

City of Northfield Planning Board
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November 5, 2020

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 of Atlantic City, 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. Digital copies of the application documents, exhibits, and the Planning Board Engineer's report have been uploaded onto the City website as well.

This **REGULAR** meeting of the Northfield Planning Board was held on Thursday, November 5, 2020. Pursuant to N.J.S.A. 10:4-8(b), this meeting was live-streamed using Zoom conferencing service and the public is restricted from attending in-person.

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The meeting was opened by Chairman Richard Levitt at 6:59 p.m. with the reading of the Sunshine Law and the roll call with the following members present or absent as noted:

Peter Brophy
Mayor Erland Chau
Jim Leeds
Dr. Richard Levitt
Chief Paul Newman
Henry Notaro
Dan Reardon
Ron Roegiers
Derek Rowe
Clem Scharff
Jim Shippen
Councilman Paul Utts

Steve Vain

Joel M. Fleishman, Esq.-Planning Board Solicitor
Matthew Doran, PE, PP-Planning Board Engineer

Robin Atlas, Board Secretary, read the following statement:

“As everyone knows, based on an Executive Order of the governor, public gatherings are still limited to not more than 25% occupancy of the room, and social distancing parameters apply. For this reason, members of the public are still not able to attend tonight’s meeting in person, and virtual attendance has been made possible through Zoom video-conferencing. Participants can dial in by telephone and listen to proceedings, or they can access the meeting using a web-browser, and be able to view and listen. Instructions on how members of the public can access Zoom have been made available on the municipal website and were published in The Press of Atlantic City.

All participants will be ‘muted’ upon entry to the meeting. Web-browser participants will not be able to share their screens or see the camera-view of anyone other than the host, which is the City of Northfield.

When the time comes for public comment, a specific announcement will be made; one by one any telephone users will be asked to identify themselves and will be unmuted to permit commentary. Web-browser attendees may ask questions or make comments through the ‘chat’ function at the designated time. Please note that comments made through the chat function will not be acknowledged until the public portion of the meeting begins, at which time they will be read aloud into the record.”

Dr. Levitt opened the meeting at 7:04 p.m. There were no applications submitted for this hearing. There were no resolutions to memorialize.

It was announced that 1st Choice Property Maintenance, Inc., Block 95, Lots 46 & 47, located at 322 Northfield Avenue was adjourned until December 3, 2020. This announcement will serve as official notice. Dr. Levitt said he visited the site and suggested the Board members do this as well from the Northfield Avenue side and the Park Lane side.

Dr. Levitt said the purpose of the meeting is to discuss outdoor seating and the findings of the outdoor seating committee. Mr. Doran, Chief Newman, and Mr. Shippen reported their findings in an email for the Board to review. Dr. Levitt said it is important to think past Covid. This will pass and the Board needs to make suggestions to City Council so that outdoor seating can be a permanent part of the Ordinance. The Board needs to discuss if they feel outdoor seating is appropriate and draft an Ordinance amendment to send to Council for their approval. Dr. Levitt asked for general thoughts and to discuss parameters as a general concept. Mr. Shippen commented that it is worth moving forward with this and they are addressed in Mr. Doran’s summary. On the Zoom screen, a majority of hands agreed.

Dr. Levitt commented that some conditions to consider are where the seating is allowed, what zones would permit outdoor seating, how many seats to allow and at what percentage, safety and protection issues, and restrictions for pedestrians and sidewalk traffic. Mr. Brophy asked if there was an Ordinance in place already. He commented that Carluccio’s has had a few tables for years. Dr. Levitt said the tables were in their original site plan and they also have a berm along Tilton Road for protection and this was a requirement when approved. Mr. Doran commented that the Little Italy site on Tilton Road is allowed

their seating since outdoor seating has been there since Kohr Brothers Ice Cream Parlor and the seating carries forward as shown on the original site plan. Outdoor seating has been approved on a case-by-case basis. What we are trying to do here is make outdoor seating a permanent part of the Ordinance for restaurants who currently do not have outdoor seating. Dr. Levitt suggested that it should not be allowed in residential zones and at least 200 ft. from any residential properties. He added that the Country Club (CC) zone should be excluded even though it is really a residential zone. Mayor Chau said that residents have expressed that outdoor seating has affected their quality of life and that noise and trash is a problem. Mayor Chau said he has assured people that the tents would not be a permanent structure that would be allowed. Mr. Shippen asked what facilities are in question. Mayor Chau said Ventura's and Carluccio's in particular. Dr. Levitt commented that Carluccio's is not in a residential zone but it is within 200 ft. of a residential zone. Mayor Chau said another concern is if outdoor seating is allowed to continue, how are we to deal with seating in parking lots and on lawns. Mr. Shippen said that question was in Mr. Doran's summary as well. Dr. Levitt said that in Carluccio's situation, the few tables face the busy intersection of Tilton and New Roads and the houses are on the opposite side of the restaurant. Noise from the tables themselves would not be an issue for the residential homeowners. Mayor Chau said they do have a parking lot across the street that is being utilized for employee parking. Dr. Levitt said outdoor seating must be on the same lot as the restaurant. Mayor Chau said another question is will we allow businesses to use space that does not belong to them. La Cucina is doing that presently at Center Point Plaza. The entire patio area is being utilized. They were originally approved for half the courtyard. Mr. Shippen commented that the nearby businesses are not open in the evenings. Mayor Chau said they are happy to let them use the space for now. Dr. Levitt said this sounds like a landlord-tenant issue and is up to the owner to mediate. He felt the Board should focus on the broad parameters. Dr. Levitt said outside seating cannot block the sidewalks and force people to walk into the parking lots. Mr. Shippen agreed. Mayor Chau added that if outdoor seating areas were expanded, parking numbers which were previously approved could be affected. Dr. Levitt said we can legislate the safety aspect, adequate parking, and the protection of pedestrians. Mayor Chau mentioned Denny's Restaurant where they are using their parking lot for seating. Mr. Shippen felt the discussion was getting beyond the issues mentioned in Mr. Doran's notes from the committee meeting. Mayor Chau said he is expressing concerns that he has encountered. Dr. Levitt said we need to separate what City Council is now allowing and what will be allowed permanently going forward. The tents will probably not be allowed. He doesn't think Denny's is interested in sending their employees outside to serve patrons. That is a temporary issue. A few tables outside to be used on a nice, sunny day that are not causing any safety issues would not be objectionable.

Mr. Doran said there are two threshold issues. We are talking about a time when the restaurants will have 100% occupancy back and parking will be affected once this occurs. The question is how much seating should we allow them to have outside. Mayor Chau said a year ago Carluccio's wanted to have outdoor seating and was denied by the Zoning Official. Mr. Shippen said there was no Ordinance at that time allowing outdoor seating. People have discovered how much they enjoy al fresco dining and they will want to continue. Naturally the restaurant owners will want to do what makes their customers happy and will want to avail themselves of this kind of dining. What we are trying to do is to come up with safe guidelines so this type of dining can continue without spilling over into residential areas. Mayor Chau agreed, but the experience is that some will be allowed to have outdoor seating and some will not. We need to have some kind of consistency. Dr. Levitt asked the Board if they could agree to not permit outdoor dining in the residential zones. Mr. Brophy said that would only affect one or two restaurants. Mr. Doran said it would affect Ventura's. There are more that are within 200 ft. of a residential zone. Dr. Levitt said if in the commercial zone the 200 ft. should be from the actual seating, not the restaurant itself. Mr. Doran added there are some restaurants who have no room for outdoor

seating unless they use their parking lots. He used Nick's Pizza as an example. Dr. Levitt said we don't want to see restaurants fail with unnecessary restrictions at this time. He suggested post-Covid that dining tables would not be permitted in residential zones and would have to be at least 150 from a residence and only permitted if the restaurant already has outside seating and if the restaurant already conforms to the parking requirement. Mr. Doran asked how many tables would they be permitted to have. Dr. Levitt answered it would have to be a percentage of total parking allowed. The Board discussed what restaurants would have a problem. They came up with Carluccio's, Ventura's, Nicks, and Chico's. Dr. Levitt suggested one additional outdoor table for five parking spots and the restaurant would have to have enough parking to begin with. That would be 20%. Mr. Shippen thought this was reasonable since most restaurants would not be packed at any one time. Dr. Levitt added that they would also have to demonstrate that the restaurant has adequate protection from vehicular traffic with curbs and barriers.

Mr. Doran commented from an administrative view that this put a lot of burden, calculations, and follow through on the Zoning Officer. He would have to make all the evaluations we are setting up. Dr. Levitt felt it would be straight forward. We have numbers of tables, distances, protection with curbs or barriers. Mr. Doran took it further and said what about most restaurants that don't have grassy areas or parking areas to use. Mr. Shippen added sidewalks to that. Dr. Levitt said they won't be using parking lots post-Covid. Mr. Doran and Mr. Shippen agreed this restricts the number of outdoor tables. They discussed restaurants adding paving for tables. Mr. Doran said that further complicates things since they would be adding to the site. Dr. Levitt said any added impervious surface changes would have to come before the Board. Mayor Chau asked about restaurants currently using sidewalk areas as Capri is doing. Dr. Levitt said if there is a curb and they have adequate parking and pedestrians are not obstructed from using the sidewalk there should be no problem. Mr. Shippen said the Chief brought up the incident at Ventura's when the car went off the road into the grassy area and almost wiped out the seating area. Chief Newman added that there were patrons under the tent at the time and the barriers did nothing to help the situation. There have also been accidents where cars have gone right through store fronts. A parking bumper or curb won't stop the vehicle. Dr. Levitt said we need to weigh the likelihood of that happening. Chief Newman had concerns with liabilities. Mr. Shippen suggested concrete filled bollards installed into the pavement. He agreed with Chief Newman that the curbs will not stop cars. Dr. Levitt gave the example of Ventnor City and the many restaurants that have seating not far from Ventnor Avenue. Jim Shippen suggested getting the opinion of the City Attorney and the Ordinance should err on the side of caution. Mayor Chau said there are several restaurants that have only a sidewalk in front and named Naomi's, Capri's, and Carluccio's as examples. Dr. Levitt said he sees the risk on Shore Road with outdoor seating, but the restaurants are setback far from Tilton Road. He added that if there are enough restrictions, there won't be any outdoor seating post-Covid. Mr. Shippen relayed an incidence where he was called to a job at the State Farm office on New Road where a car had gone through the building and pinned an office worker at their desk. Thank goodness no one was hurt. Mr. Roegiers told a similar story and questioned who would pay for the bollards to be installed and also the landlord would have to allow the restaurant owner to do it. His observation is that it is a Catch-22 situation. Dr. Levitt said in Italy you pay a premium for an outside table and there is always a risk in life. Outdoor seating would be a benefit to the public and the restaurant owners and he thought the risk to be small. Mr. Shippen asked if the city was in anyway liable for serious injury if the city didn't protect by statute and ordinance. Dr. Levitt asked Mr. Fleishman to comment about protections. Mr. Fleishman said the Board does not write the Ordinance; that is City Council's domain. He commented on whether this has been discussed by City Council and normally an Ordinance will be referred to the Board. He said the Board does not prepare or write the Ordinance; the Board gives recommendations. Mr. Utts said in Ventnor City, they parallel park on the main city streets. He likes the idea of retractable bollards. As a councilman, he would not be in

favor of tables where there is perpendicular parking. He felt that could be a risk, but he likes the idea of outdoor seating. He said there must be some way to adequately protect outdoor diners. Mr. Vain felt there were problems anywhere you go and he mentioned playgrounds and the Veteran's park. Chief Newman agreed with most of the comments and said protection from automobiles is very important.

Mr. Fleishman said the Board needs to be very cautious about restrictions. He noted that Chico's has a beautiful new outdoor seating area and as it is now, if they wanted to keep it, they would have to come before the Board for a use variance. He added that Wawa uses bollards and they work very well. Reasonable restrictions cannot be overly restrictive and outdoor dining could be an economic boom for the city. Chief Newman said they use bollards to keep cars off the bike path and they work very well and are fully removable. Dr. Levitt asked if they will they stop a car. Mr. Shippen said the solid bollards would. They are steel and filled with concrete. Mr. Shippen said the Board needs to come up with a workable definition and have the unique situations be addressed by the Zoning Officer. Dr. Levitt added that he did not feel parking lots are appropriate for dining tables. Mr. Shippen said it might be viable if they have more than adequate parking. Mr. Vain agreed with Mr. Shippen that the restaurants need help and the patrons enjoy the outdoor seating. Dr. Levitt said he was in Washington and they have closed off entire streets in Bethesda. Traffic is being diverted to accommodate outdoor dining. But when we return to normal, he would not be in favor of that. Mr. Shippen said basically we would be telling some restaurants they can't have outdoor dining. Dr. Levitt said they may not be eligible for it without Board approval. Mr. Shippen said we have been talking about allowing a certain number of outdoor tables. The purpose of the discussion is to come up with what we can do going forward after Covid to help the restaurants maintain themselves and to provide a service that a lot of people have come to enjoy and appreciate. Dr. Levitt said we need to look at the Parking Ordinance as structured for restaurants. Mr. Doran said the parking is calculated in one of two ways. It is either by square footage or one parking space for every three seats, whichever is higher. Most fast-food restaurants use square footage. Mr. Scharff said outdoor space could be considered floor space for the parking calculations. Mr. Vain said then they would need more parking spaces. Dr. Levitt said there are reasons for parking requirements. We need to keep people from overflow parking in the neighborhoods. Dr. Levitt was in favor of considering one additional table for every five parking spaces which is a lower parking requirement for the restaurant, but he was not in favor of permanently setting up tables in parking lots once the Covid restrictions are lifted. We still have Planning and Zoning issues to consider for adequate parking and to ensure that the neighbors are protected from overflow parking. Mr. Vain commented that outdoor seating has been a big help for Ventura's and it won't look good for Northfield if a lot of these restaurants go out of business. Dr. Levitt said the restriction is for the residential zone. We have to consider outdoor serving of liquor, noise, odors, and complaints from the neighbors. Dr. Levitt felt outdoor seating in residential zones should be restricted post-Covid. But during Covid he agrees we need to do whatever we can to keep these businesses viable. Mr. Vain felt that post-Covid will be a catch up for a lot of these restaurants. Dr. Levitt said we cannot ignore the Zoning Ordinance. Mr. Vain felt it could be re-visited and made a little more friendly for them.

Dr. Levitt asked the Board if they would like to draft an Ordinance for City Council to consider the issues the Board agrees on. Mr. Utts said the safety issue needs to be addressed and this hurdle has to be met before passing on to Council. Possibly other towns have already dealt with this issue. Chief Newman said perpendicular parking is a risk. He added that the Board could consider suggesting that there be no parking near the areas where the tables are located. Dr. Levitt said Mr. Dattalo won't want to be responsible for the decision. Dr. Levitt said the hazard issue is paramount and he doesn't see it being an easy fix. Mr. Brophy said the Board should consider Mr. Utts' suggestion to look into how other towns have dealt with this problem. Mr. Doran said he will research Ocean City and Somers Point as they have

dealt with this issue. Mr. Doran said he will look into Ocean City and Somers Point Ordinances for suggestions and solutions. There are a lot of questions and issues to consider. Mr. Vain said Ventnor and Margate would have Ordinances as well. Mr. Shippen added we also need to consider something we haven't touched on which is what types of heaters are acceptable to use in chilly weather. He said most of the restaurants use tower heaters and they work well. There are also heaters out there called Salamanders that are constructed with tubes and put out a lot of heat. If people were to walk into them, there would be a problem. Possibly we could restrict the use of them. Mr. Scharff said the heaters are for UTL listing and ETL and more of a fire issue and not for us to determine. Dr. Levitt felt the Board was starting to micro manage and Mr. Scharff said the restaurant's insurance carriers will have a say on this as well. Dr. Levitt said the liability should be left with the restaurant owner.

Mr. Scharff noted that the shore towns have less residential areas where their restaurants are located and the speed limit is lower. Northfield has Tilton Road and Shore Road at 35 mph and tables shouldn't be located near roads with the higher speed limits. Dr. Levitt said the restaurants would have to show they have adequate protection and if the Zoning Officer didn't feel it to be adequate, he can send them to the Board. Mr. Doran said he was a Zoning Officer in Brigantine for many years and he felt the Ordinance needs to be very specific. The word adequate is not specific enough. It will create arguments with people. Mr. Dattalo has to be able to read the Ordinance and enforce it. Mr. Shippen suggested a requirement for insurance for the restaurants and to waive liability for the city. Mr. Utts strongly suggested looking into other Ordinances that would fit into our circumstances. Mr. Doran agreed. Dr. Levitt said to find one formula that meets all situations will be very difficult to do. Mr. Vain added that what is adequate for one restaurant may not be for another. Mr. Fleishman said this is not totally uncommon and liability issues are in the Ordinance in regards to storm water drains. It should be considered by the City Solicitor. Mr. Fleishman said it could raise the insurance rates for the restaurants. Mr. Utts said it should be a business decision. Dr. Levitt said it could be more of a burden on the restaurant. Dr. Levitt encouraged Mr. Utts to discuss this with City Council before we get to far into this. Mr. Utts said there are two new City Council members coming on in January and he may not even be the liaison next year. He said it is a good idea to table until next year with Mr. Doran looking into other city's Ordinances in the meantime. Mr. Utts will bring up outdoor seating before the new Council next year for discussion and input. Dr. Levitt said we will probably not have to be concerned with this until next summer anyway and the temporary Covid permissions are in place. Mr. Shippen said there was one item that was not touched upon and that is hours of operation outside. Dr. Levitt said hours are set by profitability of the restaurant and none will be serving liquor. Mr. Shippen mentioned BYO restaurants and Ventura's was brought up. Mr. Vain asked if Ventura's would be affected by the Noise Ordinance. Mr. Brophy commented that he didn't believe Northfield has a valid Noise Ordinance. Chief Newman agreed that they do not. Mr. Scharff said there is an 11:00 p.m. State Ordinance. Chief Newman said the Noise Ordinance was ruled unenforceable and unconstitutional. Serving liquor outside is an ABC rule and Ventura's is in the process of re-applying for an Expansion of Premise and it may be completed already. It will be sent to the City Clerk and the Chief to sign off on it or not. Mr. Doran said they will not get outside seating if this Ordinance is adopted since they are in a residential zone. Dr. Levitt said they would have to come before the Board with a Site Plan.

Dr. Levitt summarized the discussion. He said there are some broad agreements and the only thorny issue involves protection from cars and how that will be enforced. The Board will discuss again at a meeting early next year when time permits. Mr. Doran asked Chief Newman and Mr. Shippen to meet with him one more time once he gathers information and they agreed. Dr. Levitt thanked the Board for their time and said outdoor dining is more involved than expected, but he said we are on the right track for al fresco dining.

Mr. Fleishman brought up the situation concerning the 1st Choice postponement and their attorney Charles Gemmel. He said normally, Mr. Gemmel should have appeared before the Board to request a postponement and then the Board would ask for a waiver of any applicable statute of limitations for the Board to act on the application. Under MLUL, the Board has 90 days to render a decision on the matter whether positive or negative from the date the application was deemed complete. Mr. Fleishman said the Board can use the date of Mr. Doran's Engineer letter. Mr. Fleishman asked if Mr. Gemmel had provided anything in writing. The Secretary reported that he sent an email asking for the postponement to December and to announce the adjournment at the November meeting which would serve as notice of the change. The email was forwarded to the Board members. He did not address the waiver. Dr. Levitt question completeness of the application since a Certificate of Compliance was not provided which was a condition of Mr. Doran's letter. Mr. Fleishman said Mr. Gemmel should agree to the waiver as this is customary, but he wants it in writing.

Dr. Levitt noted publicly that the 1st Choice application will be postponed to the December 3, 2020 meeting and there will be no need to advertise this further, but at this time the application is incomplete. Mr. Fleishman stated that Mr. Gemmel should have appeared publicly on Zoom and going further, this will be the standard. The Secretary noted that the applicant has not paid the fees and escrow for a "D" variance since it was included in Mr. Doran's report that this would be necessary. Mr. Fleishman asked the Secretary to generate an email that the fees must be paid and request a written postponement request with the waiver included which he will review prior to sending. Dr. Levitt said the application is incomplete also due to the fact that a Certificate of Compliance was not provided. Mr. Doran agreed and said it was mentioned in the application that it would be included. Dr. Levitt asked the Board to review the application very carefully.

The motion to adjourn was made by Councilman Utts and seconded by Mr. Shippen. Dr. Levitt closed the meeting at 8:28 p.m.

Respectfully submitted,

Robin Atlas

Robin Atlas, Secretary to the Board