

City of Northfield Planning Board
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July 7, 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 June 27, 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, July 7, 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 Vice Chairman Clem Scharff at 7:01 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-absent

Dr. Richard Levitt-absent

Chief Paul Newman-resigned

Henry Notaro

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

Mr. Scharff took care of some housekeeping items before the applications. He asked for an approval of the June 2, 2022 minutes and asked if there were any changes or corrections. Seeing none, Mr. Shippen made the motion to approve the minutes and Councilman Utts seconded the motion. All were in favor of approval.

There were four resolutions to memorialize. The first was for Robert H. Hemberger, Block 125 Lot 9.02, 27 Roosevelt Avenue for a "C" Variance for a residential addition. Mr. Brophy, Mr. Carney, and Mr. Reardon abstained. The voice vote was all in favor. The second resolution was for Michael & Debra Murphy, Block 1.03, Lot 23, 101 Haviv Drive for a "C" variance to construct a 6 ft. fence. Mr. Brophy, Mr. Carney, and Mr. Reardon abstained. The voice vote was all in favor. The third resolution was for William Luciano, Block 49 Lot 5, 507 Fairbanks Avenue, for "C" variances for a front yard setback, two side yard setback, and building coverage. Mr. Brophy, Mr. Carney, and Mr. Reardon abstained. The voice vote was all in favor. The fourth resolution was for Jose Arichabala Orellana, Block 109 Lots 28-31, 420 Mt. Vernon Avenue for "C" variances to continue to construct an accessory building with conditions to remove concrete and other conditions. Abstentions were Mathew Carney, Mayor Chau, and Mr. Roegiers. The voice vote was all in favor.

The first application was from David B. Gatto, Block 145 Lot 3, 37 Fairway Avenue. The property is in the R-2 Zone and the application is a "C" Variance request for a side yard setback. Mr. Gatto was sworn in by Mr. Fleishman. Mr. Gatto said he appreciates the opportunity to come before the Board and he stated his family are the newest residents of Northfield as they recently purchased their property and they feel right at home here. Mr. Gatto said he is asking for a "C" Variance to build and expand their kitchen. He stated his wife will be better able to nourish their kids in an updated kitchen. The current kitchen is a non-conforming structure that was built a long time ago. Mr. Gatto supplied updated pictures and plans designed by Harry Harper. Mr. Fleishman asked if they were different from plans submitted with the application. Mr. Gatto said they are new plans, photos, and an aerial view. Mr. Fleishman labeled the 4 photos and the plans Exhibit A-1 and passed them out for the Board members to view.

Mr. Doran referred to his report and said there are nice trees out front and the property has curbs and sidewalks. Mr. Doran wanted clarification that Mr. Gatto is seeking the existing 5.4 ft. setback and is not planning on continuing with the line of the house at 6 ft. Mr. Gatto said the kitchen bumps in slightly and the plans are going with the existing line. They plan to keep the bump in. Mr. Scharff commented that the setback is pre-existing. Mr. Doran said he is making the bump out a little bigger. Mr. Scharff said there are no other setback issues. Mr. Doran agreed. He added that there is an existing shed in the back, but that too is existing. Mr. Doran said this is basically a C-1 variance for a unique and existing situation.

Mr. Fleishman asked Mr. Doran if he sees any detriment from this application to the neighborhood or Zone plan. Mr. Doran didn't find anything detrimental and the house will be one foot further from the line than it is now. Mr. Fleishman added that they are reducing the degree of nonconformity. Mr. Scharff clarified that there is not a lot coverage issue. Mr. Doran said there is not. Mayor Chau questioned the applicant and asked him to describe the current kitchen situation with the appliances and how it is set up. Mr. Gatto said the kitchen is very old and dates back to 1960 and 1980. The previous owner, Mr. Clouting, is now 96 years old. The kitchen is in desperate need of an upgrade. Mr. Gatto mentioned that Mr. Clouting intends to visit after the upgrades to view the changes. Mayor Chau asked if there was a refrigerator. Mr. Gatto said there is an old fridge that they want to replace it. Mayor Chau asked if the kitchen had an eating area. Mr. Gatto said the kitchen is narrow and there is a separate dining room.

Mr. Scharff opened the public session, but seeing no one who wished to comment, he closed the public session.

Mr. Scharff made the motion for the "C" variance request to construct a new kitchen area at the rear of the existing dwelling where a 10 ft. side setback is required, the existing house has a 5.1 ft. setback, and the new kitchen is proposed at 6 ft. Mayor Chau seconded the motion. The roll call vote was as follows:

Mr. Brophy-yes

Mr. Carney-yes

Mayor Chau-yes

Mr. Notaro-yes

Mr. Reardon-yes

Mr. Roegiers-yes

Mr. Scharff-yes

Mr. Shippen-yes

Councilman Utts-yes

The motion carries.

The second application was a continuation from the March 3, 2022 hearing. The applicant was Webster Property Management, LLC, Block 106 Lot 8, 207 Northfield Avenue in the R-2 Zone. Charles Gemmel, Esq., the attorney for the applicant, addressed the Board and said this application is a continuation that commenced in March. Before continuing, he said there is an issue to resolve before the presentation at Mr. Fleishman's request. Mr. Fleishman said the issue is bifurcation of the original application. He asked Mr. Gemmel if he is still requesting bifurcation limited solely to the consideration of the use variance which essentially would be a new application. Mr. Gemmel said he made the request to proceed with a bifurcated application since the primary issue is the use variance for the allowance of medical offices in a residential zone. Mr. Gemmel read Mr. Fleishman's response letter stating they should withdrawal the original application and address the use variance only and this is consistent with N.J.S.A. 40:55D-76b. Mr. Gemmel said he wants to address the use variance and MLUL gives them the right to do that. He said he responded to Mr. King and he is aware that the three letters were circulated to the Board. His client prefers bifurcation of the application. Mr. Fleishman agreed that the letters were shared with everyone on the Board. Mr. Shippen commented that the question that the issue comes down to is

whether or not the variance and site plan issues are highly interrelated. Mr. Fleishman suggested allowing Mr. King to respond to this and then Mr. Gemmel can reply.

Mr. King addressed the Board and stated he is an attorney in Northfield and recently moved into the Weiss & Paarz building on New Road and he represents Miriam Boudreau of 210 Infield Avenue, Robert Pattillo of 212 Infield Avenue, and Lisa & Donald Edwards of 208 Infield Avenue. Mr. King said he submitted a letter explaining why bifurcation is inappropriate and wants to explain his letter for the benefit of the public. Mr. King read from the Cox manual and stated:

Where the site plan issues are central to resolving the problems which cause the proposed use not to satisfy the negative criteria, the variance application and the site plan review should not be bifurcated. Stated differently, bifurcation is not appropriate where the variance and the site plan issues are highly interrelated.

Mr. King continued by discussing case law involving *House of Fire Christian Church* which was heard in the Appellate Division which is considered a higher court, found that bifurcation was inappropriate and

“Problematic where factors such as traffic flow, traffic congestion, ingress and egress, building orientation, and the nature of the surrounding properties are highly relevant to both the determination of whether to grant a use variance and the later decision to approve the site plan.”

Mr. King said what they are saying here is that you cannot decide a use in isolation and you have to consider the properties around it. There are three properties intersecting in this application. There is a property containing the existing medial building that obtained a variance with the condition that they could use the church property across the street for parking. That couldn't be done now since there is an Ordinance that prevents that. Now they want to create a campus of medical facilities that crosses over a residential street. They have a medical building that uses the church for parking and they want to create a campus on a newly created lot across the street that will be used for a use not permitted. The church is a conditional use required to be on five acres that has less than half the size of that and further reducing it and creating a lot coverage variance on the church property. Mr. King stated the applicant now wants to put a drainage swale around the non-permitted use at the rear property line near his client's back yards. He said this use does affect the surrounding properties. It is down the street from the Bike Path and the intersection of three roads. There is no traffic plan and now there is no site plan associated with the use variance application. This is not a case for bifurcation and is not what it was designed for. It can be useful in some cases such as an existing building that wants to request a change of use. It allows the property owners to get a feel for whether the new use could work. That is not the case here.

Mr. King continued and said originally there was a full site plan with drainage. There were problems with the application after it was heard in full and now, they want to do something inappropriate and break up the application. If it was appropriate, they would have done it initially. They are not giving you the information you need to make a decision. Mr. King said at the previous meeting there was a Board member who spoke about the previous approval in 1999 for the medical facility. Mr. King obtained the

approval and objected to the notice because the two lots are interrelated and they should have noticed for both properties. They subsequently did that. Now they are trying to say that the properties are not interrelated and when you read the standards, it can be seen that the nature of the surrounding properties are highly relevant. Mr. King told the Board that they are connected by your own variance. Mr. King said he cannot understand how there can be an application for a use variance that creates a new lot, that creates variances on the existing lot, creates an interrelated business on two sides of the road, and then say that this is appropriate for bifurcation. He said this may be the most inappropriate application for bifurcation he has ever seen.

Mr. Fleishman said it is up to the Board to decide on this and asked for Board comments. Mr. Gemmel addressed the Board and said he disagrees. He said Mr. King is suggesting they are trying to avoid things to try and get the variance for the medical building and that is not true. There will be conditions for this application and they will need site plan approval and minor subdivision approval. They are not bifurcating in order to avoid anything; they are seeking it for timing reasons. Mr. King seemed to be suggesting that the Board is losing jurisdiction and they are not. Mr. Gemmel said they want to resolve the most important issue first. Mr. Scharff agreed and said that the application is still subject to the other approvals. Mr. Fleishman said N.J.S.A. 40:55D-76b is clear if bifurcation is allowed, it is contingent on subsequent approvals. It is important that the Board is aware of that. Case Law does state that it is a Board decision. The Board needs to decide if they are highly interrelated. Mr. Fleishman said with a use variance plan, they have to disclose certain characteristics of the site plan. They are actually at a disadvantage if they bifurcate because they will have to prove negative criteria twice. He noted that it is not an easy question.

Mr. Shippen asked why the court included that statement about the situation being highly interrelated. He said there must be a reason. Mr. Scharff commented that the building in the court case was already a pre-existing building that was being modified. Mr. Fleishman said COX does differentiate and bifurcation is more appropriate if the parcel is vacant than if there is a building on the site. There are situations where the site plan is interrelated to the use and other cases where the use variance can be considered without a full site plan. In other cases, you need to see the site plan. Mr. Fleishman asked Mr. Gemmel why he wanted to bifurcate this application. He said the Board wants to know. Mr. Gemmel said they made the request back in April. The applicant did not want to spend more money on new plans if they don't obtain the use variance. He said they will abide by the Board's decision. Mr. Fleishman said there is a statutory right to request bifurcation. Mr. Fleishman added that in the House of Fire Christian Church case, bifurcation was clearly the Board's decision. Mr. King clarified that the church was demolished and they were putting up a new church. He added that he didn't think the application was deemed complete. They don't have a full site plan and want to present a watered-down version. If they were putting up a house, they wouldn't need a drainage plan, site plan, lighting plan, a parking lot, or large buffers. He said lighting is very important to his clients. Mr. Fleishman said that is not exactly true. The property is large enough for a minor or even major subdivision of homes and it is not a by-right situation. Mr. King said they are proposing a drainage swale and lighting and a unique use that is not intended for this zone and it will impact the people behind it. This is a commercial use and a site plan issue. Mr. Brophy asked if bifurcation would result in a beforehand site plan presentation. Mr. Fleishman

said the applicant must prove special reasons and positive criteria and prove that negative criteria is satisfied to justify a "D" variance. They have to prove they have met the criteria. The applicant's presentation will answer that question. Mr. Brophy said granting the "D" variance is contingent on the site plan points. Mr. Fleishman said there will be some site plan presentation for the "D" variance and there will be some criteria. They want to avoid the cost and expense of the full site plan and the associated engineering that would go into it and this is not uncommon. They often do that to cut the expense up front for the client or developer and to determine if the use is permitted. Councilman Utts had a procedural question and asked if the Planning Board would be voting on the bifurcation. Mr. Fleishman said the Webster application has been a Zoning Board matter from the get-go and only 7 Board members can vote. The jurisdiction stays with the Zoning Board. Mr. Scharff asked if bifurcation is approved, will the Board hear the "D" variance at this meeting. Mr. Fleishman said the D1 use variance application would be heard at this meeting. If it is denied, the whole matter will be heard together. Mr. Shippen said it is his understanding that we heard a lot of the site plan information at the first hearing and we also heard public objections. Then the applicant re-did everything to address the questions raised. He asked if the first hearing is now irrelevant since they gave us a revised plan addressing the issues. Mr. Fleishman said you will hear what they want you to consider now since new plans have been submitted in response. Mr. Brophy clarified that we will hear site plan details for the "D" variance and then will hear them again for the site plan. Mr. Fleishman said if the use variance is denied, there is no site plan.

Mr. Scharff asked for a motion to vote on bifurcation. Mr. Roegiers made the motion and Mr. Brophy seconded. Mr. Fleishman asked the Board to give rational for their votes.

Mr. Brophy-yes; he said it is the expedient way to go

Mr. Carney-no; he didn't agree with bifurcation and wanted to hear the entire application

Mr. Notaro-no; he agreed with Mr. Carney and said too much significant, interrelated information could come up

Mr. Reardon-no; he said it is all related

Mr. Roegiers-no; he said the properties are too intertwined

Mr. Scharff-yes; he said the Board will see the site plan eventually and it is still under Board control

Mr. Shippen-no; due to the court ruling and the interrelated site plan issues and he didn't think bifurcation is not appropriate

The motion is denied with a 5 yay, 2 nay vote.

Mr. Fleishman said bifurcation is denied and Mr. Gemmel can proceed with the presentation of the application in full. Mr. King said they are now applying for a site plan and no revised site plan has ben submitted. Mr. Fleishman said Mr. Doran has dealt with the draining issues in his report. Mr. Doran read the changes in his review after the applicant submitted a revised plan dealing with the issues brought up at the initial public hearing.

The summary was as follows:

1. Buffer-A 15 ft. wide double staggered row of evergreens are now proposed across the rear of the property. Mr. Doran noted that the buffer should be extended along the side property line

of Lot 7, as it is a residential swelling. A 6 ft. vinyl private fence has been proposed along the Lot 7 property line and the rear lot line.

2. Parking Setbacks to a residential zone. The plan has been revised in order to provide the 50 ft. separation that is required.
3. Lot Coverage-The plan has been modified in order to provide 45% lot coverage, as opposed to 49.1% previously proposed.
4. The size of the building has been reduced from 5,100 sf to 4,200 sf which is a reduction of 900 sf.
5. The rear setback of the building has been increased and the windows along the rear of the building have been removed.
6. A new fence has been proposed along the church property line in order to provide screening.

Mr. Doran said no new drainage calculations, lighting plans, or site plan designs have been provided. This would have been appropriate for the "D" variance application by itself, but not for a full site plan application. Mr. Roegiers said drainage seems to be important and he would like to see something to scale about drainage. Mr. Fleishman commented that the Board has not been presented with a full revised site plan. Mr. Gemmel said he assumed it was deemed complete or they wouldn't be here, but he did note that they submitted what they thought was appropriate for a "D" variance application. Mr. Fleishman said the application has been tabled and postponed twice and then came the request for bifurcation and events have been unorthodox. He asked Mr. Doran if he had been given a full site plan or a single sheet. The revisions were on a single sheet. Mr. Mohnack, the engineer for the applicant, asked Mr. Doran if he would accept the one-page plan as the preliminary site plan with the condition that they would have to appear with a full site plan for final site plan approval. Mr. Doran said the preliminary plan has to show the designs including drainage, lighting, air conditioning, and the drainage basin. He said most of the bulk work is done during the preliminary phase and is why we usually hear preliminary and final site plan applications together. He added that the one-page plan is a good attempt for preliminary, but designs must be shown. Mr. Brophy said it is incomplete. Mr. Doran said if they were only asking for a "D" variance, the one-page plan is fine for that. He said he completed his revised report based on the changes only and for a "D" variance application, not a site plan application. Mr. Gemmel said they understand they need a full plan for preliminary approval. Mr. Fleishman said the plan needs to be complete and transparent. Mr. Carney said it seems they applied for the "D" variance, but not the site plan. Mr. Scharff addressed Mr. Gemmel and said they will have to continue forward with a plan showing the engineering calculations on it. He said this is a unique situation. Mr. Gemmel said that is why they made the application for bifurcation. They were denied the ability to obtain the "D" variance approval separately and they now will have to do a full-blown site plan. Mr. Shippen said the Board has to have a complete application. Mr. Gemmel asked for a brief recess to speak with his client at 7:58 p.m.

The Board resumed the hearing at 8:07 p.m. Mr. Gemmel said they will continue with the application with the recognition that they will need full-blown site plans and drainage calculations. Mr. Gemmel requested no re-noticing and that the hearing take place on September 1, 2022. Mr. Fleishman told Mr. Gemmel to submit for everything---the site plan, "D" variance, Minor subdivision, and any other

variances necessary and to submit a comprehensive application. Mr. Scharff and Mr. Fleishman agreed to waive noticing. Mr. Gemmel said they may decide to notice anyway. Mr. Fleishman said the Board will waive notice for the hearing for September 1, 2022 as the August meeting is full and it will give them eight weeks to get the revised application together. Mr. Fleishman also asked Mr. Gemmel to waive any applicable time limits for the Board to act. Mr. Gemmel agreed. Mr. Doran requested the application at least three weeks ahead of time and the Board will need everything at least ten days before the hearing.

Mayor Chau made the motion to close the meeting and Mr. Shippen seconded the motion. Vice Chairman Scharff closed the meeting at 8:11 p.m.

Respectfully submitted,

Robin Atlas, Secretary to the Board