

City of Northfield Planning Board
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Minutes: April 6, 2017

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.

This REGULAR meeting of the Northfield Planning Board, held on Thursday, April 6, 2017 in Council Chambers, City Hall, Northfield, was opened by Chairman Richard Levitt at 7:01 p.m. with the following members present or absent as noted:

Timothy Anderson
Mark Bruno
Mayor Erland Chau
Jim Leeds
Dr. Richard Levitt
Lou Milone
Chief Paul Newman
Henry Notaro
Councilman Frank Perri
Ron Roegiers
Derek Rowe-absent
Clem Scharff
Jim Shippen

Matthew Doran, Professional Engineer
Norman Zlotnick, Solicitor

Mayor Chau began by recusing himself from voting on the scheduled application as a member of St. Gianna's Church. He removed himself from the dais and sat as a member of the public. The application to be heard this evening is from St. Gianna Beretta Molla Parish located at 1421 New Road, Block 40, Lot 29 in the R-1 zone. The application is for a minor site plan and a variance for accessory maximum area in excess of 500 sf.

The attorney for the applicant was Keith A. Davis of Nehmad Perillo & Davis in Egg Harbor Township. He represented St. Gianna Beretta Molla Parish and Morgan and Associates who have a power purchase agreement involving power being conveyed to the church pursuant to an agreement for energy.

Dr. Levitt swore in the two witnesses, Doug Morgan of Morgan and Associates and Bill McManus, a Planner and Surveyor who has testified before the Board on many occasions. Mr. Morgan stated that he installs solar projects across multiple states and has experience with over 500 such projects. They have worked with the Camden Diocese and a church in Mays Landing previously. Mr. Morgan stated this will benefit St. Gianna's Church by reducing electric costs tremendously. Mr. Davis asked why they inadvertently began the project without a permit. Mr. Morgan said he was told the permit would be ready on a Tuesday or Wednesday and they began work on the project on Wednesday. When he went to pick up the permit, he was told a variance would be necessary due to the size of the structure and they ceased work on the project.

Mr. Davis asked Mr. Morgan about the size of the project. Mr. Morgan said the panels are 494 pounds, 150 KW, and is considered a small facility compared to other projects they have constructed. It is a decent size, but not huge. The church will consume the energy generated at 100%. Dr. Levitt asked if they can sell back the energy to the electric company. Mr. Morgan said the system is designed to be under the consumption needed. They do not want to overproduce unless they fully own the system. The electric company owns it and the power purchase is under agreement for 20 years. After the contract is completed, the church will own it outright. Dr. Levitt asked why they would not overproduce energy and sell it back to the electric company. Mr. Morgan said under the Power Purchase Agreement (PPA) it is designed to be under consumption that is needed. The system does not want to overproduce since the electric company will only payback a portion for the energy produced. The electric company owns the system and energy for twenty years. At that point the church would own the system. This is a lease purchase agreement. Mr. Davis commented that this type of agreement is funded through companies seeking tax credits. Banks are established through the Federal Government which allows companies to obtain tax credits allowing them to put money into banks to fund the solar panel systems. Mr. Scharff commented that basically they are producing energy and selling power at the wholesale rate. By state law you can only produce 90% of what you use. The process generates passive income for the solar company by way of tax credits and the church cuts its electric bill.

Dr. Levitt asked what will occur in twenty years. Mr. Davis said the system is transferred to the church for a nominal fee. Mr. Davis commented that solar panels are commonly financed this way as the church cannot take the tax credit and cannot put up the money to buy the system. Mr. Davis commented on Solar Removable Energy Credits (SREC). Renewable Energy Certificates and the selling of SRECs increases economic value of solar investments and assist with the financing of solar technology. Mr. Scharff said the energy produced has to be used on site as reflected in our Ordinance. Mr. Morgan said all the power also has to be used by the church. Mr. Scharff added that energy won't be generated at night and any overage produced goes back to the power company. Dr. Levitt noted that the framework is complete but the panels are not installed yet. Unless you go behind the Church, it won't really be in view. Mr. Davis added that a 6 ft. fence will be installed around the structure. Mr. Scharff asked if the structure was rated for 100 mph winds and Mr. Morgan said it is rated for 124 mph winds.

Mr. Davis called the second witness, Bob McManus, and the Board accepted his credentials as a Professional Planner and Surveyor. Mr. McManus displayed an aerial photo of the project and described the site as fronting on Route 9 and surrounded by Banning Avenue, Joseph Court, and Burton Avenue. He stated that both the State of NJ and Municipalities recognize the positive aspects of solar energy projects. There are criteria standards and this array meets all of them and the Ordinance. Mr. McManus said that Matt Doran pointed out that the solar panel array is an accessory use of the church and is incidental and subordinate to the principal use and must be smaller than the principle structure and its main use. The Ordinance allows for a maximum of 500 sf in size. The solar array is enclosed within a

25,252 sf fence and therefore needs a variance. He added that solar panels arrays are becoming more common and customary today in order to defray energy costs.

Mr. McManus discussed the “C” variance. His interpretation of the Ordinance is that the definition describing Floor Area and living space is limited to buildings. He gave an example of a parking lot as an accessory use to a building and most exceed 500 sf and they do not normally require a “C” variance for this. This is a problem with interpretation. His opinion was that the 500 sf limit does not apply to solar fields and he did not feel that a variance was necessary. Mr. Davis said they recognize that the Board has the ability to interpret as they see it. Dr. Levitt said that size is the issue and this has been evident with garage applications in the past. Mr. Doran read the Ordinance and explained that an accessory use or subordinate use of a building incidental to the main building on the same lot with a floor area of the structure in excess of 500 sf cannot be considered an accessory building. He added that the Zoning Officer interpreted this application to require a variance. Mr. Davis did agree with the application needing a Minor Site Plan as only the pedestals are attached to the ground.

Moving forward with the “C” variance discussion, Mr. McManus discussed the standards for a C (2) variance which require advancement of the purposes of zoning and positive and negative criteria. He stated that solar panels are recognized as positive structures beneficial to the community. To recycle renewable energy fits positive criteria and advances the purposes of zoning. As to negative criteria, Mr. McManus said there is none as this will not impair the zone plan and substantiates the public good. It is a permitted use and meets the setbacks, it is justifiable and there is no substantial detriment; minor site plan criteria is met as well.

Mr. Leeds asked about a landscape buffer. Mr. Morgan said there is none planned and they intend to simply install the fence. Mr. Davis said there is already a landscape buffer of vegetation toward Burton Avenue and they do not want to cut down any trees. This is why they decided to place the array where it is and to provide a chain link fence surrounding it. Mr. Morgan said any landscaping surrounding the array would have to be of a low growth variety and there can't be any trees surrounding it or they won't be able to generate power. Mr. Leeds added that if the panels were put on the roof, minor site plan approval would not be necessary.

Dr. Levitt asked if there would be any radio interference or public concern. Mr. Morgan said there would not be any and the solar field would not produce any noise. Mr. Perri asked about wetlands. Mr. Morgan didn't think this was an issue. Mr. McManus said there is no wetlands onsite. There may be wetlands offsite, but he was not aware of this. Mr. Perri asked for proof of this and Mr. McManus said this has not been investigated. Mr. Perri added that as an accessory use, this is much larger than the allowable. Mr. Davis suggested adding a section in the Ordinance and said the solar field meets all setbacks. Mr. Perri asked about safeguards. Mr. Davis said meeting the bulk requirements protects the municipality. Dr. Levitt said he feels this should be considered a structure which is an accumulation of building materials and the variance should cover Mr. Perri's concerns. Mr. Anderson discussed safety and felt that a 6 ft. high fence is not that high for children's safety and he asked what other hazards this structure might prompt. Mr. Morgan said humans and animals are safe, there is no live wiring, and special tools would be necessary to remove or deconstruct. Mr. Scharff noted that the panels are 3 ft. x 5 ft. and the size of the fenced in area or yard is 25,252 sf. Mr. Doran said the actual panels are 7,000 sf. Dr. Levitt said they are asking for a variance and the Board has the ability to weigh the merits of it and Mr. Zlotnick said it is also important to consider the primary and subordinate uses.

At this time, the Chairman opened the public session. Jim Kyle of 612 Banning Avenue spoke first and asked how a tax exempt entity can make a profit. He believed they would be making money over the lease purchase agreement period. Mr. Kyle felt this would create an important tax assessment question. Mr. Davis said this is a Planning Board and the Tax Assessor will determine if the church is no longer a tax-exempt property. Mr. Zlotnick added that places of worship are struggling to keep themselves solvent and many are consolidating. This type of energy saving is helpful. Mr. Kyle commented that he had concerns about his property value and aesthetics. Dr. Levitt asked the resident if he felt screening would help the issue. He suggested that Mr. Kyle approach City Council about the tax exempt entity concern and whether or not the City should tax that portion of the lot. He agreed it should be addressed. Mr. Kyle showed photographs on a computer tablet of what he sees from his back yard over his fence on Banning Avenue and this is without the panels being installed yet. Dr. Levitt discussed the height of the landscaping which would be possible on Banning Avenue to make the situation tolerable. Mr. Morgan suggested Arborvitae Trees or Leyland Cypress along his fence. Dr. Levitt was in favor of the Leland Cypress variety. He said they grow very quickly and are very dense. Mr. Shippen suggested planting them close to the fence for screening purposes and for the adverse effects. Mr. Kyle said his photos were taken from his second story and he didn't want to wait years to have the sight of the solar field to be hidden from view. Mr. Morgan said he cannot put the plantings along the chain link fence. The buffering and placement of the plantings was discussed. Mr. Bruno asked if there is precedence or requirement to buffer solar panels when they are placed on the roof of a house. There is none. Mr. Kyle asked about light reflection and whether this would be visible at his property. Mr. Morgan didn't see how this would occur. Dr. Levitt commented that the buffer could be handled administratively with Mr. Doran who stated that he would need to know from the Board how high the buffer should be and where it should be placed such as along the fence or setback off the fence. Mr. Perri said that the buffer is an Ordinance requirement. Mr. Morgan said Mr. Kyle's photo was taken from the second story, 25 ft. in the air, and he added that his neighbors have solar panels on the roofs. Mr. Kyle wanted the buffer on the property line and said they would need to start with 8 ft. trees. Dr. Levitt said Leyland Cypress grow 2 to 3 ft. per year. Mr. Scharff agreed with Mr. Perri that the buffer is in the Ordinance and he read the section. Any glare must be directed away from neighbors and if there is glare, screening is required along the property line. Dr. Levitt suggested a staggered row of Leyland Cypress 6 ft. in height. The smaller trees survive better and grow faster. Dr. Levitt discouraged the use of Arbor Vitae as they are not as hearty or as dense.

Mr. Leeds had concerns about the plans. He said there was one measurement on Exhibit A-2 that was shown to be over 100 ft. which actually is only 40 or 50 ft. Mr. McManus said the drawing was completed by an Electrical Engineer and he did not complete the drawings himself. Mr. Leeds said he had a problem with them submitting a drawing with an error. Mr. Davis interjected and said that they were only able to engage Mr. McManus the day of the meeting. The Engineer from Morgan and Associates was unable to attend the hearing. Mr. Morgan assured the Board that an updated plan will be on file with the Zoning Office. Mr. Davis added that Father Anthony Manuppella was unable to attend the hearing this evening, but he did sign the application on behalf of the diocese.

Dr. Levitt resumed the discussion with the neighbors about the placement of the buffer. It should be set back from the property line to provide a reasonable shield as much as possible for the neighbors. Mr. Doran will need to be provided more information to administrate. Mr. Kyle deferred to the Board's decision on this. Mr. Perri said the array is at least 40 ft. from the property line. Dr. Levitt said the trees should be placed at about 20 ft. from the property line and the trees should grow to over 30 ft. Mt. Notaro questioned whether the row of trees should be parallel to the chain link fence or the property line. Dr. Levitt gave a synopsis saying the trees should be a minimum of 6 ft. high, any trees not surviving

one year will need to be replaced, and the placement of the trees from where to where needs to be determined. The neighbors claim that two and one half houses are affected.

Mrs. Joan McGee of 608 Banning Avenue was sworn in. She asked why they did not install the panels on the roof of the church. Mr. Morgan said there are structures already in place on the rooftops and it was easier to put the whole array on the ground. She asked about putting a car port over the parking lot which has been done on other sites. Mr. Morgan said there is land to use and this was most practical. He said there are a lot of factors that go into the location decision. Mrs. McGee said she has lived in her home since 2001. Dr. Levitt said he sympathized with the neighbors who originally bought a lot near a church and are now looking at a solar array field. Mrs. McGee said it looks like a power plant. Dr. Levitt said in looking at the photograph, he agrees it is very industrial looking and asked Mr. Doran to help them to screen this and felt that 20 ft. would be a fair distance. He stated the applicant must present a landscaping plan to Mr. Doran for approval and to help with the unsightly view. Dr. Levitt said the lot used to be a nice grassy area and that is what the neighbors are used to. The neighbors are not used to seeing a solar array field. Variances give the Board broad discretion and they will need to work with Mr. Doran to come up with acceptable screening. Mrs. McGee added that when it rains hard, the lot floods. Mr. Morgan said when the panels are up it will have a better appearance.

Mr. Leeds said the plans show the size at approximately 236 ft. x 107 ft. Mr. Morgan agreed. Mr. William McGee also of 608 Banning Avenue asked about the positioning of the trees. Dr. Levitt said they will be setback into the field to provide better buffering. It would not buffer as well setting the trees right on the property line.

Mr. Greg Dewees of 617 Banning Avenue and a Northfield City Councilman thanked everyone for coming out to assist the residents with this and thanked Mr. Leeds for his keen eye. He asked about the height of the new trees and asked would they be 6 ft. or 8 ft. when planted. Dr. Levitt said 8 ft. trees are difficult to obtain. It was stated that 6 ft. trees are standard at the nurseries. Mr. Perri said we need to address when they will be installed and how. Mr. Jim Kyle said the 614 Banning Avenue neighbor's house is also affected as well. Dr. Levitt suggested an L-shaped or R-shaped buffer rather than a straight line. Mr. Scharff agreed with an angled buffer and said it should be as close to the east side of the array as possible. Dr. Levitt said there should be criteria that any backyard views of the solar field should have trees to block the view and the trees should be a double staggered row.

Mayor Chau of 1001 Shore Road spoke as a member of the public and had questions and comments. He could not understand how they could construct this solar field without a permit. Mr. Davis noted that the contractor made a mistake and they acknowledged that. Dr. Levitt said the contractor stopping work is a penalty. The Mayor asked about safety of the solar panel array. His training as a volunteer fireman has taught him that if the cables and power were disconnected, would there be residual and there could be problems with electrocution. He had concerns about populated areas and felt that a 6 ft. fence is not enough. He felt the fence should be 8 ft. He said this is the first solar yard in Northfield and there may be more coming. He felt this was an opportunity to deal with safety concerns. Dr. Levitt didn't feel there to be an electrical hazard unless it was taken apart. If the fence was 8 ft. it would look more commercial and would be more difficult to screen. The Mayor felt 6 ft. was inadequate. He asked about the ground under the solar structure. Mr. Morgan said there will be no planting done; the ground will remain the same as it is currently. The Mayor asked about maintenance and grass cutting and could a line be cut or harmed. Mr. Morgan said there is a trench 24 inches underneath. The wired are underground in the trench. Mr. Shippen asked how you get the panels to the trench and are they exposed. Mr. Morgan said there is a conduit on the beam and there would be no mowing or weed whacking there and there are no

exposed wires. The Mayor wanted information on the generation meter near the rectory and church. Mr. Morgan said it is similar to home monitoring meters and this meter will be placed to code and will count solar production. The Mayor said he does not object to the structure, but he would like to ask for a fence higher than 6 ft. Mr. Davis noted that there will be warning signs on the fence with a locked gate and live video monitoring. Mr. Morgan added that the system itself is monitored not the site or property. Mr. Kyle asked who the licensed electrical contractor is. Mr. Davis said his name will appear on the permit and he is a licensed electrical contractor and this is not a planning issue but a construction permit issue. Mr. Shippen added that he is not happy that the plan is not correct and was not immediately corrected by the applicants. Dr. Levitt added that not having principle owners present is an issue as well. He was in favor of giving Matt Doran broad authority to view the updated plans due to the errors and he agreed with Mr. Shippen's comments. Mr. Doran said they provided testimony as to 40 ft. and the Ordinance is 20 ft. Dr. Levitt said Mr. Doran has the authority to request the applicant to come back before the Board with a revised plan if he is not satisfied. Mr. Perri asked if wetlands issues need to be looked into. Dr. Levitt didn't think it was necessary. The lot is grass area not vegetation with wildlife depending on it. It is grass and not a relevant consideration. Mr. Roegiers commented that starting construction without a permit concerned him.

The motion was read to include a variance for the accessory use of solar panels greater than 500 sf with the accompanying site plan with conditions including a revised site plan to be submitted to Matt Doran for approval. The applicants must return to the Board if the plans show anything significant other than a de minimis planning aspect than that considered this evening. A double row of evergreens will buffer the solar arrays from view and a landscaping plan will be submitted to Mr. Doran for administrative review. Also as part of this and all future resolutions, As-Built plans must be submitted to the Zoning Officer. Mr. Shippen made the motion and Mr. Scharff seconded the motion.

The roll call vote was as follows:

Mr. Anderson-no vote as alternate; 9 voting members were present

Mr. Bruno-no vote as alternate; 9 voting members were present

Mayor Chau-recused

Mr. Leeds-yes

Mr. Milone-yes

Chief Newman-yes

Mr. Notaro-yes

Councilman Perri-yes

Mr. Roegiers-yes

Mr. Rowe-absent

Mr. Scharff-yes

Mr. Shippen-yes

Chairman Levitt-yes

Dr. Levitt invited the public to view the landscaping plan when submitted to Mr. Doran.

Dr. Levitt discussed a call he received from City Clerk, Mary Canesi. She received a request from DEP representative, Eileen Kull concerning the City's Stormwater Ordinances relating to the definition of 'major development' and the inclusion of this definition in the City's Land Use Ordinance. Mr. Doran noted that if major development occurs with a major site plan or a major subdivision which includes a one acre disturbance of land or a ¼ acre increase in impervious coverage, this will result in using a state code for drainage. The Ordinance says this, but the DEP wants it defined up front in the Ordinance in the definition section. Mr. Zlotnick said this refers to Stormwater Management and Dr. Levitt asked for a

motion to incorporate the state standards into the City of Northfield Ordinance. Mr. Zlotnick researched the state code and located the definition of major development in NJAC 7:8-12 and agreed that the definition should be added to our Ordinance. Mr. Zlotnick read the language as follows:

“Major development: means any “development” that provides for ultimately disturbing one or more acres of land or increasing impervious surface by one-quarter or more. Disturbance for the purpose of this rule is the placement of impervious surface or exposure and/or movement of soil or bedrock or clearing, cutting, or removing of vegetation. Projects undertaken by any government agency which otherwise meet the definition of “major development” but which do not require approval under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., are also considered “major development”.

Mr. Zlotnick said the DEP wants to know that we have the definition in our Ordinance. Dr. Levitt asked what the practical implications of this addition are in the Code in terms of drainage. Mr. Doran said there are none as the City is already doing this. Basically if one or more acres are disturbed or ¼ acre increases in impervious coverage we must use the NJ State Best Practice for Drainage definition.

The Board discussed this. Dr. Levitt asked what the practical implication is of the definition in terms of drainage. Mr. Doran said none as the City is already doing that which the definition states. Basically if more than one acre or ¼ acre increase in impervious coverage, the NJ state definition must be used which is the NJ Best Practice for drainage. Dr. Levitt asked the secretary to write a letter to Council including that the Planning Board recommends that City Council include the state definition in the Ordinance. Mr. Zlotnick said the definition should be termed “Major Development”. Mr. Doran noted that it will refer to a residential subdivision or site plan as well as commercial.

The voice vote was all in favor of forwarding this information to City Council for inclusion in the City Ordinance.

Mayor Chau reported on an enforcement issue involving an applicant from last year whose parking lot was not a legal use of a vacant lot and not filled in with the proper material. The Board decided at the time of application that the parking lot cannot be used unless certain criteria were met. It has been reported by residents that employees and possibly customers have been using the lot. The Zoning Officer has taken pictures of cars parked on the lot and a citation has been issued. Dr. Levitt said the City should use any enforcement they have. The Mayor said he is upset that the Board and City wishes have been ignored.

Mr. Shippen made a motion to close the meeting. Mr. Roegiers seconded the motion. Chairman Levitt closed the meeting at 8:33 p.m.

Respectfully Submitted,

Robin Atlas, Secretary to the Board