. Mayor Mazzeo stressed that he cannot see enforcement of the Ordinance after these types of storms. Dr. Levitt said he cannot agree to clear cutting of lots. He added that trees are a requirement of a site plan review. These trees are not required to be towering oaks. He does not know anyone whose property was damaged by small pines and holly trees. He added that the City of Linwood has

much stronger tree enforcement that Northfield. He understands that emotions are running high, but we need to step back and look at what we can do for safety while also prohibiting clear cutting and what can be done about those that do not want to care for trees on their properties.

The Mayor noted that the Ordinance amendment will be introduced for second reading at the City Council meeting November 20, 2012. Dr. Levitt again asked Council to table the amendment. Mr. Scharff added that the Tree Ordinance committee worked for a year and a half on the Ordinance and they took a lot into consideration. If a lot is clear cut of trees, there can be much more damage caused to a neighboring lot because there are no trees. Dr. Levitt added that if single family homes are exempted, the whole Ordinance is essentially gone. He agreed that violations should not be given to those with legitimate concerns for safety reasons, to remove trees with weakened limbs, diseased trees or those causing a hazardous condition, or trees in areas where building will take place. The Ordinance does not prohibit tree cutting, but it does preserve areas against clear cutting. The Chairman concluded by saying that the trees are one of the attractions to our area and he feels the Ordinance can be amended to please everybody and he encouraged the Board to read through the current Ordinance. He is in favor of lightening up the Ordinance a bit and requested that Council table the amendment until it can be further reviewed to see if there are ways that can be found to address the concerns of all. Mr. Shippen agreed with him.

Mr. Zlotnick gave his opinion to the Board. He said the Board must act formally since the amendment was referred to the Board by Council under Municipal Land Use Law, Section 26. The Planning Board has 45 days in which to respond. If Council does not hear from the Board within that time frame, they can move ahead with the amendment. If they do hear from the Board in a substantive way, they have to react and it will affect the voting pattern by way of a super majority and they must, by resolution, explain why they are differing from the recommendations of the Planning Board. If the Planning Board is going to act, it must do so formally so that Mary Canesi, the City Clerk, can present the response to Council. The responsibility is on the Board to act or do nothing within 45 days from the date of referral 10/9/12; the date of first reading. If nothing is done tonight, and 45 days passes, Council can do whatever they want since they received no recommendations from the Board.

Dr. Levitt said there needs to be a reasonable compromise and he understands the reasons behind removing a tree that can cause a hazard to property. The Ordinance needs clarification, but not an exemption to remove most of the City from the Ordinance. Mrs. Kintish suggested adding to the Ordinance the fact that permits are obtained at no cost to

the residents. Dr. Levitt noted that limiting tree removal by years gives people a chance to stop and think and take a look at how a few trees that are removed can change the look of their property. Mrs. Kintish asked if trees that are removed are required to be replaced. Sgt. Newman said that is a good idea and he is in favor of replacing trees that are removed. This contributes to more trees in the City. Dr. Levitt said there is a section of the Ordinance for developers to replace trees that are removed for no reason other than to build on the property. There is also a tree fund that they are to contribute to which funds the planting of trees in parks and along the bike path. Mr. Shippen said they should be required to replace with a 'safe' tree. Mr. Rowe suggested replacing the word 'exempt' with other language. Dr. Levitt said the Ordinance does refer to dead, dying, deceased and damaged trees as being allowed to be cut down and he does not want to take away a homeowner's right to remove a hazardous tree.

Mr. Scharff made the motion to advise Council not to go forward with the Ordinance and that the City put together a work committee to come up with a revised Tree Ordinance. Mr. Zlotnick said it is the position of this Board that it is not in favor of the passage of the proposed amendment as written for the reasons that this Board believes that the issue needs further substantive study and the Board believes that a subcommittee of interested parties should be put together for the purpose of reviewing potential changes to the existing Tree Ordinance that would satisfy the concerns of the proposed amendment. Dr. Levitt asked that the Findings and purpose section on page one of the current Ordinance be incorporated into the motion. Mr. Zlotnick noted that Council will address the issue at the November 20th City Council meeting. They have the discretion to accept and table the amendment or move to change the proposed language which would require another second reading. They may also reject the Board's recommendations entirely and pass the amendment with an enhanced super majority and a resolution stating why they are rejecting the Planning Board's recommendations. Dr. Levitt asked that it be added that the Board feels there are some protections within the existing Ordinance that are worth keeping and the Board feels we can address the citizen's safety and welfare concerns with some revisions to the current Ordinance. Mr. Zlotnick added that there is no public input necessary at this point as there is no provision for it. Mr. Shippen seconded the motion.

The roll call vote was as follows:

Councilman DeWees-absent, Mrs. Dyrek-no, Mrs. Kintish-no vote; 9 voting members were present, Mayor Mazzeo-no, Mr. Milone-yes, Sgt. Newman-yes, Mr. Notaro-yes, Mr. Roegiers-yes, Mr. Rowe-no vote; 9 voting members were present, Mr. Scharff-yes, Mr. Shippen-yes, Chairman Levitt-

yes. The motion to forward to City Council the Board's recommendations concerning the Tree Ordinance amendment carries.

Dr. Levitt said that the next item is to discuss the sub-committee. He asked Mr. Scharff if he would be interested since he put in a lot of work with the Ordinance originally. He said yes and Mr. Shippen and Mr. Rowe volunteered as well. Dr. Levitt asked Mayor Mazzeo for his input and he suggested contacting Jason O'Grady as a public committee member who also was involved originally. Dr. Levitt concluded by saying he understands the concerns that the Mayor and Council have and feels they are very justified, but he feel the concerns can be addressed in a way that all will be comfortable with it.

There was one resolution to memorialize for Wayne and Susan Palaia, Block 1.02, Lot 38 of 103 Julie Drive. They obtained approval for a "C" Variance to allow an addition in their rear yard. The voice vote was all in favor with Mrs. Dyrek abstaining.

Dr. Levitt opened the public session.

Mr. Robert Pantazes of One Madison Avenue addressed the Board. He stated that both he and his wife are amateur ham radio operators. He is proud of this, especially at this time. There are at least 24 ham operators working 8 hr. shifts, 24 hours a day, at the Canale Center for Atlantic County handling communications and are in direct contact with Trenton in the wake of the storm. He enjoys the hobby and working with modifying and installing antennas and has been working to improve designs. He has been having difficulties with the City Ordinance and personnel. He has tried to obtain a tower permit for a 45 ft. amateur radio tower. Mr. Dattalo said he will have to deny the permit and Mr. Pantazes would need to come before the Board and pay a fee. He said he refuses to do that and feels he is entitled to a 45 ft. tower. He said the laws do state in Zone 1 that he can build a 30 ft. house and can add an additional 15 ft. for a non-commercial tower for television or radio or for a flagpole. He said the Zoning Office would not give him consideration for this. Mr. Pantazes then referred to the amended Telecommunications Ordinance which exempts amateur radio from the rules. Dr. Levitt read through the Ordinance.

Mr. Scharff said it is his understanding that Mr. Pantazes wants to build a pre-engineered, pre-fabricated tower. Mr. Pantazes agreed and said it will be on the ground in cement and will be supported by a bracket attached to the house. Mrs. Kintish asked where it would be located and he answered in the rear of the house as there would not be sufficient space on the sides and would be too close to property lines. Mr. Scharff said the

new Ordinance which came about as part of cell phone communications states that amateur ham radio is under Federal law. Mr. Zlotnick felt that if the Zoning Officer had an issue and since Federal law is involved, he should have sought the advice of the City Solicitor. He suggested that Mr. Pantazes make an application before the Board for an interpretation. The Board has the authority to interpret. Mr. Pantazes said he feels he should not have to do this since Federal law states that there needs to be a reasonable accommodation for ham radio operations and he feels 45 ft. is reasonable. Dr. Levitt said the issue is not clear and that laws have to be closely looked at. There may be a height limit and this needs to be interpreted as to whether these laws apply to amateurs or cell towers. If Mr. Pantazes feels so strongly about it, he should apply for a variance by going through the variance process. If no one complains about the project, it can possibly be granted.

There are two issues. There is the law, which it must be determined if it covers amateur radio, and if he was to apply for a variance, then would he not have to worry about conforming to Federal telecommunication law. The Board needs to interpret what is reasonable by law and what the neighbors feel is reasonable. "Reasonable" as interpreted by this Board is determining how the neighborhood feels about it. If they do not think it is a problem, it's reasonable, if not, the Board needs to listen to their concerns. Mr. Zlotnick added that this Board is under Municipal Land Use Statue and is only charged with a certain amount of jurisdiction. Mr. Pantazes said he understands this and has also been before Council. Dr. Levitt again suggested to come before the Board with a legal interpretation of Case Law and to show the Board that he is entitled to a 45 ft. tower by Federal law.

Dr. Levitt concluded by asking the Mayor to look into checking with Council for a Council member who may be interested in being a Tree Ordinance sub-committee member. He also suggested the Board members read through the Ordinance which is on-line and email suggestions to the committee members. He added that Mr. Scharff will chair the committee. It was noted that if Council does not agree with the motion and passes the amendment on second reading, there will be no committee formed.

Chairman Levitt closed the meeting at 7:22 p.m. with a motion from Mr. Shippen and a second from Mr. Roegiers.

Respectfully submitted,

Robin Atlas

Robin Atlas, Secretary to the Board