

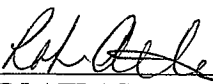
**PLANNING BOARD OF THE CITY OF NORTHFIELD
RESOLUTION OF MEMORIALIZATION**

APPLICANT: **ROGER B. HANSEN**
APPLICATION: Preliminary Major Subdivision Approval with "C" Variances for
 Lot Frontage and for Lots Fronting on a Non-Public Street
BLOCK AND LOT: Block 175 , Lot 38
PREMISES: 1300 Argo Lane
HEARING DATES: August 21, 2008, November 21, 2008 and December 4, 2008
ACTION TAKEN: **DENIED**

BE IT RESOLVED by the Planning Board of the City of Northfield that the annexed written decision and findings and conclusions resulting from this Board's action at its regular meeting with respect to the above-captioned matter be and is hereby adopted as Official.

AND BE IT FURTHER resolved that this Resolution has hereunto been adopted by a vote of a majority of the members of this Board who voted for such action previously taken and that no other members voted hereon.

THE FOREGOING is a true copy of a Resolution of Memorialization adopted by the Planning Board of the City of Northfield at its regular meeting of January 8, 2009.



ROBIN ATLAS
Planning Board Secretary

RESOLUTION AND FINDINGS OF FACT AND DECISION

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THIS BOARD, after carefully considering the evidence presented on behalf of the Applicant, through the legal argument of Applicant's attorney, Salvatore Perillo, Esquire of Nehmad Perillo and Davis, P.C., and the testimony of Fred Ingram, Engineer, Daniel J. Galetta, Planner., Jerry A. Canter, Traffic Engineer and Roger B. Hansen, owner and Applicant, as well as the legal argument of Jack Plackter, Esquire, of the Fox Rothchild law firm, representing the Atlantic City Country Club, as well as neighbors Ronald C. Gove, M.D. and Mrs. Gove, objectors, as well as the testimony presented on behalf of the objectors, who Mr. Plackter represented, Charles Fahy, Director of Golf for Atlantic City Country Club, Sean Delaney, a Licensed Engineer and Planner, Dave McInerney, a Licensed Planner, and Al Litwornia of Litwornia and Associates, a Traffic Engineer, Licensed Engineer and Planner, as well Joseph Rodgers of 11 Argo Lane, a member of the public and Steven Downey of 5 Golf View Drive, another member of the public, has made the following findings:

The Application before the Board was for preliminary major subdivision approval with "C" variances. The "C" variances for the lots were as follows:

- (1) Lot 38. Frontage on a public street of 100' is required, 50' was being proposed;
- (2) Lot 38.02. 100' on a public street was required, 0' on a public street was being

proposed;

(3) Lot 38.03. 100' on a public street was required, 0' on a public street was being

proposed;

(4) Lot 38.04. 100' was required for a public road, but 75' was being proposed.

However, on the last day of the hearing of this matter, it appeared that the 100' was satisfied through information given to the Board Engineer by Mr. Galletta;

(5) No variances were sought for Lot 38.05 as it complied with the bulk requirements of the Township's Zoning Ordinance.

Mr. Galetta testified that he was a Land Surveyor and a Professional Planner and Appraiser, who has been employed by Ole Hansen and Sons, Inc. for approximately 35 to 40 years and has been licensed in New Jersey since 1978. He described the property location as being in a R-1 Zone and surrounded by the CC, (Country Club) Zone. The surroundings consisted of bay area and meadows, the Country Club and a residence. The subject property is 4.6 acres, all in a R-1 Zone. The minimum lot size in the Zone is 10,000 square feet. A copy of the Northfield Zoning Map, marked as Exhibit A-6, was presented by Mr. Galetta

Mr. Galetta referred to certain concept drawings, marked as Exhibits A-4, Concept #1 and A-5, Concept # 2. It was, in essence, Concept #2 that was before the Board, which would create private lanes rather than a public street. He testified that the lots would be larger with more open space and that there would be less disturbance and tree removal. An easement would also be created and a restriction placed upon the parent lot so that there would be no further subdivisions. He further testified that a homeowner's association would be created to be responsible for the care and maintenance of the private lane within the subdivision. He indicated that the easement

they wished to create would allow a turn around on Argo Lane for both fire and trash removal trucks. The surface of the lane would be paver blocks. He indicated that the utilities for the existing dwelling was septic and potable water and they planned to provide sanitary sewage for new houses and the existing home, but wells would be used to supply water.

Mr. Galetta indicated that a CAFRA permit was not required according to the NJDEP and he produced a Letter of Interpretation (LOI) with regard to wetlands. He described the wetlands adjacent to the site as consisting of primarily meadows with a 50' buffer and a manmade lake. That buffer would need to be increased to 150' and would impact proposed Lot 38.03. In an exchange with Mr. Perillo, he indicated that the Applicant would be willing to increase the cart way of the private lane from 12' to 18'. In Mr. Galetta's opinion, the residential site improvement standards of the State of New Jersey contained in Title 5, Chapter 21, would not apply. Mr. Galetta indicated that an advantage of the new plan would be the maintenance of vegetation and the cutting down of the least amount of trees.

Mr. Galetta then referred to Exhibit A-8, which were aerial photographs of the rows of trees creating buffers on the southwest, northwest and southeast sides. He went on to describe the lots as well as the variances. He indicated that, in his opinion, the two homes not fronting on the public street, Lots 38.02 and 38.03, would not be a detriment to the Zoning Ordinance. He further indicated that Lot-38.04 fronts on a paper street. He went on to describe the alleged benefits of the design which he felt had no detriment or impact. In his opinion, light, air and open space would not be negatively impacted and there would be no detrimental impact in the event the variances were granted.

Mr. Ingram, the Engineer, next testified. He described the site plan, noting that there

were no curbs and sidewalks proposed. He further described the drainage as well as the stormwater collection system. In his opinion, the pavers to be used for the private lane would decrease impervious coverage, since they are permeable and were otherwise esthetically pleasing. He further discussed Argo Lane and described it as ranging from 20' at width at Shore Road to a 12' paved cart way with a 50' right of way. The plan was to extend Argo Lane to service the two new lots bordering thereon, Lots 38.04 and 38.05. Further, there would be an addition of a stop sign at the intersection of Argo Lane and the private drive and there would be signs for street designation.

At this point, Assistant Fire Chief, Lawrence Crooks, was sworn in. He testified that the City fire equipment did not have capability to draw from a water source and the fire trucks could not be taken off the roadway due to their weight and size. Assistant Chief Crooks indicated that it was unknown whether a stand pipe to an existing pond at the site would suffice for water supply. The issue remained unresolved as Mr. Perillo indicated that this would be something to be taken up at final approval.

The next witness was Jerry A. Canter of Horner & Canter Associates, Medford, NJ, a Traffic Engineer for forty years. He had prepared a traffic engineering assessment for the proposed subdivision dated May 7, 2008. From his study, the additional four houses would not make a significant or discernible difference in the traffic using Argo Lane. He acknowledged to the Chairman of the Board that two vehicles could not pass on Argo Lane without one traveling onto Country Club property. Mr. Canter felt that safety issues, as they existed, would not be effected by the proposed addition of four homes.

The next witness was Roger B. Hansen, the owner of the existing dwelling and the Applicant. He indicated that he had lived at the property for thirty years. Referring to Exhibit A-

2, an aerial view of Argo Lane to the intersection of Shore Road, Mr. Hansen described how it is used by the Atlantic City Golf Course.

At this point, Mr. Plackter cross-examined a number of the Applicant's witnesses. The first was Mr. Ingram, the Engineer. He testified that he had not prepared Concept Plan #1. In answer to Mr. Plackter's questions, Mr. Ingram indicated that, in his opinion, the emergency access easement was not part of the proposed interior roadway and was only for emergency access. In answer to a question from the Chairman, Mr. Ingram indicated that the proposed decorative pavers could withstand the weight of a fire truck.

Mr. Plackter next questioned Mr. Galetta. Mr. Galetta, in answer to Mr. Plackter's questions, indicated that if they needed a Coastal Wetlands Permit, they would obtain one. He indicated that with regard to Concept #1, no hard engineering had been done, no preparation, and that Concept #1 was not part of the Application. When asked by Chairman Levitt about how a trash truck could make a k-turn within the proposed internal road system, Mr. Galetta said that only two of the homes would be effected by this and the simplest solution would be to have these homeowners put their trash on the corner on Argo Land and Shore Road.

Thereafter, Assistant Chief Crooks further testified indicating that the private roads within the development were not acceptable and that, in his opinion, Argo Lane should be widened in any event. Assistant Chief Crooks would not comment on the difference between an 18' road and a 20' road.

At this point, Mr. Doran read his Engineer's Report into the record highlighting the Residential Site Improvement Standards that he felt were applicable to this Application. He also felt that the Board should consider requiring additional right-of-way along the property owned by the developer for parking and utilization of Argo Lane on site. He further indicated that the

Board should consider some kind of turn around for cars to leave Argo Lane. At this time, water mains, wells and fire hydrants were discussed. Mr. Doran recommended analyzing the location of an existing water main in the area and the possibility of hooking into same. Mr. Doran further indicated that a sewer pump station design and details were required, as well as a plan for the maintenance of a pump station by the homeowners association. He further indicated that a New Jersey DEP permit was required for treatment works permit to extend sewer lines. He further talked about other design waivers that the Applicant would be required to obtain from the Board.

At this point, the meeting was opened to other members of the public. Joseph Rodgers of 11 Argo Lane indicated that the plan was a nice and looked good, but was troubled by the sewer terminus in front of his house. He felt that if this project was allowed to go forward, the City might conclude that it needed to widen Argo Lane, taking portions of his property in the process. He further felt that it was difficult to make a left turn onto Shore Road from Argo Lane and that the impact on traffic would be worse on Northfield Circle.

The next member of the public to speak was Steven Downey of 5 Golf View Drive. He commented that Harrah's has spent a great deal of money redoing the golf course and clubhouse and did not see how taking portions of the golf course property for Argo Lane would be advantageous.

At this point in the hearing, the objectors' case was begun by Mr. Plackter. His first witness was Charles Fahy, Director of Golf for the Atlantic City Country Club. Mr. Fahy is a PGA Golf Pro and Director of Golf for the Country Club and is employed by Harrah's (Caesar's Entertainment). He has been at the Country Club since 1997. He described the fact that the owners have spent Twelve Million Dollars renovating the golf course and clubhouse, and have obtained a liquor license and made other improvements. Mr. Fahy indicated that he had seen the

Applicant's plans and was familiar with the Applicant's property. He indicated that if Argo Lane was widened, large historical trees would have to be removed. Among other things, in his opinion, it would make some of the golf holes unsafe and adversely effect the esthetics of the golf course. In cross-examination, Mr. Fahy indicated that he had been with the golf course since April, 2007 and with Harrah's since 2001.

The next witness was Sean Delaney, a Licensed Engineer since 1999. He is also a Professional Planner. He indicated that he had visited the site, reviewed materials and professional reports as well as the Northfield Zoning Ordinance. He presented Exhibit O-1, which was an aerial map of existing conditions as well as other photos. These were distributed to the Board. He described Argo Lane. He concern was with access to the present house existing on the Applicant's property and how four new houses would impact this access. In his opinion, the Township Ordinance required a cul-de-sac or loop street, and, therefore, the Application was violating the Ordinance requirements for a local street. He described for the Board that minimum street widths are set by Ordinance for safety considerations such as police and fire and that the Applicant's design did not consider the existing conditions or take into effect four additional new homes. He further discussed the situation of fighting a fire with multiple emergency vehicles traveling down Argo Lane and other vehicles trying to leave the scene at the same time.

He further testified that at least sixty-five trees would need to be removed in order to widen Argo Lane, all of which were located on Country Club land and three existing resident's properties. He referred to Exhibit O-3. In his opinion, the proposed internal driveway system for the subdivision was linked and served five lots, not less than 4, which brought into play the RSIS

Standards. He then described Exhibit O-4A, which was an Exhibit showing the front of a fire truck circling the proposed driveway. In his opinion, the driveway did not allow for safe vehicle movement. He also determined that, in his opinion, the Northfield Ordinance required that for a major subdivision the proposed homes would have to connect to public water. He had contacted the New Jersey American Water Company and had been advised that public water service was available.

The next hearing date for this Application was November 21, 2008. It opened up with Mr. Perillo indicating that he would change the interior street length to 18', and that they would supply city water to the proposed homes. He also had marked as Exhibit A-9 a sketch showing a k-turn that would be utilized by trash trucks.

Mr. Perillo then cross-examined Mr. Delaney, who admitted that the Board could not deny the Application because Argo Lane was undersized. During the cross-examination, Mr. Delaney emphasized that Concept #1 was only that and was not an engineered plan. He further indicated that he could not comment on the 18' street width because he has only learned about it for the first time through Mr. Perillo's representation a few minutes prior to his testimony.

Mr. Plackter then called as his witness David McInerney, a Professional Planner since 1998. He gave his opinion to the effect that the Application did not advance any of the purposes of the Municipal Land Use Law and caused substantial detriment to the Zoning Ordinance of the City of Northfield. He characterized the Golf Course as a valuable asset and that there would be a severe impact on the Golf Course if Argo Lane had to be widened. With regard to the negative criteria of N.J.S.A. 40:55D-70(c), he felt that the Application would violate sections of the Ordinance dealing with safety from fire, floods and the like. He cited a lack of adequate access

for fire trucks. In his opinion, a Coastal Permit was necessary as coastal wetlands were on site. He cited to Exhibit O-8, a Landscape Project Map as well as O-9, NJDEP Fresh Water Wetlands Map, showing saline, marsh and fresh water wetlands on the site. He indicated that the Applicant's Environmental Impact Statement did not go into these issues. In his opinion, the subdivision plan disregarded purposes of the Northfield Zoning Ordinance as well as dealing with the appropriate population densities. He was cross-examined by Mr. Perillo with regard to population densities for a R-1 Zone in which lots of 10,000 square feet were required. He also was questioned about the "Skimmer", a shore bird.

Mr. Plackter next presented Mr. Litwornia, the Traffic Engineer, who testified, that in his opinion, the proposed cart way within the project was a roadway, describing a cul-de-sac as well as the cart way and the right-of-way. In his opinion, four houses would generate 40-50 trips a day. He lastly concluded that he was not in favor of the variances for reasons stated on the record.

At this meeting, again, various members of the public spoke with regard to this Application. First, was Donald Wodsworth of 7105 Cedar Bridge Road. He did not see any benefits to the City from this project. Madeline Goldenberg of 1707 Shore Road indicated that she agreed with Mr. Wodsworth and cited traffic issues at Argo Lane and Shore Road.

Joseph Rodgers, of 11 Argo Lane, again testified that he had a wedding at his house and chose to exclude parking from Argo Lane. Dr. Ronald Gove, of 1000 Argo Lane, indicated that medical emergencies are extraordinary things and that often times a number of vehicles must respond.

Mr. Hansen, the Applicant, indicated that, in his opinion, traffic on Argo Lane was extreme because of golf carts crossing it.

Thereafter, the Board Engineer, Mr. Doran, described again the variances and the waivers that would be necessary. The variances were described. The waivers were all described in his June 9, 2008 Report predominately involving the Application of the RSIS Standards to the proposed roadway. This was detailed in paragraph 3, subparagraphs (b), (c), (d), (e), (g) and (h) of his Report. He indicated that the Applicant did agree to build a turn around at the end of the proposed Argo Lane. He further indicated that a waiver would be necessary for the proposed concrete paving block, as asphalt was required. Another waiver would be required with regard to the showing of permeability rates with regard to swales as per paragraph 21 of his Report. Lastly, with regard to paragraph 32, proof of all outside agency approvals would have to be submitted to him for his review prior to the Applicant seeking final approval.

With regard to this Application, the Board took one vote that night. The Board voted that, in fact, the Application involved five lots and, therefore, the Board was advised that pursuant to the RSIS Standards found in N.J.A.C. 5:21-1.5(f), the RSIS Standards would apply (they did not apply to driveways on privately held streets outside of a right-of-way, including common driveways established by easements shared by not more than four dwelling units on private property). By virtue of this determination, the Board indicated that the RSIS Standards would apply to the proposed roadway.

This matter was again heard on December 4, 2008 at which time the Board took up for decision the question of the design waivers for the road as well as the variances. The Applicant's attorney agreed that the variances were being submitted pursuant to N.J.S.A. 40:55-70(c)(2), the flexible, bulk variance, provisions of Municipal Land Use Law. The Board's examination of Mr. Galetta, the Planner provided by the Applicant, did not reveal that there was a specific reference to purposes under N.J.S.A. 40:55D-70(2). Nevertheless, it appeared from the testimony

that Mr. Galetta was indicating that this plan would lead to a more pleasing visual environment by virtue of the fact that a significant amount of vegetation would allegedly be allowed to be maintained and the driveway could be built in such a manner as the least amount of trees would need to be cut down to accommodate it as well as the homes to be built.

The Board took note of the Exhibits that have been placed into evidence during his testimony, A-1 through A-8, as well as all other Exhibits marked into evidence by the Applicant which are found in the record. The Board, however, determined that the issues were whether the detriments outweighed the alleged benefits or vice versa. It was the Board's determination that the detriments presented by the Application far outweighed any potential benefit or advancement of any purpose of the Municipal Land Use Law. The Board was of the opinion that the Application proposed by this Applicant posed significant safety concerns with regard to the free flow of both safety and emergency vehicles as well as service vehicles, such as trash trucks, within the proposed development itself. The Board took note of the fact that Argo Lane would significantly impede the free flow of emergency vehicles to the site. That was an existing condition, however, at the present time, only effecting the Applicant's home for purposes of this Application. The addition of four new homes would only exacerbate that condition. It found that the proposed 18' wide driveway would not alleviate the safety concerns expressed by, not only the members of the public but, the City's Assistant Fire Chief and the various experts who testified, including, but limited to Mr. Delaney, the objectors' Engineer, Mr. McInerney, the objectors' Planner as well Mr. Litwornia, the objectors' Traffic Engineer. In balancing the benefits to be gained as against the detriments, the Board found that there is very little benefit from the plan presented and this would be substantially outweighed by the health, safety and welfare issues presented. The Board had determined that the RSIS Standards applied and they

applied for reasons of safety. The Applicant was not willing to abide by the RSIS Standards in this Application, a position the Board rejected.

While, technically, these issues were discussed in the context of N.J.S.A. 40:55D-70(c)(2), they were also relevant to the Board's determination under N.J.S.A. 40:55D-38(b)(2) and (3). In these sections, the Municipal Land Use Law makes relevant to subdivisions even those without variances, issues of streets of sufficient width and suitable grade and suitability located to accommodate prospective traffic and to provide access for emergency vehicles and to create a convenient system consistent with the official map and master plan of a coordinated street design. The Board determined that even if the Application had not presented a request for variance relief, by virtue of the application of the RSIS Standards to the plan, the Board had an independent ground to reject same under these provisions of the Municipal Land Use Law.

Lastly, it was clear to the Board that the Application could not be granted without substantial detriment to the public good. For the reasons stated above, significant issues of health, safety and welfare were presented by the plan which the Board found would substantially impair the public good. The Board also determined that the Application could not be granted without substantial detriment to the Zone Plan and Zoning Ordinance of the City of Northfield. By virtue of the application of the RSIS Standards, which superceded the Northfield requirements, the Applicant was seeking was seeking a significant deviation from those Standards, the granting of which would be a substantial detriment to the Zone Plan as stated in the RSIS Standards.

The Board, therefore, voted to deny the variances as well as to deny the Application for preliminary, major subdivision approval for the reasons above stated.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the City of Northfield that the Application by Applicant be approved strictly subject to the following conditions:

(1) The recommendations contained in the Planning Board Engineer's letter regarding this Application are incorporated herein by reference as if set forth at length and shall be additional conditions of approval except to the extent inconsistent herewith.

(2) All findings and conclusions hereinabove set forth are incorporated herein by reference as conditions of approval as if specifically set forth at length.

(3) The terms and conditions contained herein shall be binding upon all successors, assignees, personal representatives, heirs, and all and every other person or entity taking possession or title of the premises in question.

(4) Review and approval of all other agencies exercising jurisdiction in this matter, by either affirmative action by any such agency, or by the required passage of time in lieu thereof.

(5) Additional conditions of approval contained in the foregoing findings are incorporated herein.

(6) All of the representations and statements made by the Applicant as well as the Applicant's representatives and witnesses shall be considered and deemed to be relied upon by this Board in rendering this decision and to be an express condition of this Board's action in approving the subject Application. This Planning Board resolution of approval shall be strictly applied and shall only grant approval for Applicant's written proposal.