

City of Northfield Planning Board
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Minutes: September 4, 2014

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, September 4, 2014 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:

Timothy Anderson
Councilman Erland Chau
Linda Dyrek
Denise Kintish-absent
Dr. Richard Levitt
Mayor Jerry McGee
Lou Milone-absent
Sgt. Paul Newman
Henry Notaro
Ron Roegiers
Derek Rowe
Clem Scharff
Jim Shippen

Matthew Doran, Professional Engineer
Norman Zlotnick, Solicitor

The meeting opened with a reading of Sunshine and a roll call. The first application was presented by Mark H. Stein, Esq. of Pleasantville, NJ. The property is located at 1333 New Road, Block 42, Lot 1.02. The site is known as Plaza 9 Shopping Center and the Unit is #10. The property is located in the C-B zone. The applicant, Qiong Qiong Wang was present, but spoke little English.

Mr. Stein addressed the Board and said the applicant wants to operate a day spa including therapeutic massage and will employ only New Jersey licensed massage therapists. They do not intend to have an Esthetician at this time, but intends to expand to include this type of service in the future. Mr. Stein said that the business will make interior design changes to the inside of the unit, but will make no changes to the outside of the store. There is plenty of parking and this is a high traffic location which is perfect for personal service businesses. Mr. Stein said the applicant is requesting a "D" Use variance. He introduced Barbara Allen Wooley-Dillon, a Professional Planner,

who was sworn in by Dr. Levitt to testify. Mr. Stein said the owner is present to answer questions, but there is a language barrier. Ms. Wooley-Dillon presented her qualifications to the Board. She was educated at Rutgers-Camden and received her Masters at the University of Pennsylvania. She has a PP and AICP license and has testified before 75 to 80 Boards in New Jersey as an expert. Dr. Levitt said the Board accepts her qualifications.

Ms. Wooley-Dillon addressed the Board and said it is her understanding that the applicant plans to renovate interior Unit #10 which is currently vacant. There will be a maximum number of two employees at any one time. They intend to operate the Healing Touch Spa six to seven days per week from the approximate hours of 9:00 a.m. to 7:00 p.m. or later depending on if a massage should run a little late. The persons employed who will be performing massage therapy are licensed in New Jersey in Massage therapy. They require a "D" Variance because the Ordinance does not permit massage therapy in any zoning districts. Mr. Stein commented that this is understood as there is the fear of sexual use associated with massage. Ms. Wooley-Dillon said she is a former Zoning Officer in Borden Township and understands this issue.

Ms. Wooley-Dillon discussed positive criteria and noted that the site qualifies by meeting six of the special reasons in the Municipal Land Use Law, namely, letters a,g,h,i,m,o, which refer to:

- (a) The use is appropriate as it promotes public health, safety, morals, and general welfare
- (g) the use will provide sufficient space in an appropriate location
- (h) the use will encourage the free flow of transportation and not cause traffic congestion
- (i) a desirable visual environment will be promoted
- (m) the land will be used efficiently
- (o) the use will recycle an unused space which will incorporate the State Recycling Plan goals

She continued by stating that the location of the Plaza is on Route 9 and is 200 ft. from the intersection of Tilton Road which is an arterial roadway and the site is a good location for a commercial use. The unit is suited for the use as it will be located in an existing shopping center in a prime location. She provided a handout to the Board members titled "Consistency of Proposed Development Project" which described General Codes and Objectives of the City's Master Plan which encourages development that enhances the interest of residents, encourages commercial development for employment and economic purposes, and promotes the continued economic development of the City for regional purposes. She noted that the Plaza is an appropriate location and will be filling a vacant unit.

Ms. Wooley-Dillon discussed negative impacts the Day Spa might provide and said massage is not a permitted use. There may be an increase in traffic at the site since the unit is currently vacant. She noted that there is ample parking and Route 9 is typically a heavily traveled road in a major transportation area and will absorb any potential traffic increases.

In conclusion, Ms. Woolly-Dillon said it is her opinion that the use can be granted due to the positive criteria provided and there will be no substantial negative impact on the Zoning Ordinance or to the public good.

Dr. Levitt asked for questions from the Board and for the record, he swore in the applicant for testimony that there will be no sexual or illicit activity. Qiong Qiong Wang, who goes by the name of Pearl, was sworn in. She has completed massage therapy classes and is the owner of the day spa. Her other employee, Patty, was also present. Pearl commented that “we don’t do that”, regarding sexual activity and massage therapy. Mr. Klein added that they may eventually be a full service spa and add services such as facial therapy, but that is in the future when they acquire additional employees. Mayor McGee asked what full service would entail. Mr. Klein said services that involve facials and nails and other spa type therapies, but not hair. He said these are all permitted uses now, but he wanted this issue to be brought up at this meeting so there is no question of expansion of use. Mr. Chau asked about the New Jersey licensure. Mr. Stein said Pearl has her graduate certificate for the massage classes and is currently waiting for her license from the state. She has submitted all the required paperwork. Her employee Patty has her state license and will be the only one performing massages until Pearl’s license is received. They will only hire licensed therapists in the future. Mr. Anderson asked if there was any precedent and if other spa uses have been before the Board. Dr. Levitt said there have been two or three. Mr. Anderson asked if there have been any issues with these businesses. Dr. Levitt asked Mayor McGee if he was aware of any problems. Both Mayor McGee and Sgt. Newman said they have not been made aware of any concerns. Mr. Klein also asked for a waiver from site plan since there is no reason for a site plan application. Deborah Wahl agreed and said there are no physical changes and the all is based on the testimony given for the use variance. Dr. Levitt asked if anyone from the public wished to speak on the application and seeing no one, he closed the public session.

Mr. Chau asked about any sign changes and what their plans were for signage. Mr. Stein answered that all signs will conform to Ordinance and will be small and within size constraints. There will be no flashing or moving message signs.

Mr. Scharff made the motion for a D1 Use Variance for a day spa with full service massage therapy with waiver of a site plan with reference to the testimony that there will be no sexual activity. Mr. Shippen seconded the motion.

The roll call vote was as follows:

Mr. Anderson-yes, Mrs. Dyrek-yes, Mrs. Kintish- absent, Mayor McGee-no vote as elected official, Sgt. Newman-yes, Mr. Milone-absent, Mr. Notaro-yes, Councilman Chau-no vote as elected official, Mr. Roegiers-yes, Mr. Rowe-yes, Mr. Scharff-yes, Mr. Shippen-yes, Chairman Levitt-yes. The motion to approve the “D1” Variance and Site Plan Waiver carries.

The second application heard this evening was from William J. Hickman, Jr. for the property located at 3 Jack Sloan Court, Block 40, Lot 18.25 in the R-4 Zone. Mr. Hickman is requesting "C" Variance relief in order to construct an in-ground swimming pool and a patio and modify an existing rear porch. Dr. Levitt swore in Mr. Hickman and Jon Barnhart, Architect and Planner, who has professionally testified before this Board on many occasions.

Mr. Hickman said he is requesting "C" Variances for a rear yard setback, lot coverage, and pool setbacks. Mr. Barnhart addressed the Board. He stated that Mr. Hickman purchased the property three years ago and the house was a model home in the Ryan Homes development. The home sat for a while and Mr. Hickman purchased it and made it beautiful. Mr. Barnhart noted that he has represented a few of these cases for his neighbors before the Board including his own property.

Mr. Barnhart said the proposed pool is modestly sized with dimensions of 16 ft. x 34 ft. and it will create the need for variances. The pool will conform to side yard setbacks, but not the rear. The model home is setback a little further by about two feet than the balance of the homes which have 110 ft. lots. Mr. Hickman's lot is a little smaller as well. Dr. Levitt asked if there was knowledge of the smaller lots at the time of the subdivision. Mr. Barnhart said he believed that the lots ended up being non-conforming and were the subject of litigation, and a new zone was created for the non-conforming lots. Mr. Barnhart said Mr. Hickman's lot is conforming at 8,800 sf and the requirement is 8,500 sf.

They are asking for four variances. They include lot coverage for 52% where 40% maximum is allowed, two pool setback variances for distance between the pool to the dwelling where 8 ft. is required and 4.5 ft. was proposed and distance between the pool to the property line where 6 ft. is proposed and 10 ft. is the requirement, and a setback variance for the rear setback to the proposed steps which was controversial. Section 215-56 allows for unroofed porches up to 100 sf to encroach on the setback. It was decided to seek the variance as originally requested.

Mr. Barnhart discussed the variances and the project. He noted that the 4.6 ft. deviation from the dwelling to the pool is a small area adjacent to the morning room and the area that requires the deviation is a small request. They intend to have a narrow walk on the side of the pool, and will have landscaping along the back property line and they will have almost 15 ft. to the building and 10 ft. of patio. Dr. Levitt questioned if the rear entrance to house opened to the pool. Mr. Barnhart said that the doorway exits out onto the deck from the side of the morning room. They intend to make a small modification to the deck by removing the stairs and to create a stair and lane down to the patio and pool. The Hickman's have small children, and in order to make room to gate off areas for the children and for multiple lines of defense for safety and to modify the deck area, this will create a rear yard setback issue where 25 ft. is required and 20.6 ft. is proposed. The property will be completely surrounded by

fencing. Dr. Levitt questioned whether the landing is excluded by Ordinance and Mr. Barnhart said it is in regards to getting out of a building, but for the overall deck, they believe the variance is required. Mr. Barnhart addressed the lot coverage variance for 52% as 42% is permitted. This includes the water area of the pool which will collect runoff and is consistent with how the neighborhood is being developed. He said the Board is aware of how many times he has represented neighbors before the Board and everyone is close in the neighborhood and there are no residents present to object. Mr. Barnhart himself will be the most impacted and he is in favor of the project and believes this application is truly characteristic of a hardship variance.

Dr. Levitt asked Mr. Barnhart about drainage issues. Mr. Barnhart said a portion of the rear yard drains toward Burton Avenue and the other side drains on the adjacent property which belongs to the Barnhart family. The site is actually a higher point in the neighborhood. Mr. Barnhart added an underground system and will allow Mr. Hickman to connect to his system and work together with a drainage plan of attack. The front of the property drains toward the front street.

Mr. Barnhart talked about fencing. He said there is solid vinyl fencing existing and a six ft. decorative aluminum fence on the right side and Dr. Levitt confirmed that the fencing conforms to the city pool ordinances.

Mr. Roegiers brought up the subject of the empty lot and any drainage issues it may cause. Mr. Hickman addressed the question and the lot is owned by Dr. Trocki and when he bought the house it was basically stripped to nothing and the sum pump was not working. His full basement was bone dry and currently, the sum pump rarely goes off. Mr. Roegiers asked about the footage of the pool and whether or not he was considering a diving board. Mr. Hickman said the pool will be 16 ft. x 32 ft. and standard is 8 ft. deep. He is not sure that his wife will want an 8 ft. pool and they have not decided on a diving board. Mr. Roegiers commented that a diving board increases insurance costs. Mr. Hickman indicated that the back fence will be 6 ft. in height. Mr. Roegiers asked if the gates lock. Mr. Hickman said they lock now and he will install a padlock and Mr. Barnhart has one as well. Mr. Hickman said he has three boys under the age of seven and safety is his main concern. He also intends to install an additional barrier fence. Mr. Barnhart commented that the basements of these homes are 4 ft. out of the ground. Mr. Shippen asked about his plan for pavers. Mr. Hickman said he intends to put the pavers on top of concrete. It will be a more expensive endeavor, but he cannot see spending a lot of money and placing them on top of gravel and risking percolation.

Dr. Levitt opened the public session, and seeing no one who wished to comment, he closed the public session. Ms. Wahl addressed the Engineer's report. She reviewed the variances and said she does not think a variance is required for the unroofed porch section, but it is best to grant it if requested. Ms. Wahl said it was noted in the report that the Ordinance requires storm water protection in order to eliminate water flow

onto the neighbor's property. Mr. Barnhart said the homeowners have existing drainage from the Homeowners' Association to the rear of the properties and some are not covered by the easement. Mr. Barnhart extended his drainage system and improved the infiltration system at his own expense and wants Mr. Hickman to connect to it. Ms. Wahl noted that any problems created by drainage or any complaints from neighbors will have to be corrected. Mr. Hickman agreed. Dr. Levitt said he knows the homeowners take care of the drainage, but questioned whether the city would be taking over at some point. Mr. Barnhart said there is no time limit for this. There was some bad press when the development was first built in that there was clay remaining in the drainage basin. This has been removed and repaired and the drainage system works amazingly well.

Mr. Scharff made a motion for the "C" Variances for construction of the pool and patio for lot coverage of 52%, distance between the pool to the dwelling of 4.5 ft., distance between the pool to the property line of 6 ft. and the variance for the rear setback to the proposed steps. Mr. Shippen seconded the motion.

The roll call vote was as follows: Mr. Anderson-no vote as 4th alternate, Mrs. Dyrek-yes, Mrs. Kintish- absent, Mayor McGee-yes, Sgt. Newman-yes, Mr. Milone-absent, Mr. Notaro-yes, Councilman Chau-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.

There were three resolutions to memorialize from the July 10, 2014 meeting. They were for Michael & Debra Murphy, Block 1.02, Lot 23 for "C" variance relief for a fence and lot coverage around a pool, Jackpot Properties, LLC, Block 16.01, Lot 60 for "C" Variance relief to upgrade signage, and for ACCDEV, LLC, Block 175, Lots 61,62,63,64,65 & 66 for three minor by-right subdivisions. Abstentions were Linda Dyrek, Henry Notaro and Clem Scharff. The resolutions were memorialized by voice vote.

The remainder of the meeting was a discussion and update of the Gurwicz proposed development and the proposed zoning changes. Mr. Zlotnick addressed the Board. Mr. Zlotnick stated that City Council will hold two public hearing during their work sessions on September 9th and October 14th. Mr. Chau added that they will be informational sessions. Mr. Zlotnick said the City's COAH legal counsel has been successful with the Order of Protection and the 5th Judge to be involved is expected to sign the order shortly. This protects the city from any builder's remedy lawsuits. The next round of COAH is due by October 15th. Dr. Levitt said the city will have until January 15th to formulate a COAH plan for the Housing Council which is an Advocacy Group. Mr. Zlotnick said the courts appreciate the good faith effort and if needed, an extension would not be a problem. Dr. Levitt said the city must come up with a plan and this may affect zoning areas. The housing unit numbers are not settled yet and could be between 116 and 200 units. The entire state process has been the subject of intense litigation and unit numbers are derived from complex formulas involving land

to be developed and a mix of current housing. The final number is a moving target and Northfield is not the only community in the state facing this process. Mr. Zlotnick added that this is all Professional Planner driven and the final plan will be completed by Tiffany Cuvillo.

Dr. Levitt expressed concerns that the original plan submitted by Mr. Gurwicz was lacking in some elements of good planning. There was no pedestrian access from the development site to the commercial property; namely the movie theater. The ordinance revision will rezone the Gurwicz site behind Ace Hardware and may have as many as 265 units with 10% being affordable housing units. There will be more children living there and there should be play areas and walkable community areas including pedestrian access to the commercial site. None of this was presented on the original plan. If there are stores adjacent to residential homes or units, people will make their own paths getting to the site and this is not desirable or safe and proper pedestrian access is necessary. Dr. Levitt noted that most of the other issues have been addressed. Mr. Zlotnick discussed where the situation currently stands and how things will move forward. The development is subject to discussions at two meetings of City Council and will be submitted to the Gurwicz attorneys for input. If all are in agreement, the approval process will proceed by involving the Planning Board since it involves Municipal Land Use Law and the Planning Board will review and advise of any recommended changes which will then go back to City Council. The commercial property on Tilton Road will remain commercial. Dr. Levitt said that the residents have concerns because the city has never had multi-family residential housing units and it must be understood that we have to conform. There is not a lot of choice here. Other towns in the state have spent millions on litigation and lost. Mr. Zlotnick added that this is a negotiated project and COAH is imminent and there is a minimum amount of controversy between the Gurwicz organization and the city. Dr. Levitt noted that there are few open spaces within city limits for this type of development and he mentioned the Arthur Henry site and the driving range area on Tilton Road and the city will receive 2 for 1 credits for rental units and that rental units are desirable for meeting the COAH obligation and this development could account for over half of the obligation. Mr. Zlotnick said the city has to create a situation of realistic opportunity for low and moderate housing units and the city will have a lot of time to comply. Mr. Shippen asked about the effect of COAH rounds above the fourth round and can higher rounds change the compliance numbers. Mr. Zlotnick answered that if the city is compliant, little will change if at all and this is part of the protection of being compliant. Dr. Levitt added that non-compliance can be affected by builder's remedy. Dr. Levitt also encouraged the Board members to attend one of the Council sessions.

Mr. Scharff gave an update on the status of his LED research. He has been researching reports based on science and noted that LED is measured in nits or candelas per square meter and in an urban setting you want no more than 100 nits. Northfield is more of a suburban setting and the nits should not measure more than 50 nits. A driver should not be distracted by LED light when driving at night or when drizzle

from rain is on the windshield. Mr. Scharff will put the information in more simple wording and Dr. Levitt suggested giving it to Mr. Doran to put into Ordinance language. He added that the Ordinance does not permit animation elements in signage or changing of colors. Mr. Chau said he has concerns with sign heights and distractions to drivers. Dr. Levitt added that there is a need to define brightness for the issue of enforcement. Mr. Scharff also mentioned advertising vehicles that are parked in site triangles. Dr. Levitt said advertising vehicles are not permitted and can cause traffic safety issues. They are more of a sign than a truck. There is one in Bootlegger's parking lot that is parked right up to the curb with an expired inspection sticker. Sgt. Newman said that is not enforceable because it is on private property. Dr. Levitt said that issue makes it more of an advertising truck and should not be permitted by Ordinance. It cannot be enforced by the Planning Board which is not an enforcement body.

The meeting was close at 8:16 p.m. by Chairman Levitt with a motion from Mr. Roegiers and a second from Mr. Shippen.

The next regular meeting will be held on October 2, 2014.

Respectfully submitted,

Robin Atlas, Secretary to the Board