

**City of Northfield Planning Board
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Minutes: October 3, 2013

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, October 3, 2013 in Council Chambers, City Hall, Northfield, was opened by Chairman Richard Levitt at 7:00 p.m. and the following members were present or absent as noted:

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

**Matthew Doran, Professional Engineer
Norman Zlotnick, Solicitor**

There were three applications on the agenda this evening. The first was from Richard Zappala for the property located at 427 Mt. Vernon Avenue, Block 110, Lot 4 in the R-3 Zone. Mr. Zappala was sworn in as well as Edwin Howell of Ocean City who is a Registered Architect and Professional Planner and the applicant's father-in-law. Mr. Zappala noted that his wife Kristin, his son, and a neighbor are also present. Mr. Zappala said he has owned the residence since 2000 and his family has since outgrown the home and they are requesting a front yard setback of 5 ft. and for impervious coverage. Mr. Howell introduced Mr. Zappala and said he has the happy distinction of being Mr. Zappala's father-in-law and it is his pleasure to describe the project to the Board. Mr. Howell said the front yard setback is necessary for the addition due to the placement of the bedrooms at the front of the house. They intend to add a master closet and bathroom and the placement can be either at the front or they would need to add a second story and the house is not designed for that and it simply would not work with this small addition.

Mr. Howell described the setbacks that are needed. The house currently has a 30 ft. front setback and they are proposing a 10 ft. addition at the front of the home. Therefore the proposed front yard setback is 20 ft. where 25 ft. is required. Mr. Howell referred to the zoning schedule on the plan and described the impervious coverage situation. The total coverage requirement is 50% and 54.1% currently exists. The project will increase the coverage to 57.8%. He noted that most of the neighboring houses are setback less than 25 ft. Mr. Howell referred to the proposed drawing of the addition and said the existing master bath is only 5 ft. square which is quite small and doesn't suit their requirement for space. He stated that the addition is reasonable and he doesn't believe it will pose any burden on the neighbors.

Dr. Levitt asked for questions from the Board and Mr. Shippen, in viewing both the Howell plan and the Koelling survey, had concerns that one of the sides would not be 15 ft. Mr. Howell assured the Board that 15 ft. will be shown on the 'as built' drawing which will be submitted to the Building Dept. and the side will definitely be 15 ft.

Dr. Levitt asked if anyone from the public wished to add any input and seeing no one, he closed the public session.

Mr. Doran referred to his Engineer's report and said that street trees need to be addressed. Mr. Howell said there is a large tree in front of the house and he noted that one of the 50 ft. trees in the rear came down on the neighbor's property in the past. They intend to remove the tree in front and will replace with a smaller shade tree. Dr. Levitt said one shade tree would be acceptable and he referred Mr. Zappala to review the approved County list of trees.

Mr. Scharff made the motion to approve the "C" variances for the front yard setback and total lot coverage for the residential addition. Mrs. Dyrek seconded the motion.

The roll call vote was as follows:

Mrs. Dyrek-yes, Mrs. Kintish- yes, Mr. Milone-no vote, Sgt. Newman-yes, Mr. Notaro-yes, Councilman Perri-yes, Mr. Roegiers-yes, Mr. Rowe-no vote as 3rd alternate, Mr. Scharff-yes, Mr. Shippen-yes, Chairman Levitt-yes. The motion to approve the "C" Variances carries.

The second application was from Riska Properties 1622, L.L.C., owned by Guy B. Riska. The application involves 1415 Wabash Avenue, Block 97, Lot 15.01 in the R-2 Zone. Before Michael R. Rann, attorney for the application, could proceed, Michael LaTorre of 1407 Wabash Avenue addressed the Board. He said the felt this application was fundamentally the same application as that which was heard at an earlier hearing. Dr. Levitt asked for response from the Board's attorney, Norman Zlotnick. He said that he has researched the cases and citations referenced in Mr. Rann's brief, which were included with the second application submitted, and he is satisfied that the application is sufficiently different and can be heard. Mr. LaTorre responded that he did research as well and he feels the application does fall under the jurisdiction of *res judicata* and is the same application and it should not be heard. Mr. LaTorre read case law stating that the changes are minor in nature and not different enough to overcome prior objections and is not sufficient to obviate the *res judicata* affect. He referred to both the prior and the current public notices for the August 1st and October 3rd hearings and said they are inherently the same with the only verbiage change being the addition of

the words “non-drive-through” in reference to the newly proposed parking lot. He said “non-drive-through” was not the original salient issue. The issue is over the residential home being demolished to build a parking lot. He again stated that the application should not be heard and that he was told at the last meeting that the applicant’s next option would be to appeal in Superior Court.

Mr. Zlotnick stated that he has read the case law on the *res judicata* issue and his advice is that each of these applications stands on its own facts. The law is in favor of applications being publically heard and after the Board hears from Mr. Rann this evening, they can vote on whether or not this application is barred from *res judicata*. He recommends the Board vote on this as a record needs to be set. The courts want and agree with this. Mr. Zlotnick did not believe that this application was barred. He also noted that Mr. LaTorre is $\frac{3}{4}$ correct in his comment referring to an appeal in Superior Court, but this is only one way to address the outcome and not the only option. There is an appropriate way to proceed and after reading all the cases referenced in Mr. Rann’s letter included with the second application, he felt this application is sufficiently different and that each referenced case is fact sensitive, particularly one Supreme Court case, Bressman v. Gash, NJ 517 (1993), which upheld that a determination by a planning board that landscaping, buffering and lot lines were sufficiently different in the applicant’s second application, and that consideration was not barred by the doctrine of *res judicata*.

Mr. Rann addressed the Board with the initial factoring issue of *res judicata*. Dr. Levitt asked that he begin by explaining what it is. Mr. Rann said that *res judicata* is legal terminology essentially meaning that an issue has come before some deciding entity and the issue has been decided and cannot come back before the entity with the same issue. The Board can determine whether or not the applications are substantially the same or different. He has provided case law including the Bressman case and the Russell v. Board of Adjustment of Tenafly case which represent very low thresholds. The court will look to see if a decision was made arbitrarily, which by nature the Board has not since case law and facts have been put in front of them. Mr. Rann said he is arguing in his letter dated September 18, 2013 that the second application should not be rejected under *res judicata* and the COX manual, which is the guru of NJ Land Use Law and Administration. There are five determining factors to give the Board guidelines to get over the hurdle of *res judicata* and number three says there must be no substantial changes to the new application to apply *res judicata* and in this case there are significant modifications. The parking lot is not a drive-through and there is no access to Wabash Avenue, there is an increase in buffering along the adjacent neighbor’s property, there is increased parking, changes to the storm water management system and revised configurations, there is an increase in landscaping, a zero buffer on the commercial side, an addition of an emergency access area, and increased access to Lot 12.01. Mr. Rann argued that merely changing the buffering and lot lines should bring them over the *res judicata* obstacle and noted that the Russell case had a small, but sufficient change, and the courts allowed the application to be heard as the change was substantial enough.

Mr. Rann said, in response to Mr. LaTorre, that he has provided proper noticing and that the notice identified that bulk variances will be sought and that alone is a sufficient change. He feels they have met the burden of substantial changes and should not be barred under *res judicata*.

Mr. Zlotnick detailed the changes for the Board before the vote. The new application will increase the size of the buffer to the adjacent neighbor by 3 ft., they intend to add plantings and landscaping including 39 Arborvitaes, they will increase the parking by two spaces from 17 spaces to 19 spaces, changed the storm water management system to 100 yr. storm standards, add an emergency access area, increased landscaping along the street including street trees, increase the driveway area, redesign the curb lines and propose a zero buffer to the Dry Cleaners lot. Mr. Zlotnick said the Board could decide whether or not the applications are the same or not.

Dr. Levitt said there will be a vote based on the legal description whether or not there are substantial changes, and if there are, the Board is entitled to hear as a new application, and at this point, the Board is not deciding the merits of the application. Based on the case law provided, which described less substantial changes, this application seems to qualify as being barred from *res judicata*.

Mr. Scharff made the motion that an affirmative vote would indicate that there is enough difference from the original application to hear this application. Mr. Rowe seconded the motion.

The roll call vote was as follows:

Mrs. Dyrek-yes, Mrs. Kintish- yes, Mr. Milone-yes, Sgt. Newman-yes, Mr. Notaro-yes, Councilman Perri-no vote, Mr. Roegiers-yes, Mr. Rowe-no vote as 3rd alternate, Mr. Scharff-yes, Mr. Shippen-yes, Chairman Levitt-yes. The motion to hear the application carries.

Mr. Rann proceeded with the Riska application. He introduced the professionals with him; Robert Bruce, Engineer, Thomas Darcy, Esq., Professional Planner, Guy Riska, owner of Riska Properties, and Matthew Feinstone, owner of Stone Concrete, and they were all sworn in.

Mr. Rann began by stating that the applicant is a contract purchaser of Block 97, Lot 15.01 and is rightfully present. The applicant is seeking major and final site plan approval and a "D" Use variance and other variances and he described the business as being an insurance agency located at 1622 Tilton Road.

Mr. Rann called Robert Bruce to testify. He displayed the site plan and said he has inspected the property and has prepared the plans to support the application. They intend to construct a non-drive-through parking lot on Lot 15.01 with access from 1622 Tilton Road only. He described the site and referenced the businesses surrounding the property. Mr. Bruce said the plan now eliminates all traffic access to Wabash Avenue. They have added a small turnaround at the back of the property and including a 12 ft. access for emergency vehicles on the Wabash Avenue side. They do not intend any trees, shrubs, or improvements on this emergency strip. They intend to leave the space a grassy area to allow emergency vehicles to come over the curb as needed. Dr. Levitt added that regular vehicles will see the grass and curb and not drive over it. Mr. Notaro asked about the curbing and Mr. Bruce said there will be a six inch curb on both sides of the parking lot. This will allow for additional landscaping on the Wabash Avenue side and they have moved the parking lot toward the Dry Cleaners which will now have a zero buffer. This will also allow for a three ft. strip in front of

the residential lot for Arborvitaes and a board on board fence. Mrs. Kintish asked about the buffer between the parking lot and Mrs. Carney's property. Mr. Bruce answered that the buffer will be 3 ft. with the board on board fence on the property line and an evergreen buffer along the fence on the Riska side.

Mr. Bruce described the storm water system as going a different route on the Riska property which will now not affect any of the neighboring properties and the storm water will be directed toward Tilton Road. They plan to widen the access to the parking lot to 25 ft. which will now be more sufficient for passing. The access was to be 18 ft. and will now be 25 ft. which is typical for a drive aisle. Two-way traffic will now be necessary since there will be no exiting on Wabash Avenue. They will also be realigning the curbs and adding two parking spaces on the side opposite the lot on Wabash Avenue. They will be adding shrubs to screen Wabash Avenue.

Mr. Roegiers asked about the fence. The fence will be a wood board on board fence 3 ft. to 6 ft. and will go up to 6 ft. where allowed. The fence will be 3 ft. for 25 ft. from the property line and then will go up to 6 ft. in height. Mrs. Kintish asked Mr. Doran about the required buffer and he said the requirement is 15 ft. and they are asking for 3 ft. Mrs. Kintish asked about new parking spaces. Mr. Bruce said the two parking spaces will be added at the Corner of the vacant Dino's property. Mrs. Kintish had concerns about the buffer and asked if it would be possible to increase the buffer by having fewer parking spaces. Mr. Bruce addressed this and said at the last meeting, it was determined that 31 spaces were required and Riska at the time had 10 spaces. With the new project, he was able to increase this to 28 spaces. Mr. Doran said they would lose 10 parking spaces if they increased the buffer to the required 15 ft. Dr. Levitt and Mr. Shippen agreed and said that they need the space for the turnaround and for two way traffic. Mr. Rann noted that fences can be less than 3 ft. off the property throughout the neighborhood. Mrs. Kintish said her concern is that the business is next door to the residential property. Mr. Riska asked what the current setback is and no one was sure, but Mr. Bruce said he googled this and it looks to be about 30 ft. Mr. Roegiers verified with Mr. Bruce that the fence is actually on the property line and suggested placing the evergreens on Mrs. Carney's side so that she won't have to view the fence. Mr. Bruce said they would be responsible to maintain the plantings and they would be trespassing on her property in order to do so. Mr. Bruce said they agree with all the comments in Mr. Doran's letter. Mr. Doran said that lighting should be discussed. He suggested using lower style lights below the fence level which can be directed toward the Dry Cleaners rather than 16 ft. poles. Mr. Rann referred to previous testimony from Mr. Riska who stated that lighting at night would be absolutely minimal. Mr. Shippen suggesting having the lights on a timer and Mr. Rann said this would be beneficial to both the applicants as well as the neighbors. Mr. Riska said he wouldn't even do lights if it wasn't a requirement. Dr. Levitt noted that they probably won't even use the back lot in the evening hours since the few cars visiting the site at night will most likely use the Tilton Road side for parking. Mr. Scharff asked if the emergency access will be stabilized. Mr. Bruce said it will be a grassy area only to discourage any cars from using the area.

Mr. Thomas Darcy, the Professional Planner for this application, gave testimony next. He stated that he conducted three visits to the site and he described the three variances the applicant is seeking. They require approval for a D1 Use variance for construction of the parking lot to service the commercial building on Lot 15.01 in the

R-2 Zone, a "C" variance for total lot coverage of 80.3% with the requirement being 45%, and a variance for the buffer adjoining the residential Lot 16 for 3 ft. where 15 ft. is required. It is necessary for the applicant to demonstrate that the proposed variances will promote the purposes of Municipal Land Use Law and there are two purposes which will be advanced. The first is a two-prong purpose in that the application promotes the general welfare and the site is well suited for this use. The lot is not in the center of the R-2 Zone and does not have houses surrounding it. Lot 15.01 is on the cusp of the western portion of the zone and borders the N-B district which is commercial. The lot is also located next to the commercial Lot 12.01 and the lots are so situated together that they touch and can become a consolidated lot which will have two frontages. An opportunity will exist to have both ingress and egress on Tilton Road. No commercial traffic will travel on Wabash Avenue. This is a substantial change to the original application, the residential neighbor, and to the character of the neighborhood. In reference to lot width, they have a width of 65 ft. where 70 ft. is required, but they will create an industry standard parking lot which advances the purposes of zoning.

The second purpose involves the free flow of traffic and the reduction of congestion. He referred to the COX manual and said there is a section devoted to commercial parking lots in residential districts which advance the purposes of zoning if there is a deficiency or a need exists. There is a deficiency in parking for this property. There is a need for increased parking for this business and for the N-B district. The parking demand for Riska is about 31 spaces and the business currently has 9 spaces. This is an existing non-conforming condition which has been so for over forty years. This application will correct a substantial deficiency and the site will be going from a 22 space deficiency to a 4 space deficiency. The parking would be a substantial benefit to both Mr. Riska and the community itself.

Mr. Darcy continued by saying that the N-B Zone has a parking deficiency and this was covered in the initial application and he described the businesses located in the general area of Riska and noted approximate parking deficiencies in an effort to show an overall pattern. The Law Office on the corner would require 15 spaces and they have 11 spaces, the Dry Cleaners would require 12 and they have 5, the now vacant Dino's Sub Shop would require 12 to 16 spaces and they had 11, the only business to meet the parking is the ReMax real estate office at 15 spaces, and the gas station on the other corner which only has about 10 unmarked spaces. There are six businesses on the block and five are deficient. He noted that this is the oldest commercial business area in Northfield.

Mr. Darcy went on to describe the character of Tilton Road which he described in detail when the application was initially presented. Tilton Road is a County Road which does not allow street parking and the City has no public parking in this section of town. Granting a variance will help Mr. Riska's situation and the N-B Zone as well as advance the Municipal Land Use Law.

As to negative criteria, the granting of the variance will not substantially impair the Zoning Ordinance or the Master Plan and will not be a substantial detriment to the public good. Whenever a variance is granted it is the nature of zoning that there will be some detriment, but for there to be an issue with this, there must be a substantial detriment and Mr. Darcy testified that in this situation, there are many reasons that

there is not a substantial detriment. The character of the neighborhood must be considered as well. Lot area in the N-B zone is required to be 10,000 sf and if the two lots are consolidated, the new lot area will be 17,749 sf which will make this the largest lot in the zone. They intend to lessen the non-conformity with the increase in parking and will minimize the deficiency by consolidating the lots. Floor area ratio will be improved by the reduced deficiency and the principle use will be in the commercial N-B Zone and is permitted. The parking lot will serve as an accessory to the use. The one-story house, which is not historical, will be demolished and the loss of one house is not a substantial loss of housing stock for the City and the benefit of the available parking far outweighs the demolition of a house. Mr. Darcy noted that five of the property lines of Lot 15.01 already border the N-B Zone and if Lot 15.01 would have been vacant when the zoning had been put in place, he felt it would have been included in this zone. Mr. Kintish asked about the current taxes on the house and no one present was sure. Mr. Darcy continued by saying that there is a shifting of the zoning burden to Lot 16 which will now border a commercial zone. The use of the parking lot will not be that of a convenience store and will not cause any substantial detriment to the neighborhood and will not be an intense use.

Mr. Darcy discussed the parking lot on Tilton Road and the proposed lot to the rear of the Riska property and said the intensity will be low and self-regulated. Mr. Riska will tell his employees to park on the back lot and will have clients use the Tilton Road lot for parking which is closer to the building. He suggested designating the spots closest to Mrs. Carney's property for employees. He discussed the activity of the back lot as being idle 75% of the time. He said cars will simply be sitting there and this is not a substantial detriment to the public good.

Mr. Darcy said the most significant aspect is there will be no access on Wabash Avenue and this improves the parking issue on the street and will enhance the streetscape for the neighborhood and the bike path with the addition of landscaping. The difficulty is with the buffer. The requirement for the buffer is 15 ft. They will be providing the maximum buffer they can and will be installing a solid fence. The recommendation is to place the trees on the commercial side so that they can maintain them.

As to drainage, Mr. Darcy said that Mr. Bruce did a fine job of engineering. The runoff will be graded away from the residential properties and will be located on the commercial site.

Mr. Rann and Mr. Darcy discussed the fact that the home is now only 4 ft. from Mrs. Carney's property line, and by demolishing the house, they are essentially creating open space which further enhances vertical space.

Mrs. Kintish asked Dr. Levitt if the business were to be sold, would the hours of operation change. Dr. Levitt said conditions will be stated in the resolution and if the property is sold and the new business is more of an intense use, the Zoning Officer could site them. The purchasers would have the burden of due diligence.

Mr. Rann called Mr. Riska to testify about the intended use of the proposed parking lot. Mr. Riska stated that the hours of operation for the parking lot would be between 8:30 and 4:30 or less as some employees will leave earlier. Most customers do not visit the building and there is low demand and intensity. He added that he has taken to heart

all the comments and concerns and he has no intention of eliminating a park-like section on Wabash Avenue. There will be a blend of shrubs, trees, and flowers and the parking lot won't be viewed. Instead of cars parked up and down the street on both sides, the cars will be on the lot. He stated that cars currently litter the street. He said the house is currently in teardown mode. They will be adding fencing and from Wabash Avenue, you will see a beautifully landscaped area as a buffer. Emergency vehicles will have clear site and with the landscaping and fencing, the neighborhood will be prettier, safer, and more organized. Mr. Riska addressed the emergency access section and lane and said he doesn't understand why emergency vehicles wouldn't use the access on Tilton Road and said if the emergency access is needed by code, he will comply, but he would prefer to add more trees and landscaping for buffering.

Mr. Rann called Matthew Feinstone to testify. He owns Stone Concrete and has been in business since 1980. He has had discussions with Mr. Riska about the parking area and he has reviewed the situation and has given estimates. He was questioned as to the extent of disruption to the neighborhood. He said it would take approximately 4 to 5 weeks to demolish the house and build the lot. He has constructed lots from 20 parking spaces to 2,000 parking spaces and he does demolitions for a living as well. In comparison he said it would take over 9 months to demolish an existing home and construct a new one between the times it will take for permits and construction.

Dr. Levitt asked Mr. Doran if everything was covered in his report. Mr. Doran said they have and they have agreed to the minor changes he suggested.

Dr. Levitt opened the public session.

Michael LaTorre of 1407 Wabash Avenue addressed the Board. He began by asking Mr. Doran that if the house were considered to be in teardown mode, have any code violations issued. Mr. Doran said he would have to research that. Mr. LaTorre said he walks by the house and said the house is a single family home in a residential zone and he does not think it is dilapidated. He said the neighbors are not concerned about the driveway, it the neighborhood that they are concerned about. The driveway is an ancillary issue existing due to the construction of the parking lot. The salient issue of concern is the demolition of the house. The neighbors want the residential neighborhood maintained. Mr. LaTorre said the courts say that a "D" Variance is the exception not the rule, and the house complies with the zoning laws and is a permitted purpose. The parking lot will change the zoning laws and the Master Plan.

Mr. LaTorre continued by stating that the house is useable and particularly suited for the purpose of the lot and neighborhood and questioned why the applicant must request multiple variances. If the parking lot was ideally suited, they would not need to request the variances. He felt that the landscape buffers are insufficient and questioned why zoning laws are so contorted. He said that he felt the project was a detriment to the neighborhood and they will be altering the character of the neighborhood. Mrs. Carney will have to view a parking lot and the removal of the house will allow commercial encroachment toward the Bike Path which is a green way and a park. This project will have a negative effect on the quality of life for Mr. LaTorre and his neighbors. They thought they had an answer back in August at the first hearing; testimony was heard, and the Board made a decision. This is not arbitrary or capricious; they lost. He believes they have simply made tweaks to the plan. He wanted

the Board to know that if they grant the variance, this will affect all of those living on Wabash Avenue, especially Mrs. Carney.

Mrs. Kintish said there are cars parked on Wabash Avenue and she asked what businesses they come from. Mr. LaTorre said the 1622 Tilton Road business. Mrs. Kintish noted that if the variance is passed the cars will no longer have to park on Wabash Avenue. The parking lot would eliminate this situation and Dr. Levitt agreed. Mrs. Kintish added that the Arborvitaes should be on Mrs. Carney's side. Mr. LaTorre said the cars on Wabash are not a complaint from the neighborhood. He said the Law Office and the Dry Cleaners provide enough commercial development on the block and there was an issue last year with the Dry Cleaners emitting chemicals into the ground. If this is passed and the lots re-deeded, it will be a long term situation for the neighbors. Dr. Levitt said the lot can only be used as a parking lot. Mr. LaTorre said it is one more commercial lot closer to the residents.

Dr. Levitt discussed a past use at this Tilton Road property when Merrill Lynch occupied the site. If Riska were to move out, there could be another use occupying the building similar to Merrill Lynch which was a much more intense use. Wabash Avenue was parked solid. We have a well-maintained office building that does not have enough parking and is not going away. We have a two-story commercial office building with only 10 parking spots where 28 are required. This application is a plan to improve the situation. The Master Plan and purposes of zoning are multiple and the Master Plan recognizes that maintaining residential areas is a positive thing, but it also recognizes that commercial uses are also necessary to keep things economically viable. The tax base in the City is based largely on commercial and that value cannot plummet and we need to keep jobs in town. Dr. Levitt used the example of Carluccio's Pizzeria. The restaurant was a permitted use and opened and was a success, but there was not enough parking to support the business and the increase in the intensity of the use. The character of the surrounding neighborhood changed and there was parking up and down Davis Avenue, which is residential, and the neighbors were up in arms. This applicant is trying to prevent that. Wabash Avenue was a mess when Merrill Lynch occupied the location. The house on Lot 15.01 is not well maintained and has been a rental property. There is overgrown brush and a broken chain-linked fence. The applicant has offered to add bushes on Mrs. Carney's side which is very generous and he wants to do all he can to improve the situation. Dr. Levitt added that he is sure Mr. Riska would be willing to speak with her and to do all he can to make the neighbors happier with the situation.

Dr. Levitt said he understands the concerns of the neighbors and was recently involved personally with an issue of intrusion into a residential area, but he also agrees with Mr. Darcy's testimony about what constitutes a substantial detriment and he recognizes that maintaining both residential and commercial properties is an important aspect of the purposes of zoning. He said he will make sure the Bike Path area stays a park-like setting. Dr. Levitt said with this application you know what to expect and with a rental property, anybody could move in there. They could have 3 to 4 cars and have parties; you simply don't know. A home will generate many more trips and the business will not generate any onto Wabash Avenue. The City will have enforcement capabilities with a resolution. Mr. LaTorre said the home could also be owner occupied. Dr. Levitt countered that the City cannot enforce that and we are dealing with unknowns here. Mr. LaTorre agreed and said he understands there are unknowns, but they are here

tonight because of what they do know. Dr. Levitt said a resolution will lock in the future. The property now is a small, poorly maintained, rental property. Dr. Levitt thanked Mr. LaTorre for an excellent job and said he is impressed with his legal knowledge and research. Mr. LaTorre said they are present tonight to fight for Mrs. Carney.

Dr. Levitt asked Mrs. Anne Carney of 1413 Wabash Avenue if she wished to speak during the public session. Mrs. Carney said that Riska should go someplace else if he needs more room to operate his business. There are too many problems on the street. She is 85 years old and previously lived in the house in question. She noted that people on the bike path with allergies will be affected from inhaling dust. She noted that the neighbors in the past have prevented businesses from operating there and they should not be allowed to add on anything.

Mrs. Patricia Camp of 1405 Wabash Avenue said she remembered when Merrill Lynch was located at the site and has lived on the street for a long time. She never complained before, but now there are cars over the street. She suggested they park on Willow Drive and questioned why the gas station would need any parking.

Ms. Agnes Bocelli of 12 Holly Drive addressed the Board next. She had concerns since she lives directly across from the lot and has lived there for 34 years. She also was not bothered by Merrill Lynch. The only business that has parked on Wabash Avenue has been Bruce's Auto Repair and that issue has been resolved. There hasn't been any parking on her side of Wabash Avenue. She said there is a substantial detriment to the public good and the character of the neighborhood. If the Board members lived there, they would have concerns. She assumes all concerned have a graceful home and she has one herself and feels this will change due to this project. She does not want to be driven away and if she decides to sell after the parking lot is built, she wonders who is going to want to buy her property. She is afraid she will lose her investment. Emotionally speaking, this is where she stands and she noted that the house being demolished will not be a great loss, but the replacement will be a great loss to them. Dr. Levitt said that the area will be newly landscaped except for the 12 ft. grass strip for emergency vehicle access. Mrs. Kintish said she will be looking at landscaping and it will be more aesthetically pleasing. The rear of the property is overgrown and Mr. Riska wants to beautify it. Mrs. Bocelli noted that Mr. Bruce's descriptions were romantic, but Mr. Darcy's were not. She asked to view the plans up close and she was given the opportunity.

Mr. Shippen asked Mr. Doran if the emergency access section was necessary and required by the Fire Department. He suggested landscaping the entire area and eliminating this 12 ft. section if possible. Dr. Levitt added that the parking lot would then not be visible at all. He said this could not be determined tonight since they would have to check with the Fire Department. Mrs. Kintish and Mr. Shippen agreed that all that would be viewed would be landscaping. Ms. Bocelli asked how high the evergreens would be. Dr. Levitt said at least as high as the level of a car. Ms. Bocelli didn't think that would be high enough to hide the view of the lot since her house is high off the ground. Dr. Levitt thanked her for her input.

Brian Flaherty, who is the grandson of Mrs. Carney, addressed the Board next. He said that there are empty businesses all over town and questioned why they just don't

move. He gave an example of the medical center on the corner of Zion and New Roads. Mr. Shippen said this wouldn't solve anything as they would still be left with an oversized building without enough parking which was in existence before the zoning laws. Dr. Levitt said that the Board is trying to correct a problem developed from poor land use in the past. Mr. Flaherty said that the lot is in bad shape and he asked who would maintain it. Dr. Levitt said a resolution in place would determine that. Mr. Flaherty said it is a small affordable house and a family with one or two children could move into it and he asked if it had been put on the market and that this is a possibility. Dr. Levitt and Mrs. Dyrek agreed that there is no control over that. Mr. Zlotnick said the comment is not relevant and is speculative. The Board has to decide the case on the facts, not speculation. Mr. Flaherty said it is possible that somebody could clean up the property. Mrs. Dyrek and Mr. Shippen agreed that it could also get worse. Mr. Flaherty said he has been cutting the grass on the property and there have not been any police issues.

Louis Bradspus of 12 Holly Drive was sworn in next. He presented an analogy saying that he was just as his grandson's 6th birthday party and he said the point is that the past 6 years have flown by and time does fly. He said that in the next 6 years, new faces will be on the Board, but these neighbors will still be here. They aren't going anywhere. He uses the Bike Path every day of the year. It is special to him and he feels it is the best thing the City has given its citizens. He enjoys the flowers along the bike path, the children who use the path, and the old couples who sit on the benches. It is special, quiet, and natural and he can't believe that businesses want to affect changes to the Bike Path. He thinks the house should be torn down and a gazebo built in its place. Dr. Levitt asked Mr. Bradspus if he heard the testimony about the maintained landscaping instead of the old house. Mr. Bradspus thought better things could be done with the lot than the construction of a parking lot. He said the neighborhood is made up of family people and Northfield doesn't need another parking lot. He felt the Board should do the right thing and leave the Bike Path as beautiful as it is. Mr. Bradspus suggested a monument. Dr. Levitt said that very thing is being done on Oak Avenue. He also stated that the Board can only rule on what comes before them and to consider if the application furthers the purpose of our Land Use Ordinance. It is not in the Board's power to do otherwise.

Dr. Levitt closed the public session as no one else wished to speak on the issue.

Dr. Levitt asked for a few closing words and Mr. Riska offered an apology for the disconnect with the neighborhood if there is any. He promised that the 65 ft. lot would be viewed as trees, shrubs, and flowers and the parking lot would not be seen. He said he was very sorry for being the reason the neighbors were upset.

Dr. Levitt thanked Mr. Riska and proceeded to discuss the variances. There are three variances requested. The first is a D1 Use variance to permit an accessory parking lot to a commercial site in a residential zone and there is also a 'C' variance for lot coverage and a variance for the buffer. It was decided to vote on the D1 Use variance first. Mr. Scharff made the motion and Mrs. Dyrek seconded.

The roll call vote was as follows:

Mrs. Dyrek-yes; she added that she listened closely to all the testimony from the neighbors and she felt that Riska is doing all he can do to make this a really nice project, Mrs. Kintish- yes; she added that she agreed with Mrs. Dyrek and felt that Mr. Riska is doing all he can to make the area look better for all, Mr. Milone-yes, Sgt. Newman-yes, Mr. Notaro-yes, Councilman Perri-no vote as elected official, Mr. Roegiers-yes, Mr. Rowe-no vote as 3rd alternate, Mr. Scharff-yes, Mr. Shippen-yes, Chairman Levitt-yes. The motion to approve the D1 Use variance carries.

The second vote was for the “C” variances, lot consolidation, design waivers, and the site plan. Mr. Scharff made the motion. The variances and waivers include lighting. Mr. Zlotnick said they have agreed to Ballard low lighting. Dr. Levitt said the fencing will be placed on the property line and the trees and landscaping will be on the Riska side to make them maintainable, there will be substantial landscaping and flowers on the Wabash Avenue frontage, and the applicant will ask the Fire Department if they can landscape straight across rather than allow for an emergency access. The landscaping plan must be submitted to Mr. Doran for professional approval. Mr. Bruce added that the landscaping plan will have to grow together over time. Mr. Doran said that was understood, but the importance is that there are multiple rows of flowers, shrubs and other landscaping including shade trees. The “C” Variances are for lot coverage and the buffer, lot consolidation, and the design waivers as noted in Mr. Doran’s report. Mr. Shippen seconded the motion.

Before the vote, Dr. Levitt addressed the public. He told them that this Board has heard them. This second application is much better than what was originally proposed and this is because of you, the neighbors. It is because you came out and voiced your concerns. He said you have done your civic duty and the Board thanks you.

The roll call was as follows:

Mrs. Dyrek-yes, Mrs. Kintish- no vote as 2nd alternate, Mr. Milone-yes, Sgt. Newman-yes, Mr. Notaro-yes, Councilman Perri-yes, Mr. Roegiers-yes, Mr. Rowe-no vote as 3rd alternate, Mr. Scharff-yes, Mr. Shippen-yes, Chairman Levitt-yes. The motion to approve the “C” variances, design waivers, and site plan carries.

The Board called a recess at 9:23 p.m. until 9:30 p.m. Mrs. Dyrek had to leave the meeting to pick up her daughter, Dr. Levitt recused himself from chairing the third application and Mr. Scharff took over the chair for the remaining application.

The third application was from 2605 Shore Road, L.L.C. located at 2605 Shore Road, and involved Block 78, Lot 14, Block 78, Lot 18, and Block 76, Lot 19 in the R-B Zone. The attorney for the applicant was Nicholas Talvacchia of Atlantic City. He began by stating that 2605 Shore Road, LLC has been before the Board on three previous occasions-in 2005, 2008, 2011, and today. Site Plan approval was granted 6/2/05 and amended 11/6/08 and 6/2/11. The medical use was granted 6/2/11. The project is proposed to be developed in two phases.

Mr. Talvacchia continued by saying that with this application, the building will be almost at capacity. The Palombo’s are present as well since the intent is to purchase their building and parking lot across the street and to demolish the building and add 39 parking spaces. This will increase the parking from 147 spaces currently to 185

spaces. They will testify that there will be more than adequate parking for what they are proposing. They will be seeking Preliminary and Final site plan approval, a conditional use variance for the medical uses, and a D3 variance for parking which is a conditional use standard. They must convince the Board that the site is still suitable for the proposed uses. The type of medical uses proposed will consume a lot of space but will not involve a lot of patients and they are seen by appointment only. The proposed Wells Fargo office will need 27 parking spaces which is more than will be needed, but they are providing the code required number of spaces necessary for the 5,000 sf use.

Mr. Talvacchia said he has three professional witnesses with him, Daniel Scott Mascione, Licensed Architect of Northfield, and Jon Barnhart, Licensed Professional Engineer and Planner with Arthur Ponzio in Atlantic City. Derek Suragh is also present. He is the Director of Radiology with Shore Memorial. All three were sworn in by Mr. Scharff.

Mr. Suragh testified that he is the tenant of the new space of 14,000 sf which will have three highly specialized uses. There will be a women's imaging service which will consist of mammography, biopsy services, DEXA bone density services, gynecological services, and pregnancy evaluation services. The diagnostic inquiry services will include MRI, Ultra Cat scans, Tomography scans to evaluate cancer progression and how responsive it is to treatment, as well as ultrasounds for men in the areas of prostate, urinary incontinence and biopsy. Mr. Suragh said the third service, a vascular surgery center, is very special as there is a large diabetic population and many patients out-migrate since these services are not readily available here. As to the parking demand, the outpatient women's imaging center will staff a maximum of 17 employees who will work 12 hour shifts from 8:00 a.m. to 7:00 p.m. with staff arriving earlier to prepare. The patient maximum on site will be 12 to 15 with 8 patients seen on a slower day. The average will be about 12 and this is based on actual experience in other locations. All patient visits are by appointment only. The vascular access center involves surgery with employees working an 8 hour shift and the employee number is about 7. Mrs. Kintish asked if there would be part-time employees. Mr. Suragh said they do not plan on that. The hours will be from Monday to Friday and on Saturday, they will be open for 4 hours. The patients in the vascular center will be about 8 to 10 per day and no more than three at one time. All patients will be under anesthesia for the most part and will be there for 4 to 5 hours. They are not allowed to drive themselves. There will be a high concentration of diabetic patients and they may be transported by van. This is also based on actual experience and the patients have to be scheduled. Sgt. Newman asked if ambulance service will increase. Mr. Talvacchia said not at all and that transport vans would be utilized. Mr. Suragh said that 40% of the vascular patients are from nursing homes. Mr. Talvacchia said the hours on Saturday will be limited to 8 a.m. to 1 p.m. with 4 hours of patient service and 1 hour for staff preparation.

Mr. Jon Barnhart gave Engineering testimony next. He presented Exhibit A-1 which was an aerial photograph of the site and said the plan is to increase the parking. He described the photograph and said there are 121 spaces from the original approval and there are still 27 parking spaces behind the building. The new parking aspects involve the Palombo's building and the off-street parking lot across the street. Mr. Droboniku is proposing to purchase the Palombo's building and the parking lot across

the street and they feel he couldn't be providing a better plan for the community. They intend to demolish the 6,000 sf building and redevelop the lot into a parking area and to improve the parking lot across Oakcrest Avenue. They want to take a successful property at 2605 Shore Road and add parking to this site while eliminating a parking generator. They will be creating a net parking benefit of 67 spaces by getting rid of the building. Parking has always been a concern due to the large building which lacked adequate parking. They now have a new R-B Zone and commercial uses are conditionally permitted. This is not a use variance application as has been the case in the past.

Mr. Barnhart displayed Exhibit A-2 which is a rendered site plan with coloring. He will tie this in with the parking study. It showed site improvements with the building shaded tan and the 121 space parking lot shaded grey. Also shown was the demolished building replaced with more parking and the 25 space lot across the street. The end result will be 185 parking spaces where 148 currently exists. Exhibit A-3 showed a chart of the parking study.

Mr. Barnhart said his client mounted cameras on the building for 11 days to take inventory of the parking. Photographs were taken every hour from 6 a.m. to 8 p.m. and the study took place from July 30, 2013 to August 9, 2013. There were 15 photographs from each day and they had 165 samples to show the parking demand at different times. The range was wide with 2 cars at 6 a.m. on Sunday to 63 cars at 2 p.m. on Monday. The peak is between the 1 p.m. to 3 p.m. with 63 cars being counted. Currently there exists a Dialysis Center, an Urgent Care Facility, Coastal Designs Outdoor Furniture, and a Beauty Salon in a separate unit facing Shore Road. They allocated arbitrary spaces being used per use and found that 63 spaces were used for Dialysis, Urgent Care and Coast Design and then added 10 for the Beauty Salon. Mr. Barnhart noted that the salon will be located on site in Phase One, but not Phase Two. Next they determined the parking needs for the three new uses consisting of Women's Imaging, Diagnostic Imaging, and the Vascular Surgery Center. They figured 15 spaces for each imaging center and 10 spaces for the surgery center for a total of 40 new spaces due to the use changes. The nature of these medical uses cannot use the one space per 150 sf in the Ordinance. The parking study presented would be more appropriate. There are two more proposed uses for the main building. These include a Wells Fargo Mortgage Office at just over 5,000 sf and a second area intended to be medical at 3,723 sf. They are unsure of exactly the medical use at this time. They have allocated 27 spaces to Wells Fargo and 25 spaces to the undecided medical section. They used the 150 sf per one parking space formula to determine the 3,723 sf medical section. In adding all of this together, the total parking requirement would be 165 spaces and the total number proposed is 185 spaces. They will have an excess of 20 spaces. They feel they have calculated high and will not need that many spaces. He noted that the Palombo's building and lot development are part of Phase 2.

Mr. Barnhart displayed Exhibit A-4 which is an Existing Conditions Plan. They will leave the Palombo's building as is for now due to the Beauty Salon lease. Until they demolish the building, they will have 170 spaces which includes 121 at the main building, 27 behind the building, and 25 on the lot across from the Palombo's building. They are guaranteeing that they will not occupy the balance of the Palombo's building until the Beauty Salon vacates and the building is demolished. The salon's lease is up 12/31/14.

Mr. Scharff asked when the new medical centers expect to be operating. He was told mid-summer 2014.

Mrs. Kintish asked Mr. Doran about the buffer for the lot across the street. Mr. Doran said the buffer is 15 ft. and by Ordinance, there is to be no parking within 20 ft. of a right-of-way. Mrs. Kintish expressed concerns with the lot across the street and as business increases, the access on Shore Road from that lot is not safe. Mr. Barnhart agreed with this point about the Shore Road access and said they will be fencing that area and will not allow access. There will be a low fence on Oakcrest Avenue on both lots which will eliminate jay walking and will force people to cross at the corner. Handicapped ramps will be in place and there will be a safer and more beautiful condition than exists presently. The lot on Oakcrest will probably be used for employee parking because it is remote.

Mrs. Kintish and Mr. Doran continued a discussion about the existing parking lot and there is no buffer to the adjacent houses on two sides, but this is an existing condition. It is not meeting the 20 ft. parking to a right-of-way, but the situation will be improved by blocking the access to Shore Road. Mrs. Kintish suggested adding trees. Mr. Barnhart said they full intend to beautify the lot. Currently the asphalt goes to the curb and it looks like a big sea of asphalt. They will soft cut and add a landscaped planting area for street trees and plantings within a low level planter and will add a 3 ft. high fence and they will do this on both sides of the street. They will be framing both lots and will beautify the corner.

Mr. Rowe asked if any other entrance to the main building is available. Mr. Barnhart answered that they contemplated access at the rear and there is one existing. They will add a handicapped ramp and a sidewalk entry for access from these lots. The employees can make the decision if they want to use this entrance. Mr. Roegiers asked if the Wells Fargo office was a typical bank. Mr. Talvacchia said it is not a typical bank and will handle mortgages only. There will be no customers and will consist of all outside sales.

Mr. Talvacchia said that concerning the conditional use variance, the site is still suitable for the use. Mr. Barnhart agreed. The types of uses there now are similar to the new uses. They have demonstrated that they meet the parking demands and needs and the site continues to be adequate for the uses. The proposal is truly a benefit to the community and the public good. As to the setback variance and buffer for landscaping for the parking lot and the waivers, some existing and some proposed, they will be opening up the corner and adding nice landscaping and he feels this justifies the waivers. Drive aisle widths are an example. The buffer requirement is 15 ft. and they are proposing zero. There would be no parking if they met the setback requirement. The benefit to the project is the added parking. They intend to give the area a more residential feel with the added landscaping. They are doing a lot in the public right-of-way area to beautify the front of the site. There will be fencing close to the parking stalls, then landscaping, sidewalks, and grass. Mr. Barnhart said they will meet all the items and requirements of Mr. Doran's report.

Mr. Talvacchia called Dan Mascione to comment on the signs and windows. Mr. Mascione said he has been working on this building since 2004 and he presented Exhibit A-5 which is an architectural drawing for the submitted packet. It showed the

original building and how it has developed and how it will be enhanced. It will be a great asset to the property and his client has always looked to beneficial tenants. Mr. Mascione presented Exhibit A-6 which was a photographic rendering showing the original and new buildings and how much the owner has added. They have made the entire area greener and have always wanted a circulation to the back to tie the parking lots together. Exhibit A-8 showed existing and proposed photos of the rear of the property. Exhibit A-9 is a rendition of the signage from the front elevation. They will be adding signage for Wells Fargo and relocating the Coastal Design sign. Exhibit A-10 is the original signage package approval dating back to 2004 and they been consistent with what was originally approved. They are asking for relief from a prior condition of approval for a non-lit sign to be placed on the building facing Shore Road which originally was not to be allowed. There used to be two entrances on Shore Road which allowed access to the lot if a vehicle missed the first entrance. This will help with identification for motorists so that they don't pass the entrance and then have to turn around. The sign is about 26 sf and the maximum would be 27 sf. They are not sure at this time what the sign will say. Mr. Talvacchia said all the other signs are permitted and their signage is way below what was originally proposed. This building sign facing Shore Road is the only issue. Mr. Mascione said most of the signs are channel lettered signs and are not lighted box signs and they are tastefully done and must be approved by the owners.

Mr. Talvacchia said there is one more prior condition, for aesthetic reasons, and he referred to windows. They would like to add windows on the back of the building overlooking Erie Avenue. They will be placed high and will start at 5 ft. off the floor from the inside at 2nd story level. They will be 14 ft. in width and will be near the roof. These windows will serve the purpose of bringing light into the building. Mr. Roegiers asked that they not be intrusive to the neighbors or a privacy issue and Mr. Shippen asked what the use of the space entailed. Mr. Mascione said it is a section for general office space. The windows will probably have some sort of window coverings and are for the purpose of light, not vision.

Mr. Talvacchia said that completes the presentation.

Mr. Perri asked about the building in the back which used to house a beauty salon and a dance studio. Mr. Mascione said there is no plan to occupy that area. They accounted for the 750 sf section for a storage area and they have no plans to use the remaining section and would have to come back before the Board if this were to change.

Mr. Rowe asked about the loading dock in the back and if they expected to increase the use with the new medical uses. Mr. Suragh said there will be no significant increase in refuse or trash. They will have regular trash and medical waste which will continue to be disposed of properly. Mr. Mascione said they closed the loading dock near Erie Avenue. They have an interior conveyor to move things around inside the building.

Mr. Scharff opened the public session and seeing that no one wished to speak, he closed the public session.

Mr. Shippen asked if there was an issue with the parking lot across the street not being contiguous with the primary use. Mr. Doran said they would need a waiver if this was a new lot, but it is already there and goes with the Palombo's property.

Mr. Scharff reviewed the phase timing. Medical occupancy should begin July 2014, the demolition of the Palombo's building January 2015, and the final product should be completed by May of 2015.

Mr. Perri asked about the drainage. Mr. Barnhart said they are proposing a similar system to that which is currently installed and have solved issues as the site had drainage problems for years. They will install a similar system along Oakcrest Avenue which will be a net benefit for drainage. Mr. Doran said he has six comments on drainage in his report. He added that it is important for there to be resolution package for the Zoning Officer and he asked Mr. Talvacchia to provide Mr. Dattalo with file-sized copies of the exhibits. Mr. Zlotnick said he will make the exhibits part of the resolution. Mr. Doran said it is important that a list is easily accessible. Mr. Talvacchia added Exhibit A-11 which is a small parking chart of Exhibit A-3. Mr. Talvacchia added for the record that there will also be a coffee cart inside of the building to serve the tenants in a common area. Mrs. Kintish added it will be similar to that which exists at Shore Memorial Hospital. Mr. Talvacchia said they have to ask the governing body for license to have the coffee cart and it is an accessory use. Mr. Zlotnick didn't think it even qualified as that, but made note of it. Mr. Talvacchia wanted it to be clear. Mr. Scharff said it will prevent people from having to leave the building.

Mr. Talvacchia said they are seeking approval for Preliminary and Final Major Site Plan, Conditional Use approval for medical and office use, a D3 Variance for parking, a "C" variance for the setback for the new parking lot, and 9 waivers as set forth in Mr. Doran's report. Mr. Roegiers made the motion to vote on the D3 Variance and Mr. Shippen seconded.

The roll call vote was as follows:

Mrs. Dyrek-had to leave the meeting, Mrs. Kintish- yes, Mr. Milone-yes, Sgt. Newman-yes, Mr. Notaro-yes, Councilman Perri-no vote as elected official, Mr. Roegiers-yes, Mr. Rowe-yes, Mr. Scharff-yes, Mr. Shippen-yes, Chairman Levitt-recused. The motion to approve the D3 variance carries.

Mr. Roegiers made the motion and Mr. Shippen seconded to vote on all the remaining items noted by Mr. Talvacchia.

The roll call vote was as follows:

Mrs. Dyrek-had to leave the meeting, Mrs. Kintish- yes, Mr. Milone-yes, Sgt. Newman-yes, Mr. Notaro-yes, Councilman Perri-yes, Mr. Roegiers-yes, Mr. Rowe-yes, Mr. Scharff-yes, Mr. Shippen-yes, Chairman Levitt-recused. The motion to approve the Preliminary and Final Major Site Plan, Conditional Uses, "C" Variance and the nine waivers carries.

There were two resolutions to memorialize for Nicholas D. Grasso, Block 114, Lots 19, 20 & 21, 921 First Street for a Minor Subdivision with "C" Bulk Variances and Flavio Duque for Escape Day Spa, Block 110, Lots 31, 32 & 33 for a "D" Use Variance approved at the September 5, 2013 meeting. The voice vote was all in favor with Mr. Roegiers abstaining.

The next Planning Board meeting will be November 7, 2013.

Mr. Scharff closed the meeting at 10:44 p.m. with a motion from Mr. Shippen and a second from Mr. Rowe.

Respectfully submitted,

Robin Atlas, Secretary to the Board