

City of Northfield Planning Board
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September 3, 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, September 3, 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-absent (recused)

Jim Leeds

Dr. Richard Levitt

Chief Paul Newman

Henry Notaro-absent

Dan Reardon

Ron Roegiers

Derek Rowe

Clem Scharff

Jim Shippen

Councilman Paul Utts

Steve Vain-absent

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.”

There were two applications on the agenda. The first was Mary Rose Pullo who resides in Egg Harbor Township for Block 111 Lot 20, Second Street for an interpretation. Dr. Levitt swore Ms. Pullo in for testimony. The zone is R-3.

Ms. Pullo gave a narrative of her situation. She has a small lot that did not get sold with the main lot when the house that was owned by her parents was sold. Lot 20 was always separate from Lots 18 & 19. She decided to keep Lot 20 for her own personal use. She enjoys growing vegetables. There was a metal shed on the lot previously and it rusted out and she replaced it with a wooden shed built on the same platform as the previous shed. While in the process of constructing the new shed, the Building Inspector came by and said she wasn’t allowed to build the shed because the property didn’t have a primary structure. Mr. Dattalo suggested he deny her permit for the shed and told her she should go before the Planning Board and request a variance. Ms. Pullo said she maintains the property and requires lawn equipment and she needs it for storage of the equipment and lawn furniture used during the summer. She received the denial from the Zoning officer and couldn’t understand why she was denied and she felt there was a correlation being made between principal use and a primary building and her understanding of the definitions were not synonymous which is why she requested an interpretation. Up until last week she thought she had a sound argument until she received Mr. Doran’s Engineer letter. The problem doesn’t seem to be the fact that there has to be a primary building. It seems to be that in the R-3 Zone there are specific permissible uses and she now understands that she is not allowed to use the lot for anything except a single-family home or a farm if she had three acres, and the lot isn’t a lot where you would put a primary structure.

She agreed that she needs a use variance. The question is would she be allowed to use this lot for her intended use and also be allowed to have the shed and be allowed to use it for her intended purpose. Dr. Levitt said as far as the structure is concerned, there are regulations, but as to planting, there are no

restrictions on landscaping or for using it for a vegetable garden. Dr. Levitt asked if the metal shed was still there. Ms. Pullo said she got rid of it to replace it with the new shed. Dr. Levitt said then it cannot be a pre-existing non-conforming structure because it is no longer there. He explained that a shed is an accessory structure to the primary structure which is a house. Ms. Pullo said that became clear to her from Mr. Doran's letter and the explanation of R-3 district permitted uses. She added that the lot only has a frontage of 25 ft. and she won't be able to use the lot for anything. Dr. Levitt said which is a non-buildable lot and Ms. Pullo agreed. Ms. Pullo said she can ask if she can put a shed on the lot and she would need permission to use it for her purposes. Dr. Levitt said permission to build it is permission to use it. Ms. Pullo said the code allows for five specific uses and Dr. Levitt said and it would also have to conform to bulk requirements in terms of lot frontage and square footage and everything else. Ms. Pullo asked if it doesn't conform, what can she use the lot for? Dr. Levitt said you would need a variance. Since the lot does not conform to her use of it, he suggested she apply for a use variance.

Mr. Doran said it is an interpretation the Board can possibly make. Flowers and plantings are probably fine. Mr. Doran asked who owned the lots. Ms. Pullo said her family owned them. She told the story of her parents purchasing Lots 18 & 19 in 1956 and then a year later they purchased Lot 20, but they were never consolidated and there were always two tax bills. When her parents were still alive, the title to the properties was transferred to Ms. Pullo. Her father died in 2016 and only the lot with the house was sold. She let the house go and the people who bought it didn't want the lot. Mr. Doran asked Mr. Fleishman, with the limited knowledge of the situation, is there a possibility of a Doctrine of Merger. Mr. Fleishman said she doesn't own the other two lots any longer; they are gone. Mr. Doran speculated that this may have been an illegal subdivision. Mr. Doran said under state law, the owner of an undersized lot of record who also owns the other lot, the lots automatically merge. Mr. Fleishman said Ms. Pullo might need a quiet title action to determine rightful, legal property ownership if she sells the lot and the Doctrine of Merger applies, but he didn't feel that is what is being discussed here tonight. Mr. Doran had concerns that there would be a chain of title if she were to come before the Board for a variance. The question is how she acquired a 25 ft. lot, and the arguments should be made if she comes before the Board for a variance. She can plant flowers and vegetables for her use and that is ok, but a shed is not ok and he had concerns about the secondary use. Dr. Levitt said Mr. Doran raises a good question that the owner of the house with the lot could claim an adverse possession, and since it is an undersized lot, it should have been sold with the primary lot. Dr. Levitt said they might want to consult a lawyer concerning that. Mr. Fleishman said this isn't the forum for it, but possibly the owners could quit claim their interest back to Ms. Pullo and she should seek independent legal counsel on that. Dr. Levitt said the homeowners probably wouldn't want to pay the additional taxes.

Mr. Fleishman said Mr. Doran's comments were spot on and also Ms. Pullo brings up an interesting argument. But where the argument fails is with the accessory use. An accessory building needs something to be subordinate to. He agreed with the use variance since a stand-alone shed is not permitted in the zone. If the Board sees fit, she could possibly be allowed to use it for now pending the outcome of a use variance application. Mr. Doran said she can use it for flowers as it is a private lot. Mr. Fleishman said right now she has nowhere to store her things. Ms. Pullo commented that the structure is there. Dr. Levitt asked about the size of the shed. Ms. Pullo said it is 160 sf. Dr. Levitt asked if there was any running water, cooking facilities, or a bathroom. Ms. Pullo commented no and added that there is no electricity. Dr. Levitt mentioned that zoning in Northfield does not allow mini houses. Ms. Pullo stressed that she needs to understand what type of variance she will be seeking. Mr. Fleishman and Dr. Levitt agreed it is a use variance to have a shed which requires a house to be associated with it. He said that is the only way that the city could permit you to continue to use the shed on the lot. A stand-alone shed is clearly not permitted. The Board would have to decide if the shed would be allowed. Ms. Pullo

said she is fine with that. Dr. Levitt added that primary uses and structures are kind of interchangeable and use implies building a structure.

Mr. Leeds and Dr. Levitt agreed that if she had never torn down the original structure, it would have been a pre-existing structure. Mr. Leeds asked why she tore it down. Ms. Pullo answered that it was rusted out and leaking. The new one is built out of wood. Mr. Leeds asked if it was built on the same platform. Ms. Pullo said it is on the exact same spot. It has new 2 x 6 plywood boards resting on one-inch patio cinder blocks. She said it is a brand-new building. Dr. Levitt asked if it was pre-fabricated. Ms. Pullo said no, she built it. Dr. Levitt asked Mr. Fleishman if it could be considered a pre-existing use. Mr. Fleishman said no. He would like to see her helped out, but since she removed the pre-existing structure, this eliminated that argument. Dr. Levitt instructed Ms. Pullo that her next step is to apply for a use variance. Mr. Doran said the Board will need an updated survey showing the location of the shed on the property and will need a retroactive permit for the construction of the shed. Ms. Pullo said she would like a spot on the October agenda. Mr. Doran said there is a checklist that needs to be followed, and the survey will show the setbacks and adjoining properties and how her lot fits in with the neighborhood. Dr. Levitt advised seeking the advice of an attorney especially for a use variance. Mr. Fleishman said there is legal criteria to satisfy for a use variance and an attorney can guide her appropriately. Ms. Pullo agreed. Mr. Fleishman said he is not getting a sense that you have to take down the shed right now and he thinks the Board would like to help you. Perhaps she should take her time and prepare for the November meeting in order to present the proper testimony so that the Board can find favorably for her. Dr. Levitt said to put in for an application for a use variance and be prepared to prove positive criteria and address any negative criteria. An example of positive criteria may be that you will have a well-maintained lot instead of a vacant lot left to go wild. As to negative criteria, it would take some thought, but an example might be that you have development on an undersized lot. Ms. Pullo agreed that she would talk to the Board Secretary about positive and negative criteria. Mr. Fleishman reminded her that the Zoning Board consists of seven members and she would need a super majority which constitutes five affirmative votes out of seven for approval. Dr. Levitt added that once a plan is submitted and if the use was approved, it would not be a carte blanche approval to put other structures on the lot. She would be limited to what is shown on the plan. Mr. Fleishman asked if the Board would need a resolution to memorialize the interpretation. Dr. Levitt felt that would only add to her expenses. He suggested withdrawing the application for the interpretation with no further legal charge and the escrow on file could be applied to the use variance application. Mr. Fleishman said if the Board agrees with the Chairman, he had no objection to that. Mr. Fleishman suggested polling the Board. Dr. Levitt noted that Mr. Doran did complete a report for the Interpretation. Mr. Doran said he would be willing to apply the fees to the next meeting. There were no objections voiced by the Board. Ms. Pullo said she understands the fees for the use variance are significantly higher. Ms. Pullo thanked the Board.

The second application was from Yellow Cab Holdings, LLC, commonly known as Wendy's Restaurant, located at 798 Tilton Road, Block 16.01, Lot 46.04 in the C-B zone, for a Minor Site Plan for permanent outdoor seating. The attorney representing the applicant was Lawrence A. Calli, Esq. of Calli Law, LLC of Kinnelon, NJ. Dr. Levitt asked Mr. Calli to explain the significance of the Yellow Cab name. Mr. Calli said he isn't exactly sure, but a few of the principle entities live in Manhattan and they may be referring to taxi cabs. He then told a story that he once had a client named Sympathy for the Devil, LLC and he started his case with the line "Please allow me to introduce myself..." and he said no one laughed. The Board thought it was funny. Mr. Calli thanked Northfield and the Board Secretary for getting the application on the agenda so quickly in this new virtual world and he said it is important to the applicant. He said he has one witness on the Zoom meeting, John Anderson, who is the site engineer, and he prepared the plans on file with the Board. He will take the Board on a tour of what is on the site

today, the limited changes that will be there tomorrow, and will be prepared to answer any questions the Board might have.

Mr. Calli gave a brief background of Yellow Cab and they have a number of Wendy's Restaurants in their franchise. He is sure the Board is familiar with the Wendy's sites and the existing operations and the owners manage their sites very well. The restaurant is in the C-B zone and the changes they are proposing are very limited. There are no changes to services, operations, deliveries, or the parking demand. The changes are limited to a clear need to accommodate the changes in the world and the demands put on the business due to the pandemic. To be fluid in response to world issues, they want to give their patrons an opportunity to dine outside in an area already developed in front of the property where the pylon sign is located and they want it to be permanent. Mr. Calli said that Mr. Anderson will discuss the site further. Mr. Calli said the delta of impacts at the site from today until tomorrow are nominal if any. They are not changing volumes, operations, negative impacts, how the property is managed, or refuse collection. They are simply creating an alternative dining option for their customers and they need it to be fluid and permanent going forward.

Mr. Calli referred to Mr. Doran's report and acknowledged the technical parking shortfall of 4 parking spaces. One space per 35 sf of gross floor area is required. The required parking would be 74 parking spaces. The plan shows 70 spaces of which 3 are handicapped spaces. He said this is due to the additional tables and chairs. He stressed that the employees and operations will remain the same and they do not expect any increases. He felt this was totally innocuous and there would be no impact from this technical deviation.

Dr. Levitt swore in John Anderson and asked if he had testified before this Board before. Mr. Anderson said he testified in 2008 or 2015 for Firestone. He is a licensed Engineer in New Jersey and his qualifications were accepted. Mr. Anderson took the Board through the site by describing the plan. Mr. Anderson shared the screen and displayed exhibits which he labeled as he described the site. Exhibit A-1 was a Google Image of the site showing the Wendy's Restaurant, Tilton Road running north/south, and surrounding vegetation including various commercial entities. The restaurant is on the border of the R-C zone and is located in the C-B zone. Exhibit A-2 is the C-10 plan submitted to the city. He used a laser pointer to indicate what he was referring to. The restaurant is located about a third into the site. Mr. Anderson described the counter-clockwise traffic flow on the site. Wendy's was recently renovated and the restaurant had a general upgrade to the interior and the exterior. From a Covid standpoint and for their patrons, they added an outside dining area in front of the restaurant on an existing concrete pad. Exhibit A-2 shows the outdoor seating area plan. There are four tabletops with a total of 16 seats separated from Tilton Road by 22 ft. There is a separation of 7 ft. to the drive aisle. They installed a screen fence to protect patrons from walking into the drive-thru lanes. Wendy's has applied for a temporary seating permit. Exhibit A-4 is a photograph of the recently installed seating. Exhibit A-5 is a photograph of the outdoor seating area including the landscaping. Exhibit A-6 is a photograph from the entrance drive showing the existing outdoor seating and trash receptacle.

Mr. Anderson discussed the bun freezer on the plan. They relocated it closer to the building from the rear parking area so that it would be closer to the staff exit door. They also replaced and relocated a trash receptacle near the ordering station.

A few minutes into the testimony, we lost the audio for Mr. Anderson and were unable to hear further testimony. Mr. Anderson was unable to hear comments from the Board. Dr. Levitt said his plan shows the bun freezer located behind the ordering area. Dr. Levitt asked Mr. Calli to try to reach Mr. Anderson

by cell phone. The weather was stormy in our area. Dr. Levitt said there is some confusion over the bun freezer. Mr. Calli noted that there is an existing and a proposed bun freezer on the plan. The bun freezer behind the menu board is the current location. Mr. Doran said he visited the site and both the bun freezer and the trash receptacle are existing on site and the Zoning Officer gave permission for their current locations. The confusion is that the plan says proposed. Mr. Thomas Morgan who is with Wendy's Construction Department asked to comment. Mr. Calli said he is with their team and would like to hear his thoughts. Dr. Levitt swore in Mr. Morgan. He said he would like to clarify the freezer issue. He said there were two pre-existing freezers on the lot. There was one behind the store and one all the way in the back in a parking space. There is no walk-in freezer inside the store. The main freezer for the store is the freezer outside the back door. The second freezer that was re-located is the bun freezer. Dr. Levitt said he has no problem with the site itself, but there was a problem with the Building Inspector and Dr. Levitt discussed it with Mr. Fleishman and they were not in agreement with the Building Inspector. It involves the definition of Restaurants in the Ordinance. The definition states that food is sold for consumption within an enclosed building. Mr. Dattalo interpreted it to mean outside seating is not included in the definition of a restaurant. Dr. Levitt and Mr. Fleishman thought this to be overly restrictive. Mr. Doran interjected for clarification. He said for years outside seating has been an enforcement issue and is a subject that has angered the surrounding neighborhoods. It has been interpreted that outside seating is different than inside seating. Dr. Levitt said the Board is going to look into this and try to clear up this issue. Mr. Calli said that they interpreted this the same way Dr. Levitt and Mr. Fleishman have and they are grateful for the agreement.

Dr. Levitt said there are concerns with outside seating and they involve parking, hazards to diners, tables being too close to traffic, and tables blocking pedestrian access. The Board will be discussing tweaking the definition after the application is complete. Dr. Levitt asked Mr. Calli if he had anything to add. Mr. Calli said Mr. Anderson is back and his microphone is up and running. He asked the Board if they had any further questions for him. The Board had none and Mr. Calli said that concludes his testimony. Mr. Fleishman asked for Mr. Morgan's title. He said he is the Regional Construction Manager for the Wendy's company. Dr. Levitt asked the Board if they had any further questions. The Board had none.

Dr. Levitt opened the public session to anyone on Zoom or at City Hall. There was no one who responded and Dr. Levitt closed the public session. Mr. Calli thanked the Board and had no further comments.

Mr. Leeds made the motion for minor site plan approval and Mr. Shippen seconded. Dr. Levitt noted that there was a phone number showing. Mr. Scharff said he un-muted it and there was no response. Dr. Levitt thanked Clem for helping the Board Secretary with Zoom and the technical issues this evening. The rollcall vote was as follows:

Mr. Brophy-yes

Mayor Chau-absent (recused)

Mr. Leeds-yes

Chief Newman-yes

Mr. Notaro-absent

Mr. Reardon-not vote as 9 voting members were present

Mr. Roegiers-yes

Mr. Rowe-yes

Mr. Scharff-yes

Mr. Shippen-yes

Councilman Utts-yes

Mr. Vain-absent
Chairman Levitt-yes
The motion carries.

Dr. Levitt addressed the Restaurant definition issue. He suggested sending City Council a request to re-define the Ordinance definition and to consider outdoor dining a conditional use for restaurants with the conditions referring to no blockage of automobiles or pedestrian accesses, the location must be protected, and the outside dining cannot significantly change the parking formula. Dr. Levitt suggested allowing outdoor dining as a conditional use for restaurants. Mr. Doran said as long as it is specifically defined. Dr. Levitt asked Mr. Doran if he would be willing to write this up and Mr. Doran agreed. Dr. Levitt asked the Board to authorize Mr. Doran to write up an Ordinance proposal to forward to City Council for consideration making outdoor dining a conditional use and it should include that this does not undercut any temporary uses granted by Council. The conditional use will be going forward. Dr. Levitt said it would also need to be decided if this would require an application before the Planning Board or a presentation to the Code Enforcement Officer. Mr. Doran said it would depend how it was defined.

Dr. Levitt asked Chief Newman if he has seen an overflow parking issue in town. He said only at Ventura's and he hasn't seen a problem elsewhere. He noted that there was also an incident with a driver who had a medical issue and left the roadway and went up on the grass at Ventura's and hit their sign. There were patrons dining on the grass at the time and it was lucky no one was hurt. The Board needs to seriously consider allowing people to dine on front lawns once Covid regulations are lifted. Mr. Shippen commented that the Board needs to be careful about overly regulating restaurant owners as well. They are struggling to survive. Dr. Levitt said the restaurants would have to conform to regulations that are decided and they will be limited by the space they have available. Mr. Leeds commented that he thinks many businesses will request outdoor seating once regulations are lifted. Dr. Levitt felt it was important to think 'post-Covid'. Mr. Leeds added that many restaurants have been very successful with outdoor dining.

Using Ventura's as an example, Mr. Doran posed the question if Ventura's is allowed 15% additional outdoor seating, where would they put the tables? Seating in parking lots is only allowed due to Covid. Mr. Scharff added that seating shouldn't be allowed next to residential properties. Dr. Levitt suggested adding tables would have to be at least 50 ft. away. Mr. Doran suggested putting a committee together to discuss and gather notes to present something to the Board. Chief Newman and Mr. Shippen volunteered. Chief Newman said outdoor liquor service has to be considered. Dr. Levitt said there are only two liquor licenses in town and one is the country club. Mr. Scharff pointed out that he had an issue with them playing loud music at midnight. Dr. Levitt said there is a Noise Ordinance. Mr. Brophy said he believed the Noise Ordinance was found to be invalid. Mr. Scharff said there is a state noise ordinance. Dr. Levitt asked Chief Newman if he was aware of this. The Chief said it stemmed from the truck noise issue at Mazzeo's property. It was found to be basically unenforceable. Dr. Levitt said it is obvious that there are a lot of parameters to consider. He asked Mr. Doran to forward the committee's notes to the Board members to review.

There was one resolution to memorialize for Roger B. & Edwina Y. Hansen, Block 175, Lot 38, 1300 Argo Lane for a Minor Subdivision. Abstentions were Mayor Chau, Mr. Leeds, Mr. Roegiers, Mr. Shippen. The Board had no negative comments or changes to make. By acclamation of the eligible Board members, the vote was unanimous to memorialize the resolution.

Mr. Shippen made the motion to close the meeting and Mr. Roegiers seconded the motion. The meeting was closed at 8:19 p.m.

Respectfully submitted,

Robin Atlas

Robin Atlas, Secretary to the Board