

City of Northfield Planning Board
1600 Shore Road
Northfield, New Jersey 08225
Telephone (609) 641-2832, ext. 127
Fax (609) 646-7175

August 5, 2021

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 on July 26, 2021, 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, August 5, 2021. Pursuant to N.J.S.A. 10:4-8(b), this meeting was live-streamed using Zoom conferencing service. The meeting is also being held in-person with limited seating available due to Covid-19 social distancing parameters. Public attendance was by reservation only.

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The meeting was opened by Chairman Richard Levitt at 7:06 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-absent

Joseph Dooley

Dr. Richard Levitt

Chief Paul Newman-present on Zoom

Henry Notaro-absent

Dan Reardon

Ron Roegiers
Derek Rowe
Clem Scharff
Jim Shippen-absent
Councilman Paul Utts
Joel M. Fleishman, Esq.-Planning Board Solicitor
Matthew Doran, PE, PP-Planning Board Engineer-absent

Mr. Brophy had a suggestion that the meeting open with a flag salute. Dr. Levitt said that the Planning Board has never opened their meetings with the flag salute and usually everyone just wants to get moving to get the business done and there is no public present. Dr. Levitt thanked Mr. Brophy for his suggestion.

There was one resolution to memorialize for Plastic Spoon LLC, Block 82 Lot 8.01, 2318 New Road for a "D" non-conforming use variance, a "D" conditional use variance, and a waiver of site plan.

Dr. Levitt asked for a roll call vote. The vote was as follows:

Mr. Dooley-yes
Chief Newman-yes
Mr. Roegiers-yes
Mr. Rowe-yes
Mr. Scharff-yes
Dr. Levitt-yes

Dr. Levitt asked for a voice vote to approve the minutes from the July 1, 2021 meeting. The voice vote was all in favor with no corrections.

The next order of business was a review of Ordinance No. 8-2021-An Ordinance By The City Of Northfield In The County Of Atlantic, New Jersey Prohibiting The Operation Of Any Class Of Cannabis Businesses Within Its Geographical Boundaries And Adding Section 215-151B(16) Of The City Of Northfield Municipal Code which was referred to the Planning Board from City Council.

Dr. Levitt explained to the Board that when City Council passes anything that affects Zoning, they forward the Ordinance to the Planning Board to find if it is compatible with the Master Plan. It is not for the Board to determine if they are in favor of the Ordinance or not. In this case, the effect of the Ordinance involves retail sales and retail sales are permitted in the R-C Zone which would be compatible with the Master Plan. The Board should not get into the merits of whether or not the Board is in favor of Cannabis sales; that is the job of the elected officials. Dr. Levitt gave an example that if Council had approved retail sales in a residential zone, then it would not be compatible with the Master Plan. The Board only deals with compatibility.

Mr. Fleishman explained that the Board is not a legislative branch of government. They can only make recommendations. He gave an example of a developer coming in with new commercial development and the Board could recommend what the hours of operation should be if this development was near a residential zone. In the case of Cannabis, it is not the Planning Board's role to legislate; that is the role of City Council. The Board is asked to render a report to City Council of its review and they are not obligated to follow the recommendations to the Board, but they do consider them. Mr. Dooley asked where in the Master Plan does it say that a Federal Class I narcotic can be allowed in a commercial zone. Dr. Levitt said that is not the question. The question is, can a person set up a store and sell retail. It is the retail sales that is the planning issue, not the product. The Ordinance is silent on Cannabis. It doesn't

mention it and in order for it not to be allowed, it would have to state in the Ordinance that it is prohibited in the City or the R-C Zone. Mr. Dooley said the Ordinance is vague and he is still concerned about marijuana being a Federal Class I narcotic. Dr. Levitt said we need to keep a narrow focus and leave out opinions whether for or against. If the Ordinance dealt with farming or growing, we have none of that in our Master Plan in this zone. A case could be made if the concern was the growing of Cannabis as that would not be compatible, but we permit retail sales in the zone. Dr. Levitt said we now have two Ordinances one permitting and one prohibiting and the question still is are they both compatible with the Master Plan. Mr. Dooley asked what the procedure is to change the Master Plan. Mr. Fleishman said the plan is revisited every 5 years. The Planning Board can form a committee to review it and recommend changes, but it is City Council who will adopt any Ordinances that change the Master Plan. Dr. Levitt said the next review is 2022. Dr. Levitt said the Master Plan contains general items and from there the Zoning Ordinance is determined. He commented as an example that one of the objectives of the Master Plan is to reduce pollution so an objective may be to promote electrical charging stations for cars. This is no longer a Planning Board control since New Jersey mandated that they can be anywhere. He suggested to Mr. Dooley that he make a recommendation to put into the Master Plan. Dr. Levitt said Mr. Dooley has good, valid arguments, but the Planning Board must be strictly from the point of view of compatibility with the Master Plan and there would have to be a specific section in the Master Plan to refer to and there is none. Mr. Fleishman said that the Board could also choose to not take a position or action on this. Chief Newman read a statement from the Master Plan from 2008 under the General Goals and Objectives Statement, Objective A which reads:

“To encourage municipal action to guide the appropriate use or development of lands in the City of Northfield, in a manner which will promote the public health, safety, morals and general welfare of present and future residents”. Chief Newman said this statement alone says the Planning Board has the ability to weigh in on this topic with their opinion to the Governing Body in their decision. Dr. Levitt did not disagree, but was still of the opinion that the underlying legislation is something that the representatives responsible to the voters are the ones to make the decision. It is what they were elected to do. Dr. Levitt said the Master Plan is not specific and the language contains general statements which can be applied to alcohol and smoking sales as well. Chief Newman agreed with that. Dr. Levitt recommended a favorable vote for both Ordinances for and against Cannabis sales.

Mr. Fleishman suggested there should be a motion on the table and then the Board can discuss it. Councilman Utts said this really isn't a Zoning issue. It is a prohibition Ordinance and you don't zone where something isn't prohibited. Council fast-tracked this second Ordinance to get them both approved before the deadline August 21st. Mr. Fleishman asked why it was even sent to the Board. Mr. Utts said he was surprised to see it on the agenda since there is no Zoning determination to be made here. Mr. Brophy said he found it to be odd that there is a vote for prohibition after the vote on consent. Dr. Levitt said it is just a formality and the Board voted on whether it is compatible with the Master Plan. Mr. Fleishman said someone could make a motion to do nothing. Dr. Levitt said if we do nothing, that will add to the complexity and time constraints and the legal efforts of Council. Mr. Utts said Mr. Facenda, the City attorney, felt this didn't need to come before the Board. Mr. Roegiers said it is just a common courtesy.

Dr. Levitt asked for a motion to approve the Ordinance submitted by Council prohibiting Cannabis sales and that the Ordinance is indeed compatible with the Master Plan. Mr. Dooley made the motion and Mr. Utts seconded.

There was further discussion. Mr. Scharff questioned whether this even applies if Council does nothing. Dr. Levitt said they will do something since the State can come in and allow it anywhere. Mr. Utts added

there will be no limitations as to growing, processing, or distributing although Zoning would still have input. He said one way or the other Council will vote by the 10th and report to the State by the 21st. He said the State hasn't come forth with the final guidelines yet. Dr. Levitt added that some towns have approved Cannabis sales such as Egg Harbor Township, Hamilton Township, Pleasantville, Atlantic City and Upper Township and others such as Linwood and Somers Point have voted no. He said it's a patchwork and the only model we have are from states that have approved it such as Colorado and Massachusetts and they have not had problems. Dr. Levitt said this is an elected official decision. Mr. Dooley asked Councilman Utts about grandfathering, If the vote is yes and Cannabis sales were allowed, and then it was revisited later and Council voted to not allow it, would existing stores be grandfathered in? Mr. Utts was not totally sure, but most of their discussion has been about processing. They do not have straight guidelines from the State and that is part of Council's trepidations and why this second Ordinance was introduced simultaneously. Mr. Dooley went further to state that a no vote would keep the State away, but Council could re-open the issue at a later time. Dr. Levitt suggested he attend the City Council meeting next week.

The roll call vote was as follows:

Mr. Brophy-yes

Mr. Dooley-yes

Chief Newman-yes

Mr. Reardon-yes

Mr. Roegiers-yes

Mr. Rowe-yes

Mr. Scharff-yes

Councilman Utts-yes

Chairman Levitt-yes

The motion carries.

Mr. Roegiers said this have been quite an academic exercise. If Council votes that Cannabis sales will not be allowed, this will all be for naught. Mr. Fleishman said unless they approve Ordinance #8. Dr. Levitt said this exercise was a formality and the Board is required to review any Ordinance that affects Zoning. Mr. Utts agreed it was a formality.

Dr. Levitt mentioned his letter to the Editor in the Press of Atlantic City commenting on the article about the VA Hospital coming to Northfield. His letter made note that the applicant has not submitted a development application to the City and he felt it was too premature to celebrate.

Mr. Scharff commented that there are to be no addendums to the minutes. Dr. Levitt said once a meeting is adjourned, nothing can be added. There can be a correction to the minutes prior to approval of the minutes.

Mr. Roegiers made a motion to close the meeting and Mr. Scharff seconded. Dr. Levitt closed the meeting at 7:31 p.m.

Respectfully submitted,

Robin Atlas

Robin Atlas, Secretary to the Board