

City of Northfield Planning Board
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June 2, 2022

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 May 23, 2022, 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, June 2, 2022. ***In following with the decisions of Mayor Chau and City Council, the Planning Board will be eliminating the mandatory observation of Covid-19 related social distancing measures at their public meetings. In addition, the Planning Board will continue to air the regular meetings on Zoom video conferencing for convenience of those who do not wish to appear in public.*** Formal action may be taken at this meeting.

City of Northfield Planning Board is inviting you to a scheduled Zoom meeting.

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The meeting was opened by Chairman Richard Levitt at 7:02 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

Joseph Dooley

Dr. Richard Levitt

Chief Paul Newman-resigned

Henry Notaro

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

Dr. Levitt asked the Board to approve the minutes for April 7, 2022 and May 5, 2022. Dr. Levitt contacted the secretary when the minutes were being reviewed and asked that the wording be corrected regarding the suggestion that stones be added instead of concrete since this allows water to permeate and also that Dr. Levitt had stated that no further construction can occur and no further paving can be done until the continued application is heard by the Board. Mr. Shippen made the motion and Mr. Scharff seconded. The Board was all in favor and no one was opposed.

The first application was from Robert H. and Patricia Hemberger. Mr. Carney recused himself. The address is 27 Roosevelt Avenue, Block 125 Lot 9.02 in the R-2 Zone for "C" variance relief for a residential addition. Dr. Levitt swore in the Hemberger's. Mrs. Hemberger said they had been looking to move because they need a rancher. Their two-story home no longer fit their needs as they have both had surgeries on their knees and backs and their existing stairs are too high. They want to bump out an office/bedroom in front and add a front porch. They want to be able to 'age-in-place' and stay in Northfield as they love their house and their neighbors. She said that the current front porch is a stoop and she has fallen and hurt her leg and it is a dangerous situation. Dr. Levitt asked Mr. Doran to discuss the variance. He stated they want to add an addition in the front with a porch that will stop at the garage. There was some discussion about which plan was the correct one in the application package. They added a rear addition 16 years ago and included that plan, but the plan in question was attached to the application. Mr. Fleishman marked this plan Exhibit A-1. With everyone on the same page, Mr. Doran said the front yard setback has a 25 ft. requirement. They currently have a 25.7 ft. setback and they are proposing 15 ft. Dr. Levitt said they are extending the addition out towards Roosevelt Avenue. Mr. Fleishman asked who prepared the plan. Mrs. Hemberger said she prepared it. Mr. Doran said this is a residential application and a professional signed plan is not required. Dr. Levitt said they are coming out 10 ft. from the existing setback and the setback will be reduced to 15 ft. Mr. Hemberger stated that all of his neighbors have porches and the adjoining houses in the neighborhood are closer to the street. Mrs. Hemberger distributed two photos of the neighboring houses and Mr. Fleishman labeled them both Exhibit A-2. Dr. Levitt said the neighboring existing setbacks are about where they intend to have their addition extend out to. Dr. Levitt said this will be compatible with the left and right neighbors, but they will still require a variance. Mrs. Hemberger showed photos of the porch which is only a stoop. She said with the addition, the front door will open up to a level surface instead of a stoop. Dr. Levitt clarified that the addition is one story. Mrs. Hemberger said they did not want to spend money on a formal plan until approved. Dr. Levitt asked about the porch. Mrs. Hemberger said it will have a roof and columns. She also showed the Board the interior which showed the two flights of stairs. Mrs. Hemberger commented that the addition is a solution for them to remain in their home.

Dr. Levitt opened the public session and there was no one present who wished to speak and no one on Zoom. Dr. Levitt said the Board needs to hear positive and negative criteria. Mrs. Hemberger said there are no negatives and a lot of the neighbors have porches and they are simply joining the neighborhood party, meaning their house will be in with the setbacks of the neighbors. Mr. Hemberger said they would otherwise be forced to move. Mr. Fleishman said they testified that their project is consistent with the neighborhood and the addition will have no detriment on the Zone plan and the Ordinance and that only positives exist. Mrs. Hemberger said their addition will be an enhancement and an improvement to their property and they take pride in their home. Mrs. Hemberger said she had medical letters from doctors showing what their medical issues are and Mr. Fleishman said the Board cannot cross examine letters and they are not acceptable. Mrs. Hemberger was given back her letters.

Mr. Doran commented on his letter and said there is one nice tree in the front yard. Dr. Levitt said there are high trees on the property line and another tree would block the view of the house. They have curbs and sidewalks and two existing parking spaces onsite.

Mr. Scharff made the motion for the "C" variance for a 15 ft. setback for an addition to the front of the residential home and a covered front porch. Mr. Shippen seconded the motion. The roll call vote was as follows:

Mayor Erland Chau-yes

Joseph Dooley-yes

Henry Notaro-yes

Ron Roegiers-yes

Derek Rowe-yes

Clem Scharff-yes

Jim Shippen-yes

Councilman Paul Utts-yes

Dr. Richard Levitt-yes

The motion carries.

The second application was from Michael & Debra Murphy of 101 Haviv Drive, Block 1.03 Lot 23 in the R-1A Zone for a "C" variance to construct a 6 ft. high fence. They were both sworn in by Dr. Levitt. Dr. Levitt initially asked a question regarding where the 6 ft. portion of the fence would be. The plan was not clear. Mr. & Mrs. Murphy handed out the survey which was highlighted so the placement could be clearly seen.

Mr. Murphy addressed the Board and said they got a 'Covid' puppy and he is currently 35 pounds. He jumps their 4 ft. fence. There are always people around the area of their property and the dog wants to play with the people. The Murphy's want to replace the 4 ft. fence with a 6 ft. fence. They really prefer to keep the 4 ft. fence so that they can talk with their neighbors over the fence, but the dog won't stop going over the fence. Mrs. Murphy explained that there is a 4 ft. fence along the back with a 2 ft. step down to the pool and her neighbor, Georgia, has monstrous evergreen trees and the dog doesn't go in that area and the fence appears to be 6 ft. there. There is a 6 ft. fence on the other neighbor's side at 103 Haviv Drive that was put in years ago. They also want the 6 ft. fence to keep the dog out of the pool since he likes to swim. Dr. Levitt asked about the dimension of the length of the fence on Glenwood Drive. Mr. Scharff said the measurement includes the gated area and it is 35.5 ft. Dr. Levitt asked about the material. He said it appears to be painted black aluminum or wrought iron and there is a mesh

covering. Mr. Murphy said they bought the 4 ft. mesh to make the fence look more solid and thought it would keep the dog from seeing people. Mr. Carney asked what type of dog they have. Mr. Murphy said he is a Labradoodle and the neighborhood kids know to bring him back. He is a friendly dog, but they still want him contained.

Dr. Levitt commented that their home is on a corner lot with two frontages and he doesn't want to see a solid wall of fencing. He asked what type of fence they want to install. Mr. Murphy said a 6 ft. vinyl fence and he commented that his neighbors across the street were approved last year. Mr. Murphy said it is on the front yard setback and they got a variance. Mr. Shippen suggested a lattice extension. Mr. Murphy didn't understand what he was referring to. Mr. Shippen said they could possibly attach a lattice extension to the existing fence. Mrs. Murphy said their fence is aluminum and that wouldn't work for them. Dr. Levitt asked if they would consider an open design for light, air, and open space. The Murphy's expressed concerns about the dog and that he might get his feet caught in the fence. They had concerns with the dog running in the street. They are trying to protect the dog and he said some people might be fearful of a charging dog even if he is friendly. Mr. Shippen said they would put a cap rail on the lattice and it would be tough for the dog to climb over. Mr. Murphy said it's at the back of the house and it won't be seen when you turn down the street. Mrs. Murphy added that the neighbor's evergreens are so large that you don't even see their yard until you come right up on it. Dr. Levitt asked about neighbor's objections. They said there were no objections from anyone. Dr. Levitt said he prefers openness. Mr. Doran commented on his report and said the property line is 3 to 4 ft. behind the sidewalk line and he said they need to have a 3 or 4 ft. grass section. Mrs. Murphy said there is a sidewalk and another section of grass. They tried to install evergreens and they died. She was thinking of trying grasses. Mr. Doran asked about drainage. Mrs. Murphy said they installed a French drain and Mr. Murphy said it was installed with the pool.

Dr. Levitt asked for positive and negative criteria testimony. Mr. Murphy said he is concerned for the safety of the dog and children in the neighborhood as well as other dogs and their owners. He said it is a negative aspect that he won't be able to talk to his neighbors when they walk by. The fence won't negatively affect his property. Mayor Chau asked what happens if they find themselves without a dog. He asked if they can go back to a 4 ft. fence. Dr. Levitt said the approvals stay with the property. Mayor Chau suggested they may be setting precedent for other dog owners. Dr. Levitt said that is a valid concern and a concern he shares. Dr. Levitt said they did give testimony that a variance was granted to the neighbor across the street. He suggested the Board consider an Ordinance revision requiring an open design in the future. Mr. Brophy said each case has its own pros and cons. Dr. Levitt agreed and said every situation has merits on its own. Mr. Fleishman asked Mr. Doran if it was a side yard would it be allowed. Mr. Doran said it's allowed to be 6 ft. within 25 ft. of the street and then it has to drop down to 3 ft. He added that they received a variance in 2014 for a 4 ft. fence. Mr. Fleishman said they have a bit of a hardship since they are on a corner lot. The two fronts require them to come before the Board for a variance. Dr. Levitt said had there been a neighbor instead of a street they wouldn't need the variance.

Dr. Levitt noted there was no one present from the public in person or on Zoom.

Mr. Scharff made the motion to grant the "C" variance for a 6 ft. fence. Mr. Shippen seconded the motion. The roll call vote was as follows:

Mayor Erland Chau-yes

Joseph Dooley-yes

Henry Notaro-yes
Ron Roegiers-yes
Derek Rowe-yes
Clem Scharff-yes
Jim Shippen-yes
Councilman Paul Utts-yes
Dr. Richard Levitt-yes
The motion carries.

The third application on the agenda was from William Luciano, Block 49 Lot 5, 507 Fairbanks Avenue in the R-1 zone, for "C" variances for a manufactured home. Kishor Ghelani, a licensed engineer in New Jersey, was also present and he prepared the plan. Both gentlemen were sworn in.

Dr. Levitt commented that he drove by the site and it is currently an empty lot with a basement. Mr. Luciano said the house has been demolished and it has a crawl space. He intends to make it a little larger. He wants to keep the basement and refurbish it with new cinder block around the left side and then install a manufactured home. Mr. Fleishman asked Mr. Ghelani to describe the four variances they are requesting. The four variances are: Front Yard Setback (25 ft. is required, 15.5 ft. proposed), Side Yard Setback (10 ft. is required, 5.5 ft. is proposed), Side Yard Setback (15 ft. is required, 12.8 ft. is proposed), Building Coverage (25% maximum is permitted, 25.5% is proposed). Dr. Levitt asked Mr. Doran if the existing basement variances are grandfathered. Mr. Doran said normally a 50% or more change in the structure will require a variance. In this case, these are new variances. Mr. Doran discussed the variances included in his report as noted above. The sunporch was discussed. Mr. Doran said the dimension was not included. Mr. Luciano said they will be expanding it 1 ft. Dr. Levitt asked if he could set the house back further. Mr. Kishor said he wants to reuse the existing basement as a basement. Mr. Shippen said the basement blockwork will be reused. Mr. Luciano said the right wall and the front wall will be existing and the left wall and the back wall will come out and they will re-concrete. Dr. Levitt asked what the condition of the house was before the demolition. Mr. Luciano said there was asbestos and there were no walls left and it was rotted. Mr. Shippen clarified that the exterior sheeting was rotted. Mr. Luciano said the neighbors were happy when it was demolished. The home was an eyesore. He wants to replace it with a small home for himself and his wife and child. Mr. Notaro asked what type of style the house would be. Mr. Luciano said a one and a half story Cape Cod. Mr. Doran noted that there is one parking spot and they need two on site and they also need two street trees. Dr. Levitt asked if Mr. Luciano would agree to that. Mr. Luciano thought two cars would fit. Mr. Doran said the parking space would be another variance. Mr. Shippen suggested extending the driveway. Mr. Luciano said he could do that on the left side and he agreed. Mr. Fleishman said that can be a condition. Mr. Carney said that would increase the lot coverage due to the concrete. Mr. Shippen said he would have to check with the engineer as to the required length of the driveway. Mr. Fleishman suggested to Mr. Ghelani that he submit a new plan to Mr. Doran for approval and he thought the lot coverage variance would be minimal and Mr. Doran agreed. Mr. Doran said a road opening permit would be required if any work is done in the City right-of-way. Mr. Doran asked if water and sewer connections

exist. Mr. Luciano said they do exist and said they will be putting in a new gas line underground and will be replacing the curbs and sidewalks.

There was a discussion about the fencing surrounding the property. Mr. Doran said the fence is off the property line all the way around. Mr. Luciano said he is thinking of replacing with a vinyl fence or to use the neighbor's fence and if it is replaced, he will put it where it belongs. Mr. Doran said that encroachment exists, but he is unsure of who owns which fence. Dr. Levitt suggested getting a new survey. Mr. Luciano said he has done that. Mr. Doran said the back and left fences are encroaching, but the right fence is fine. Mr. Fleishman said this is not the Board's call. Mr. Luciano said the neighbor on the left wants to keep the fence and he testified that he will make it look nice. Mr. Doran read the Ordinance concerning fences and Dr. Levitt said it needs to be 1 ft. off the property line. Mr. Fleishman said if the neighbor's fence encroaches, you can allow it to stay there; the Board doesn't impose that. Mr. Luciano said he doesn't want the fence in front. Mr. Fleishman said if he replaces the fence it would have to comply or come back before the Board if it doesn't. Dr. Levitt said adverse possession can occur if many years go by, but it can be allowed if the owner of the land says it is allowed. Mr. Doran said the fence must comply and we will leave it at that.

Dr. Levitt said Mr. Luciano has testified to positive criteria in that the house was a poorly maintained home on the site and he is going to improve the aesthetics and value to the neighborhood, but the negative criteria is that it will require numerous variances. Mr. Luciano said the lot is narrow and undersized and Dr. Levitt agreed it is not practical to make the living space smaller. Mr. Luciano said the wideness will be the same and Dr. Levitt said the pre-existing condition is no worse than what he is doing. Mr. Carney asked for clarification on the two different coverage percentages. Mr. Doran said one is Building Coverage and the other is Total Coverage. Total Coverage conforms at 29.3% (40% allowed), but Building Coverage is slightly over at 25.5% where 25% is permitted. Mr. Fleishman and Mr. Doran discussed coverage and Mr. Doran said the increase in coverage due to the second parking spot will affect Total Coverage and will still comply.

Mr. Scharff made the motion for the variances for a front yard setback of 15.5 ft. (25 ft. required, 15.5 ft. proposed), a side yard setback for 5.5 ft. (10 is required), and a side yard setback for 12.8 ft. (15 ft. is required), and Building Coverage 25 ft. is the maximum permitted (25.5% is proposed). Mr. Fleishman went over the conditions. He said the applicant will expand the driveway to allow for a second parking space, he will revise the plan showing the parking and will submit to Mr. Doran, he will replace the curbs and sidewalks, install a new fence on the easternly side, he will add one shade tree in front, and agree to all conditions in Mr. Doran's report. Mr. Shippen seconded the motion.

The roll call vote was as follows:

Mayor Erland Chau-yes

Joseph Dooley-yes

Henry Notaro-yes

Ron Roegiers-yes

Derek Rowe-yes

Clem Scharff-yes

Jim Shippen-yes

Councilman Paul Utts-yes
Dr. Richard Levitt-yes
The motion carries.

The final application of the evening was a continuance from the May 5, 2022 meeting from Jose O. Arichabala Orellana, Block 109 Lots 28, 29, 30, and 31, known as 420 Mt. Vernon Avenue for "C" variance relief for height for an accessory building and lot coverage due to excessive paving in the R-3 zone. Mr. Orellana's engineer, Kishor Ghelani was also present. Dr. Levitt swore them both in.

Dr. Levitt said there are unresolved questions from the last hearing and a stop work order was put in place. Mr. Fleishman asked Mr. Ghelani to identify the plans he wants the Board to consider tonight. Mr. Ghelani said the revised plans are dated May 18, 2022. Mr. Fleishman labeled it Exhibit A-1 which consisted of two sheets. Mr. Fleishman said this is a continued application from May 5, 2022. He asked Mr. Ghelani to explain the changes. Mr. Ghelani said the accessory building height will be reduced. Previously they were asking for 24 ft. They will reduce the height to the mid-ridge to 17 ft. Exhibit A-2 showed the impervious surface and the highlighted area is the pervious surfaces. Mr. Ghelani said the patio is concrete and is impervious and the area with the pavers is pervious. Mr. Notaro agreed with this and said there is space between the pavers. Mr. Ghelani said water can run-off into the ground. Mr. Doran read the definition of lot coverage from the Ordinance. Dr. Levitt said Mr. Doran is saying this is an unroofed patio and it is not pervious. Mr. Doran said it should be delineated that a vehicle cannot park in this area. It should be blocked off. Mr. Doran said he drove by and there was a car parked there. Dr. Levitt noted that the pavers had a car parked on them and if it is used for parking, then it is impervious. Mr. Doran said that it is a small area. Mr. Fleishman noted that there would be no parking on the paver area.

Dr. Levitt said lot coverage is still over what is permitted. When Mr. Orellano was here in May, he was asked to not pave the driveway and now it is paved. Mr. Ghelani said he told the Board it wasn't paved when he visited the site. Mr. Fleishman asked when the concrete was installed. Mr. Orellana said the area next to the garage wasn't paved when he visited the site. Mr. Fleishman asked if the concrete was installed after May 5th. Mr. Ghelani wasn't sure, but it was done after his first visit. Mr. Notaro said it appears the concrete was poured before the last meeting. Mr. Fleishman asked if the 55% coverage includes all of the poured impervious coverage. Mr. Shippen said the Ordinance states that driveways or internal roadways whether pervious or impervious are considered in the lot coverage percentage. Mr. Doran said he recalculated lot coverage and came up with 54.4% and this did not include the concrete access sidewalks. Dr. Levitt said we are down to a 4% to 5% overage in coverage and we will need testimony from the engineer to justify the variance. Mr. Doran said the Board needs clarification on building height as well.

Dr. Levitt said the building height for an accessory building that is permitted is 12 ft. Mr. Doran agreed. Dr. Levitt asked Mr. Doran to explain the measurement for a building with a peaked roof. Mr. Doran said the structure is measured to the mean height of the 'A'. This building is 17 ft. to the peak and 14.96 ft. to the mean. They are over by almost 3 ft. Dr. Levitt asked Mr. Orellana why he needs a roof that high. He

had difficulty understanding, but said he is using it for storage and he has agreed to take out the stairs. Dr. Levitt asked if he could make it conform. Mr. Doran said the walls would have to be cut down for a flat roof. Mr. Roegiers interpreted that Mr. Orellana doesn't want to lower the walls. Mr. Notaro said the walls would have to be lowered to have a peaked roof. Mr. Scharff suggested leaving it as is. It is behind One Stop Car Audio and the property is neat as a pin and clearly there is a communication issue. Dr. Levitt commented that this all could have been avoided if the proper permits were pulled.

Mr. Shippen interjected here and said he did research on the history of the permits pulled for this location. He passed out a packet to the Board members. Mr. Fleishman asked Mr. Ghelani if his presentation was done. He said yes. Mr. Fleishman labeled Mr. Shippen's packed Exhibit PB-1 and the applicant and his engineer were given a copy. Mr. Shippen explained that there is a complicated chain of events. There was a Sidewalk Permit submitted to the Building Department on March 31, 2021. This was for the paving of a driveway 96 ft. in length by 17 ft. in width and a plot plan was also provided showing the proposed driveway. This application to pour concrete was approved April 1, 2021 by Zoning Officer Michael Dattalo. On October 25, 2021, a Zoning Permit was submitted for an accessory building. Mr. Dattalo retired and the City Clerk, Mary Canesi, was the Acting Zoning Official at that time. The application was denied and stated that Planning Board approval is required and lot coverage standards must also be met. The next day on October 26, 2021, another application was submitted with revised drawings and Zoning approval was granted for a 500-sf detached garage including the stipulation that there is to be no commercial use. Mr. Shippen continued by saying that subsequent to the Zoning approval, the applicant began construction but did not apply for a Building Permit. A Building Permit would have dealt with the height of the accessory building. On November 18, 2021, a stop work order was issued by the Construction Code Official for a violation of Work Without Proper Permitting and a date of compliance was set for December 2, 2021. Mr. Fleishman agreed with this and explained further for the Board. On November 24, 2021, Mr. Orellana submitted a construction application and drawing, but this was not approved due to several zoning violations determined by the Construction Code Official. On December 8, 2021 a certified letter was sent to Mr. Orellana that he must seek approval from the City of Northfield Planning Board. Dr. Levitt verified that the application for paving only required Zoning approval. Mr. Doran agreed and said they wouldn't need a Building Permit for that. Mr. Shippen agreed as well and said that was only for the back and side concrete. Dr. Levitt said the garage is what was built without permits. Mr. Shippen agreed and said the garage was constructed without permits and the stop work order was subsequent to that. There was a note on the construction application that the roof was too high and approval was denied. Dr. Levitt thanked Mr. Shippen for his leg work. Mr. Fleishman added that the information presented this evening is public record. Mr. Shippen said he obtained the documents from the Construction and Zoning Departments. Mr. Roegiers asked if the fines and penalties have been satisfied. Mr. Doran said only the Building Department would know that.

Dr. Levitt asked Mr. Orellana if he understood that there was to be no commercial use. Mr. Orellana said there is no commercial use. Dr. Levitt asked if he was storing construction materials on site. Mr. Brophy asked about parking commercial vehicles on site. Mr. Orellana said he has two cars. Mr. Fleishman asked where his commercial business runs from. He asked if he had a building or a garage. Mr. Orellana said he

has a garage on the Black Horse Pike and New Road in Pleasantville. Mr. Notaro said he saw commercial vehicles parked in the back yard. He said they are stake body trucks. He asked if they are parked there all the time. Mr. Orellano said not every day.

Mr. Fleishman suggested at this point, the Board should review Mr. Doran's report. Mr. Doran reviewed items in his report that have not been covered. There are curbs and sidewalks along the front as required. He said the Board should address street trees. The applicant has two onsite parking spaces as required. A Road Opening Permit will need to be obtained for any new curb cuts or concrete apron to be installed. The use of the new accessory building cannot be used for commercial purposes and it cannot be used for residential living. It is an accessory to the house which is the principal structure.

Mr. Shippen asked about the Board's responsibility for excessive paving without Zoning approval. Mr. Fleishman said the applicant is here requesting the Board's approval and the Board can grant it or deny it depending on whether you feel they have established a case to support the granting of the variances and if he is entitled to relief. Mr. Orellana acted without permits, but he is here now asking for the Board's permission. Dr. Levitt showed a photograph that he took this evening and asked why the driveway has to be so wide and said it is twice as wide as it needs to be. Mr. Shippen asked if there was still a dump trailer there. He located it in the photograph as being behind the pick-up truck. Dr. Levitt said he thinks the lot coverage is di minimus at this point. Mr. Doran said they are over 4% and that would require the removal of 674 sf of concrete in order to comply at 50% coverage. Dr. Levitt said that number is not di minimus. Dr. Levitt said the Board hasn't heard justification and positive and negative criteria testimony from the applicant's engineer. Mr. Ghelani said it looks like it is only 5.4% in coverage than what is allowed and he doesn't feel this is detrimental. Mr. Orellana came down to 15 ft. and that is only 3 ft. over the 12 ft. that is allowed. He can decide if he wants to lower the height any further. As to the driveway, he could cut out some of the driveway to reduce it. Mr. Orellana is the owner and he would have to agree to do that.

Dr. Levitt opened the public session with a motion from Mr. Shippen and a second from Mr. Brophy.

Matthew Carney who resides at 407 Davis Avenue addressed the Board. Dr. Levitt said this is the basis of Mr. Carney's recusal from hearing the application. He said he lives behind Mr. Orellana's property and had concerns that the property is being used as a business. Mr. Fleishman said that would be an enforcement issue if approved and the Board has that issue under consideration. There was no one else who wished to speak and Dr. Levitt closed the public session.

Dr. Levitt said he had mixed feelings about this application. He didn't believe Mr. Orellano understands the implications of the permits, but also felt that he should have some understanding since he is in the roofing business. Mr. Ghelani mentioned that some of the concrete could be cut out. He would also like the accessory building to conform to 12 feet with the peaked roof higher. Mr. Notaro said the walls would have to come down 5 ft. He asked Mr. Orellana why he needs the building to be so high. Mr. Orellana suggested a flat roof instead of taking the walls down. Mr. Shippen said he would still need a variance for 13 ft. according to Mr. Doran's calculations in his report. Mr. Notaro said he would still need

to cut the walls down. Dr. Levitt asked what he is putting in the garage. Mr. Orellana said his cars. Dr. Levitt said cars don't need 12 ft. Dr. Levitt asked for a straw vote from the Board.

Mr. Notaro said he thinks he should conform to the roof height and cut back the concrete. The patio area needs to be delineated so it can't be driven on and you don't drive on pavers. Mr. Shippen said he found it difficult to believe that someone in the construction business did not realize that he needed permits to build the accessory building. As someone who had to endure the process for 40 years, he was not inclined to let all of these discrepancies go. He has seen cases where plans were submitted and approved and later errors were found and it was decided that it was best to leave it the way it was. He said that is not what we have here. Mr. Shippen said he agreed with Mr. Notaro that the building should be brought to proper elevation and some of the concrete should be removed since a good deal of it was poured without Zoning approval. Mr. Notaro added that they testified at the last meeting that the concrete was not there yet. He drove by the property after the meeting to take a look at it and the concrete was there. Mr. Scharff said his property adjoins One Stop which is commercial and the applicant is not encroaching on the residential side. He thinks it should be left as it is and let him finish. We have a major communication problem here and he felt he didn't understand and he thought he had the Zoning. Mr. Dooley said we are the Zoning Board and have a case with an applicant seeking relief from Zoning. There are other enforcement mechanisms in place in the City that permits fall under, and we should deal with the variances. He felt that if he could cut back on some of the concrete, he would be inclined to approve the roof as it is. Mr. Rowe felt that he should conform with the roof height and remove some of the concrete to conform. Councilman Utts had concerns that the property is being used for business purposes and to accommodate commercial vehicles. If he was a neighbor, he would be very concerned. If the roof is lowered, it can't be used to store large construction vehicles. He felt he should reduce the concrete as there is a lot of it there. If everyone did what has been done at this property, we would have a real problem and it would put a strain on the municipal stormwater system and we would have to upgrade it. There is too much impervious surface and there are real reasons we don't want all of this impervious surface. He thought the Board should look at forgiveness instead of permission and if he could cut back on the concrete and bring the roof into compliance, he could get at least some of what he wants and we wouldn't be encouraging this to happen in the future. Mr. Brophy said he would like to see him comply. Dr. Levitt said the property is adjacent to commercial properties on Route 9 and it is in a residential neighborhood. He noted that people park their commercial trucks in their driveways all the time. Mr. Notaro said he is not parking one truck; he has three. Dr. Levitt said you can't use the property as the base of your business. Mr. Orellana said he only is keeping his personal tools in the garage. Dr. Levitt said if you cut the concrete to comply and lower the roof, it is technically the same as denying the variance request and it has the same effect and he wouldn't have to be before this Board. The question was does the Board set conditions or vote on the application.

Mr. Fleishman said the applicant has applied for approval for height of an accessory building and lot coverage. The Board has heard the testimony. A motion needs to be framed in the affirmative and a motion made to approve. Then the Board can impose conditions. He did this project without permits and he needs to come before the Board to legitimize. Mr. Doran said they need to decide which height they want to have a vote on. The revised plan has been amended to be at a height of 14.97 ft. Dr. Levitt

said if they bring the height down, the reduced height would eliminate the possibility of a room on the second floor. He would prefer to see a tapered roof for aesthetics and he thought a flat roof would look terrible and it would look more commercial. The applicant has agreed to remove the steps. The accessory building sits back 96 ft. from the road and he could park the trucks in the back, saw cut the concrete in the front to make it conform, and put in some grass and a shade tree in the front as well. Dr. Levitt said he will need to submit plans for saw cutting of the concrete. The Board discussed the wording of the motion and which height would be part of the motion. Mr. Fleishman advised that if the Board does not grant any variances, the Board loses the ability to add conditions. It was decided to use the revised height for the variance and include the saw cutting of the concrete.

The motion was made by Mr. Scharff as stated by Mr. Fleishman and included the reduction of the accessory building to 14.97 ft. measured to the mid ridge and the removal of concrete to conform with 50% lot coverage with the following conditions: there will be no parking on the pavers, he will install planters around the patio area to prevent access to cars around the building, there will be no commercial use, there will be no residential living in the accessory garage, he will comply with everything contained in Mr. Doran's report, he will install one street tree, 675 sf of concrete will be saw cut. Mr. Fleishman asked Mr. Orellana if he agreed, which he did. The garage will be reduced to 17 ft. with 15 ft. to the mid ridge and this requires a variance as submitted and revised. All Building Department Permits and Planning Board professional fees will be paid in full and any outstanding fines will also be paid and satisfied. Mr. Scharff repeated the motion above according to the plans dated 5/18/22 and in addition included one shade tree in front, there will be no stairs in the accessory building, there will be no construction materials stored on site, and the Board suggested the following to create a barrier for the patio to prevent cars being parked or using that area: install planters, use potted plants, curb stops, benches, plant a hedge, or install other landscaping. Mr. Dooley seconded the motion. The roll call was as follows and Mr. Fleishman asked the voting members to provide a brief explanation or rationale to explain the vote.

The roll call vote was as follows:

Peter Brophy-yes; with hesitancy, but will agree as long as conditions are strictly adhered to

Matthew Carney-no vote-recused

Mayor Chau-no vote; absent 5/5/21 hearing

Joseph Dooley-yes; Mr. Orellana agreed to meet the conditions as stated

Henry Notaro-yes; satisfied with the compromise

Dan Reardon-yes; satisfied with the compromise

Ron Roegiers-no vote; absent 5/5/21 hearing

Derek Rowe-yes; combination of agreement to conform and the conditions will allay fears of the Board concerning commercial use

Clem Scharff-yes; taking advantage of a unique location of this property

Jim Shippen-yes; agreed to go along with the compromise

Councilman Paul Utts-yes; agreed with amended conditions

Dr. Richard Levitt-yes; satisfied with the accessory building and the peaked roof and noted that if the paver sections were counted in the percentage, he would have had to cut out more concrete

The motion carries.

Dr. Levitt reminded Mr. Orellana to give all revised plans to the Construction Department and to obtain all of the permits he will need.

Councilman Utts stated that there is a business in town that wants to put up a large tent for a tent sale for ten days and the Ordinance states they are allowed for one week in duration (Chapter 215, Article V, Section 215-42 (C)). He believes this may have been an oversight of Code Enforcement in the past. City Council had a straw vote on this and agreed that ten days would be advantageous since it would allow the businesses to have a sale over two weekend periods. Councilman Utts asked for the Board's feeling on this Ordinance change and said they plan to only change section (C). The Planning Board by poll agreed to this. A letter will be sent to City Council.

Mayor Chau stated that Chief Newman resigned as Class II Planning Board member. This involved a Worker's Compensation issue and if he is injured or gets sick, he would not be covered by Worker's Compensation or by the City since this is a voluntary position. Mayor Chau was unsure of the legalities or if it would affect other employees. Dr. Levitt commented that since 1978, no one has ever been injured serving on the Planning Board.

Dr. Levitt closed the meeting at 9:20 p.m. with a motion from Mr. Shippen and a second from Mr. Roegiers.

Respectfully submitted,

Robin Atlas, Secretary to the Board