

City of Northfield Planning Board
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Minutes: September 6, 2018

Notice of this meeting had been given in accordance with Chapter 231 Public Law 1975, otherwise known as the Open Public Meetings Act. Notice of this meeting had been given to The Press, posted on the bulletin board in City Hall, filed with the City Clerk, and posted on the City website, stating the date, time and place of the meeting and the agenda to the extent known.

This REGULAR meeting of the Northfield Planning Board held on Thursday, September 6, 2018 in Council Chambers, City Hall, Northfield, was opened by Chairman Richard Levitt at 7:06 p.m. with the reading of the Sunshine Law and the following members present or absent as noted:

Mark Bruno
Mayor Erland Chau
Jim Leeds
Dr. Richard Levitt
Joe Massari
Chief Paul Newman
Henry Notaro-absent
Councilman Frank Perri
Daniel Reardon
Ron Roegiers
Derek Rowe
Clem Scharff-absent
Jim Shippen

Matthew Doran, Professional Engineer
Norman Zlotnick, Solicitor

There were two applications on the agenda. The first was Boris Kalika, DMD who resides at 2325 Merritt Drive, Block 82, Lot 7.01 and is requesting a "C" variance for the installment of a 6 ft. fence. The property is located in the R-1 zone. The attorney for the applicant is Brian D. Heun, Esq. Dr. Levitt recused himself from this application for professional reasons and Jim Shippen chaired the meeting for this application. Dr. Kalika was sworn in by Mr. Shippen.

Mr. Heun addressed the Board and said his applicant recognizes that 6 ft. front yard fences are not favored, but he believes Dr. Kalika's property presents a unique situation. The house is setback from Merritt Drive and the public right-of-way according to the survey is 6 ft. onto the property. The fence will run along the property line about 5 to 6 ft., but not in the public right-of-way. Mr. Heun explained that Dr. Kalika recently purchased a German Shepherd puppy for his family and he has concerns that the puppy will get loose. He has a young teen-age son and a 7-year old daughter and he wants the kids to play in the front yard safely. They have a pool in the backyard. He stated that Merritt Drive is a cut-

through street and he wants a taller fence than the Ordinance allows. The fence will not be solid; it will be decorative and have spacing and will not look like a wall. The house is well back from the street and sits angularly. Mr. Heun added that this fence will not negate the neighborhood in any way, there is no property located across the street, and there is no one from the public in attendance.

Dr. Kalika said his puppy is 4 months old and the fence will be a help in its transition. His daughter loves to play with the dog. The fence will help protect the dog from passing vehicles. He stated that some of his neighbors have dogs and they have gotten loose and have been in his yard. The fence will prevent other dogs from coming onto his property. Dr. Kalika said the fence will be a decorative, high end fence.

Mr. Doran commented that the property line is 5 ft. back from the asphalt and there is a 10 ft. sewer easement. He noted the fence should not be built within this easement unless the easement document specifically allows that to happen. There is probably a sewer pipe underneath and really shouldn't have any improvements above it. There are two existing non-conformities involving Total Coverage which is slight at 2% over and Lot Width which is a little sub-standard, but it is existing. The Ordinance says the fence needs to be setback in the front 25 ft. and they are proposing 0 ft. Again, it should not be built on the easement due to possible repairs being needed. The property line is 5 ft. back from the asphalt and then there is the 10 ft. easement. Mr. Heun said they did not know about the easement and added that if they built the fence 15 ft. back, it would not work. Mr. Heun said they would be willing to sign an amended easement stating they would be responsible to remove the fence if repairs are needed and if there was a sewer emergency, they would indemnify the City for any responsibility and would be responsible for any costs to repair or rebuild the fence.

Mr. Zlotnick and Mr. Doran reviewed the survey. They discussed the 10 ft. wide sanitary sewerage easement which is parallel with the property line. Mr. Doran explained that the applicant is asking to put the fence on the edge of the property line which will cross the easement to get to the front property line. Mr. Heun again stressed that they would be happy to amend the easement and to make Dr. Kalika responsible for any repairs to the fence. Mr. Doran said he is not sure who the easement is in favor of. Mr. Zlotnick added that to modify an easement, it would be necessary to see who is benefiting and see if they consent to the change. Mr. Heun said he assumes it is the Northfield Sewer Authority. Mr. Heun said his client does not want to push the fence back. He would be willing to pull the easement by title search and table the application for tonight. Mr. Zlotnick said the Board should view the easement, have the easement explained, and pose questions. Mr. Heun said the proposed application places the fence along the property line. If it was to be along the easement line, they would lose too much of the front yard. Mr. Shippen said 10 ft. off of 57 ft., and width was discussed. During the discussion, Mr. Heun spoke with his client and they decided to amend the application to request the fence to parallel the easement line and not to enter into the easement area. Mr. Zlotnick said the Board had no problem with that.

Mr. Shippen asked Mr. Doran to address #4 and #5 in his report. Mr. Doran said the Board requires the applicant to address trees and sidewalks. Mr. Doran said Merritt Drive has no sidewalks and there are plenty of trees. The street is very wooded. Mr. Heun said there may be a pre-existing tree already in the easement. Mr. Shippen noted that there are no sidewalks along Merritt Drive. Mr. Zlotnick said no trees are required. Mr. Shippen asked the Board members for questions.

Mayor Chau asked Dr. Kalika how long he has owned the property. Dr. Kalika stated he purchased the property in April 2014. Mayor Chau had concerns about the dog once he is a full grown adult and commented that a 6 ft. fence may not be adequate and he asked Dr. Kalika if he has done research on

this. Dr. Kalika answered that he has researched online. Mayor Chau commented that he has knowledge of dogs and has owned a German shepherd. The unknown factors are how big the dog will be and whether or not he will be able to jump a 6 ft. high fence. Mayor Chau also asked Dr. Kalika if he decided to move out of Northfield, would he consider taking the fence down before moving. Dr. Kalika said his dog and younger child will not be unsupervised and he is a responsible dog owner. He isn't like his neighbor who allows his Pit Bull to run free and roam in others' yards. He said if he decides to sell, removal of the fence would depend on the buyer's demands and wishes. Mr. Heun said the fence will set back 15 ft. and will be aesthetically pleasing and he does not agree to commit to fence removal. Mayor Chau asked Mr. Zlotnick if the Doctor moves and the new homeowners don't have a dog, will this set any precedence. Mr. Zlotnick said no; each case stands on its own facts. Mr. Heun added that all the fencing will be 6 ft. The existing solid fence surrounding the pool area is 6 ft. as well as the proposed fencing. Mayor Chau also expressed concerns about dogs digging under the fence. Dr. Kalika said that is always a concern with dogs as they like to dig. He is working with a trainer to prevent this behavior. He stressed that his dog will not be unsupervised. Mayor Chau asked if he looked at alternative fencing such as Invisible Fencing. Dr. Kalika said he is against electric shocking of dogs. Mayor Chau asked about his dog's weight standards and lineage. Dr. Kalika asked for clarification. Mayor Chau asked about the dog purchase. Dr. Kalika said he paid \$3,000 for the dog that has a pure bred pedigree and is from Pennsylvania. He researched the purchase for 1 and ½ years.

Mr. Heun said he understands about precedence and this property is fairly unique in the way the house sits back on the lot and positive criteria exists for this project to be constructed on this lot. At this point, Mr. Shippen opened the public session. Seeing no one who wished to comment on the application, he closed the public session.

Mr. Shippen asked for a motion. Mayor Chau made the motion to grant the variance requested as proposed with adjustments. Mr. Roegiers seconded the motion.

The roll call vote was as follows:

Mr. Bruno-yes

Mayor Chau-yes

Mr. Leeds-yes

Mr. Massari-yes

Chief Newman-yes

Mr. Notaro-absent

Councilman Perri-yes

Mr. Reardon-no vote as 9 voting members were present

Mr. Roegiers-yes

Mr. Rowe-yes

Mr. Scharff-absent

Mr. Shippen-yes

Chairman Levitt-recused

The motion carries.

Dr. Levitt returned to the dais and resumed the chair for the remainder of the hearing. The second application was from Ronald Mitchell for Block 46, Lot 13 located at 1023 New Road for an Interpretation and Appeal of the Action of the Administrative Officer to operate a Psychic Shop in the O-PB Zone. The attorney for Mr. Mitchell is Steven Kaplan, Esq. who operates his practice in Northfield. Dr. Levitt swore in Mr. Mitchell.

Mr. Kaplan gave a summary. Mr. Mitchell wants to operate a Psychic Shop in the OP-B Zone where personal services are permitted. Mr. Mitchell felt that palm reading is a personal service. Mr. Dattalo, the Zoning Officer denied the permit under 215-16 of the Zoning Ordinance and said that a variance would be necessary. The question is whether palm reading is a personal service. Personal service is not defined as such in the Ordinance. It is defined in other zones, but not O-PB. The N-B Zone does get specific, but in the O-PB Zone it is a blanket term and is meant to be general and all encompassing. Mr. Kaplan reviewed definitions of palm reading from the Merriam Webster Dictionary, Wikipedia, and an online legal dictionary and suggested all three cover the definition of palm reading. There is nothing in the Ordinance that bans it. The old Ordinance did talk of it, but the new one does not address it. Cases throughout the nation find it unconstitutional to ban as it can be construed as a ban on freedom of speech. In his interpretation of the Ordinance, it needs to be permitted.

Mr. Doran read section 215-5 of the Ordinance, the personal service general definition. Dr. Levitt asked if any items would be available for sale. Mr. Mitchell said no. Dr. Levitt said he has given this interpretation a lot of thought and does believe it falls under category of personal service and is not retail or a use prohibited by the Ordinance. He asked for comments and opinions of the Board. Mr. Massari read a definition of fortune telling and it did not include the word service. He said the definition is 'one that professes to foretell future events'. Mr. Massari asked if it is an exact science. Mr. Kaplan said no. Dr. Levitt said he is not a believer, but there are those who do believe and he respects their opinions of freedom of speech. Dr. Levitt said this industry has in the past been questioned for incidents of fraud or abuse, and he asked the applicant how he would make sure this does not occur. Mr. Kaplan said his client has had a shop on the Ocean City Boardwalk for 40 years and there have been no complaints. Mr. Kaplan couldn't find a case in New Jersey, but quoted a case from California that found that some may not believe in fortune telling, but it can't be prohibited. Some may find it distasteful, corrupt, or fraudulent, but this is irrelevant to our Constitution. Communicating opinions, however dubious, are protected by our Constitution. Dr. Levitt agreed and said most people go to fortune tellers on a whim or a lark; it is almost an entertainment venue. He reluctantly admitted that it really is of a personal service. Jim Shippen agreed as well. Dr. Levitt said that when you drive up and down Route 9, there are many 'For Rent' signs in the commercial zones and vacant buildings. We should try not to be overly restrictive if it won't harm the public. Mayor Chau agreed with the vacancies, but is a strong supporter of zoning. He asked Mr. Mitchell if he had looked into other locations. He answered that he had. Mayor Chau asked why he had decided on this site. Mr. Mitchell said the price and long term lease option helped make his decision. He said he is a pillar of his community, is a property owner, and has been in business in Ocean City since he was young. He is looking to expand his business to year round and not just operate seasonally. He wants to be more productive in the community. Mayor Chau asked about signage. Mr. Mitchell said he will use existing signage and would use whatever the City Code allows. Mr. Mitchell said there is a wooden sign that he would like to see painted and possibly have a window sign. Mr. Zlotnick said the signage must conform and if it doesn't, he would have to come to the Board for a sign variance. Mayor Chau said it is important that Mr. Mitchell understands what he is allowed to do with signage before spending money on something that doesn't conform. In his experience, the Mayor has seen this happen. Mr. Shippen said it is an enforcement issue. Mayor Chau said he wants it on the record.

Mr. Leeds noted that personal service is mentioned in four other districts in the Ordinance and Mr. Zlotnick commented that it has a very broad definition. Dr. Levitt said the Board may need to take a closer look at this during an Ordinance review. Mr. Perri questioned the Zoning Officer's intentions, and basically Dr. Levitt said the Zoning Officer questioned the use and Mr. Shippen said in order to pass it on the Board for interpretation. Mr. Zlotnick added it is not specifically excluded and that the Ordinance is

vague. He understands Mr. Dattalo's thinking and this could be controversial. Dr. Levitt said Mr. Dattalo hadn't confronted this before. He added at one time there were specific codes for every use and any time something new came up, it needed a new industrial code. He noted that the Board is here to assist the Zoning Officer.

Dr. Levitt said the Board needs to interpret whether it accepts, as fitting, palm reading under a personal service definition. Dr. Levitt said a 'yes' vote would be that the use fits under personal service, and a 'no' vote states it does not. Mr. Doran read the general definition in the Ordinance again and agreed it is a broad definition.

Mr. Shippen made the motion and Mr. Roegiers seconded.

The roll call vote was as follows:

Mr. Bruno-yes

Mayor Chau-no

Mr. Leeds-yes

Mr. Massari-no vote as 9 voting members were present

Chief Newman-yes

Mr. Notaro-absent

Councilman Perri-no

Mr. Reardon-no vote as 9 voting members were present

Mr. Roegiers-no

Mr. Rowe-yes

Mr. Scharff-absent

Mr. Shippen-yes

Chairman Levitt-yes

The motion carries with 6 yes votes and 3 no votes.

Dr. Levitt commented that the Zoning Officer should bring these kinds of things to the Board for interpretation.

Mayor Chau commented that Mr. Shippen did an outstanding job chairing the first application this evening. The Mayor discussed an issue about resident complaints concerning the Bunting tree placement issue. The trees, which were mandated by the City and a Planning Board application, were planted in a site triangle and posed problems for motorists pulling out on New Road from Banning Avenue. The trees were then removed. Mr. Bunting said the City told him to put the trees there and there were costs involved. The Mayor expressed concerns as to how this happened and doesn't recall references as to the type of trees to plant. Dr. Levitt said the Board doesn't specify what types of trees to plant and allows applicants to pick from the Atlantic County species list. Dr. Levitt suggested perhaps they weren't trimmed or maintained and he would need to review the plan. Mr. Doran said the trees were part of the plan and the file has been reviewed. Mr. Bunting has replanted the trees behind the building. There was an error at inspection, but it has been resolved. The trees should have been planted further back, but this would have affected the sign. Mr. Bunting agreed to move the trees and Mr. Doran thanked him and all has been resolved. The Mayor said he was upset about the cost, but it is over and done and everyone appears to be happy. Dr. Levitt commented that we all need to look at plans very carefully.

Mayor Chau continued by saying Council faces signage and parking complaints at every meeting. Mr. Perri said the Sign Ordinance is being looked into at every meeting and they are still working on it. Mr.

Perri mentioned cell tower nodes and said cell towers may become a thing of the past. Nodes on telephone poles and street lights are the future and they should be part of Ordinance changes. Dr. Levitt asked if they could be taxed. The Mayor said it depends on the municipality and he added that there may be six or more added in Northfield depending on wherever reception enhancement is needed. Mr. Rowe mentioned that he noticed them on Wesley Avenue in Ocean City. Mr. Perri said they are definitely coming with the increased need of reception and increased data. Towers are expensive and the nodes are the wave of the future. Dr. Levitt said there is a need to be proactive with this.

There was one resolution to memorialize for Robert Cornagie for "C" variance relief for a side yard setback in order to construct a detached garage. The address is 109 W. Revere Avenue, Block 78, Lots 8,9,10. Abstentions were Mark Bruno, Jim Leeds, Jim Shippen, and Clem Scharff. Mr. Roegiers made the motion and Mr. Rowe seconded. The voice vote was all in favor.

Dr. Levitt closed the meeting at 8:20 p.m. with a motion from Mr. Shippen and a second from Mr. Bruno.

Respectfully submitted,

Robin Atlas, Secretary to the Board