

City of Northfield Planning Board
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February 4, 2021

Notice of this meeting had been given in accordance with Chapter 231 Public Law 1975, otherwise known as the Open Public Meetings Act. Notice of this meeting had been given to The Press of Atlantic City on January 25, 2021, posted on the bulletin board in City Hall, filed with the City Clerk, and posted on the City website, stating the date, time and place of the meeting and the agenda to the extent known. Digital copies of the application documents, exhibits, and the Planning Board Engineer's report have been uploaded onto the City website as well.

This **REGULAR** meeting of the Northfield Planning Board was held on Thursday, February 4, 2021. 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
Jim Leeds
Dr. Richard Levitt
Chief Paul Newman
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

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, which will be expanded by the Governor on February 5th, 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.”

The Board allowed John Berenato 15 minutes to informally present a possible future project involving the VA with the understanding that the members may comment or not and any comments would have no bearing on any future application and no comments are committed to follow through to a formal application. Mr. Berenato thanked the Board and realized that the Board doesn’t normally do this. He mentioned his brother Paul is also with him and he asked to share screen to display documents. His company is HealthCare Realty Solutions and he is a real estate developer. He lives in Wenonah, Gloucester County and has spent most of his life in Sea Isle City. He has been a developer of hospitals and health systems for 12 years and a licensed real estate broker for 17 years. Mr. Berenato discussed the project. He has been working with the VA for 10 months and the VA is looking for a location for a 23,000-sf new medical office space over a four-mile radius. The current VA hospital in Northfield is located at 1909 New Road. Mr. Berenato has not been awarded the project yet and has been waiting for an answer. He has been in touch with a Pittsburgh representative who has informed him the VA is interested in his site and one other which he believes is in a shopping center, but they will not disclose the exact location. They have a deadline for completion of August 2021, but that will be delayed. Mr. Berenato said he is not a seller of real estate and he considers himself a partner and genuinely cares about the sites and has a high sense of pride and ownership.

The property he is interested in developing is 2101 New Road in the O-P zone which allows for medical clinic uses. The site is 2.49 acres and is the current location of the Tilt-in Windows Company and is next door to the current VA building. The VA will only allow him to pay rent on useable square footage which is not how he usually operates. The building is two-story and will have 24,000 sf of useable space, two elevators, and will be 100% ADA compliant. The VA loved the military branding on the side of the building and the flags. The VA wants 100 parking spaces and his plan provides 108 spots. He displayed a rendition of the rear of the building showing a porte-cochere for protection when dropping off patients

and four van parking spots since many patients are transported by VA transport and public transportation. He then showed a rendition of the side of the building and said he wants to use natural limestone blocking material and fiberboard cement siding. The windows shown won't be opened and the roof will be flat. He then showed a site plan and said they scored high for technical reviews. They did not score high with pricing and have been negotiating. He thought it was promising that they are still talking back and forth. The site plan showed primary care rooms, mental health sections, common areas for the Vets to congregate and relax, and administrative offices. The VA thought to add a radiology room for their Orthopedic program and they incorporated it into the second story floor plan. He then showed the second story plan which consisted of medical rooms, offices, and the radiology room.

Mr. Berenato concluded by stating he hopes to have a formal application before the Board in the near future and he thanked the Board for their time. There was five minutes remaining and he said he is open to any questions. Dr. Levitt asked to have the screen unshared. Dr. Levitt suggested talking to the Board Engineer. He noted that they are way under the parking requirements and there will be questions about open drainage on the property. Mr. Doran noted that 160 parking spaces will be required by Ordinance. Mr. Berenato said the VA only wants 100 spaces. Dr. Levitt said this can be discussed later but to keep in mind the parking requirement is what the City requires by Ordinance and not what the VA wants. There were no questions from the Board. Dr. Levitt said this looks like an interesting project and he looks forward to discussing it further.

The first application was from Danny Davila for Block 87 Lot 3, 96 W. Mill Road for an Interpretation. Charles Gemmel, Esq. of Linwood represented the applicant. Mr. Rowe recused himself from hearing the application since he is associated with a business representing the buyer and seller in a sales contract. Mr. Scharff will text him to rejoin the meeting for the memorialization of the resolution. Mr. Gemmel made an opening statement. He said the applicant is Danny Davila, the Block is 87 and the Lot is 3, located at 96 W. Mill Road in the R-1 Zone and the lot has a depth of 100 ft. and a width of 80 ft. The application is two-fold in the affirmative. They are requesting an interpretation as to whether Lot 3 can be developed without variances from the Board relying upon a grandfather clause in the Ordinance in 215-18 (A4). Mr. Gemmel read the code which stated that an owner would be allowed to build on an undersized lot as long as they own no adjoining land and it may be used for any purpose allowed in the residential zone and it has a minimum of 5000 sf and a lot width of 50 ft. and complies with all regulations in the zone. Mr. Gemmel felt that the criteria for this lot is satisfied under the grandfather clause. The lot has been of record for a long period of time and has had one owner since 1986. From 1968 to 2001 there has been one owner, Yvonne Dounton, and deeds have been provided as exhibits. They also need to establish that Ben Mazzeo, the current owner, doesn't own any contiguous property, and they have provided a copy of the 200 ft. list showing this as an exhibit as well. Mr. Gemmel said the lot in question is larger than the minimums and they comply with the Zoning Ordinance. They comply with the setbacks, but are short on lot area and width and would need variances if the Interpretation is not granted. They would then proceed with the second part of the application for variances.

Dr. Levitt asked Mr. Fleishman to reply. Mr. Fleishman said he has reviewed 215-18 of the City Ordinance and the use of undersized lots and he has reviewed the deeds. The 1968 deed shows that Ms. Dounton owned the lot until 2021 when it was conveyed out by her estate, and he feels they have satisfied that section of the ordinance that would allow this to be a pre-existing non-conforming lot that could be developed without variances being required. Dr. Levitt asked if this could be done by right or would it require a resolution. Mr. Fleishman said it should be adopted by a Resolution of Interpretation stating that the Board interprets that this lot complies with section 215-18 of the City Zoning Ordinance. Dr. Levitt asked for any comments from the Board and there were none. Dr. Levitt asked if there was

any cross-ownership. Mr. Gemmel said Mr. Davila is the contract purchaser of both properties and there is no cross-ownership. Mr. Fleishman said it is important to hear from Mr. Doran concerning his report and any conditions that may need addressing. Dr. Levitt asked Mr. Doran to read through relevant items. Mr. Doran said the Building Department will require curbs and sidewalks and street trees when obtaining building permits. He added that Mill Road is a busy street and is also a designated route for school children. He said curbs and sidewalks should be required. Mr. Gemmel commented that Mill Road is a County Road and Atlantic County will decide what gets installed and what does not. They would prefer to develop without it, but it is the County's decision. The other issue is that the County may ask for a dedication for street widening. They are well over the 5,000-sf minimum so they feel the site can be developed even if there was a street dedication. Mr. Doran said the Board still has to decide if they want curbs and sidewalks even though it is ultimately the County's decision. The County has the right to say no, but the City can still ask for it. Dr. Levitt agreed it is a heavily used pedestrian area and he would like to see curbs and sidewalks. Mr. Gemmel said shade trees are certainly not a problem. Mr. Doran said curbs and sidewalks are required and waivers would be necessary. Dr. Levitt said the interpretation will include curbs, sidewalks, and trees. Mr. Fleishman said he will put it in the resolution so it is clear. Mr. Shippen had a question regarding contract ownership. Mr. Fleishman said contract ownership involves equitable interest in the property and is the purchaser under contract agreement of sale. The contract purchaser is under an agreement of sale to buy the properties subject to approvals and other things such as clear title. He doesn't own either of them now. Mr. Leeds questioned why the estate wouldn't bring this before the Board. Mr. Fleishman said there is no subdivision here. The lots are separate lots with two sellers who are not the estate. Mr. Gemmel said there is one contract purchaser and the sellers are different people. Dr. Levitt said the issue of contiguous ownership comes into play only if they are requesting a variance. That is not the situation here. Mr. Fleishman gave an example. If the owner of one lot also owned an adjacent lot and the lots were combined to bring the square footage to a number that was needed for conformity, thus eliminating the need for a variance, this would be an issue. This does not exist here. Mr. Fleishman said the Board has to deal with the facts as they exist today.

Mr. Fleishman suggested opening the public portion before framing the resolution. Michael P. Hubert of 1912 Cedarbridge Drive, Block 86, Lot 17 was sworn in and spoke first. He said he has no problem with the Mill Road property, but he does have a problem with the Cedarbridge property being developed. They plan to put a 3,000-sf home on the Cedarbridge lot. Dr. Levitt commented that he can discuss Cedarbridge when the next application comes up. Mr. Hubert said both houses will be 30 ft. in the sky. He now has a view of the bike path and has lived in his house since 1998. He is a former marine, a Verizon worker for 35 ½ years, and he knows a lot of people in the area as well as Mr. Mazzeo, the owner of the lot. He doesn't understand the Board granting everything for nothing and allowing Mr. Davila to buy the property, develop it for profit, and not even live there. He drove by Mr. Davila's property in Brigantine and doesn't think he would want a big sailboat in front of his house. If it was only the Mill Road property that was being developed, he wouldn't be bothered. Dr. Levitt said the Board will allow him to speak during the public session for the Cedarbridge lot.

Michael Gustray was sworn in and spoke next. He resides at 2113 Merritt Drive. He wanted to go on record to state that this is in the R-1 zone which requires 100 ft. frontage and a 10,000-sf lot size. The City has Zoning Ordinances in place to preserve the integrity of the community and he has an issue with lot frontage and the size of the lot. Dr. Levitt said Mr. Doran has stated that this lot is a pre-existing non-conforming lot and we don't have control of that. The setbacks and the height will conform.

Dr. Levitt asked for a motion for an Interpretation for Block 87, Lot 3 for the pre-existing buildable non-conforming lot subject to the conditions stated. Mr. Brophy alerted Dr. Levitt to another member of the public who may be trying to speak. Dr. Levitt asked her to unmute her microphone. Francis Justis who resides at 100 W. Mill Road addressed the Board and was sworn in. Her house is on the corner of Mill Road and the bike path and her home is between both of the applications. The lot joins the east side of her property. She asked if they were going to have a basement. Mr. Davila said no. She requested that the side setbacks be switched. Currently the plan shows a 10 ft. setback on the east side and a 15 ft. setback on the west side. Mr. Davila agreed to this.

Mr. Scharff made the motion and Mr. Leeds seconded. Mr. Roegiers stated that he wanted to make sure it is known that the Board is requesting curbs and sidewalks. Dr. Levitt said they will be required unless the County has reason to not want them installed.

The roll call vote was as follows:

Mayor Chau-yes

Mr. Leeds-yes

Chief Newman-yes

Henry Notaro-yes

Mr. Roegiers-yes

Mr. Scharff-yes

Mr. Shippen-yes

Councilman Utts-yes

Chairman Levitt-yes

The motion carries.

The second application was for the same applicant but for a different lot. Mr. Gemmel continued by stating the applicant is Danny Davila for Block 87 Lot 1 at the address of 1921 Cedarbridge Road. The lot is irregularly shaped and sized and is shaped like a triangle. The lot has two frontages one on Cedarbridge and the other is on a section of Wabash which is an unimproved paper street. There are three variances needed. One is for lot area since they have 9,125 sf and 10,000 sf is required. The second is a frontage setback on Cedarbridge as some portions will not have the 25 ft. setback, but others will have more. A 15 ft. front yard setback is also needed on the Wabash side where 25 feet is required. Mr. Gemmel noted that visibly the setback will appear larger due to the paper street and the bike path. Mr. Gemmel noted that there was another variance they deemed not necessary. It involves a side/rear yard setback between Lot 1 and Lot 4, but due to the way the Ordinance section reads regarding corner lots, a variance will not be requested. Mr. Gemmel added that this is a classic hardship undersized lot situation due to the unusual shape of the lot. This lot would be rendered worthless if the variances were not granted except possibly a benefit to a neighbor who may want to purchase it. He said the lot will not be out of keeping with the neighborhood and will not be a detriment to the public good or the zone plan.

Dr. Levitt swore in Jon Barnhart, a licensed Engineer and Planner who has testified before the Board many times, and the applicant Danny Davila. Dr. Levitt said that historically the Board has interpreted that corner lots with two frontages have two rear setbacks and the applicant would need a variance for that. Mr. Doran read the Ordinance and agreed. Mr. Gemmel also referred to the Ordinance, specifically Section E, and said Lot 1 and Lot 4 are corner lots and they have side yards rather than rear yards, they both abut, and would require setbacks of 10 ft. rather than 25 ft. Mr. Doran asked if he can discount Section D of the Ordinance which says corner lots have a rear. He understands that it is a grey area and he said he will read the Ordinance again. Mr. Gemmel said Section E specifically speaks to this situation.

Mr. Shippen said that a house with streets on two sides would both be frontages. Mr. Doran agreed and said they are asking for that and he noted that both sections can be interpreted and applied here. Dr. Levitt asked Mr. Doran to make a note of this for future Ordinance revisions. Mr. Shippen clarified with Mr. Doran that the setbacks on Wabash and Cedarbridge should be 25 ft. and neither complies.

Mr. Barnhart began his testimony. Mr. Gemmel said Mr. Barnhart is an Engineer, Planner, and Municipal Engineer and the Board accepted his qualifications. Mr. Barnhart described the property and site and said it is highly irregular. The lot is 9,126 sf, just shy of 10,000 and is a challenge for development. Wabash Avenue has a wide right-of-way, and in some areas, it consists of two roadways through Northfield, Linwood, and Somers Point. There is also a bike path and grass area along Wabash Avenue or in between the two roads. The perception of Lot 1 is that the site is dramatically larger than it really is. The proposal is to develop one single-family house on the lot. They have laid out the plan with purpose and are trying to be as conforming as possible, but the development needs setback variances.

Mr. Barnhart described the variances. The first is for a front yard setback from Wabash Avenue where 25 ft. is required and 15 ft. is proposed. The second is a front yard setback from Cedarbridge Road where 25 ft. is required and there are two triangular sections of a corner of the main building and the garage that encroach at 18.5 ft. and 21.9 ft. The majority of the house structure complies, but the deviations occur due to the shape of the lot. The third variance depends on how the Ordinance is interpreted concerning corner lots as was previously discussed. Mr. Barnhart agreed that this is subject to interpretation. He felt that the 2nd section applies in this case and that the setback should be 10 ft., but since the Board has interpreted in the past that a variance would be required, they will request it.

Mr. Barnhart spoke about justifications for the variances. The lot is just shy of 10,000 sf, and with regards to lot area density, it is very close to conforming and they have enough land area to build a house. What they don't have is a building envelope with a reasonable footprint. Most lots in town in the R-1 zone have a width of 100 ft. and a depth of 100 ft. and the lots are 10,000 sf. This lot is 170 ft. wide on Cedarbridge Road and along Wabash Avenue, it is 102 ft. long, and at the easterly corner, the lot is down to 7 ft. This creates a small building envelope. Mr. Barnhart said the C-1 criteria holds true for all the variances requested due to the unique shape of the lot and the lot's exceptional shallowness. He said it is important to remember, in looking at what he called the massing characteristics of the Ordinance, that they are not asking for a variance for building coverage which would mean the house is too big for the lot. They are not asking for lot coverage which would mean there is too much concrete, and they are not asking for a height variance which would mean the building is too high. The project complies with lot coverage, impervious coverage, and height and it is just the shape of the lot that creates these setback variances. They have chosen to move the building closer to Wabash because the setback will appear enormous due to the grassy area and bike path. The perception is that the house is far from Wabash Avenue. He noted that this is a small block with four properties and the corner properties on Mill and Cedarbridge have setbacks of only a few feet and he stressed again that the setbacks for the proposed development are due to the uniqueness of the lot.

Mr. Barnhart looked at any negative criteria that might exist and said that there is no substantial impact to the zone plan and there is no detriment to the public good. The parking and height comply and the building complies with the character of Northfield. Mr. Barnhart said he has established the positive and negative criteria for the C-1 hardship variances. Mr. Gemmel agreed that he covered everything necessary.

Dr. Levitt asked for questions from the Board. Mr. Leeds said that he wanted to view a tax map of the area and he noted that there are a lot of irregularly shaped lots in the area. He didn't find Lot 1 out of character in the existing neighborhood and he felt the lot fits the neighborhood. Dr. Levitt said the plan doesn't show the adjacent dwellings. He noted that this house does block his neighbor's southern exposure and Mrs. Justis had issues with light, air, and open space and he can be sensitive to that. Since variances are being requested, conditions can be set. He suggested that possibly the height can be lowered and the building could be angled in such a way to give Mrs. Justis some relief from impact and proximity and the blocking of light on her property. Mr. Doran said he scaled the plan and it scales at 30 ft. to the peak from the ground and they are at maximum height. Mr. Shippen referred to the elevation drawing and said it shows a gable with a 3 ft. to 4 ft. ridge below the upper ridge. He suggested doing away with that extra space. He is not sure what the space is for and as long as the structure has sufficient ceiling height, eliminating this space will mitigate the blockage of light to Lot 4. Mr. Gemmel said they could lower the height by changing the angles and Mr. Shippen's comments made sense to them and they would lower the height 3 ft. Mr. Fleishman clarified that the applicant would be changing the architectural plans and lowering the height to 27 ft. Mr. Doran added that the height would be lowered by 3 ft. to the ridge.

Dr. Levitt asked if the house could be turned or rotated. The house is square to Wabash and he suggested turning it to be squarer to Cedarbridge. Mr. Shippen said this may reduce the side yard setback. Mr. Gemmel asked Mr. Barnhart if they could do this. Mr. Barnhart said it can be rotated around the garage corner. Dr. Levitt suggested moving the northwest corner closer to Wabash. Mr. Shippen, Mr. Leeds, and Mr. Scharff joined the discussion and Mr. Scharff said to bring the front corner closer to Cedarbridge and Mr. Doran agreed. Mr. Scharff also had comments about the roof ridge and shadowing and he said if it was perpendicular to the bike path, it would have less of an impact on the neighbor. The rotating of the house was discussed for some time. Mr. Barnhart said if they spin the house it will get closer to Wabash. Dr. Levitt suggested starting at the northeast corner of the garage as a fixed point and move the house so it is more perpendicular to Cedarbridge. Mr. Leeds and Mr. Barnhart agreed that there should be a 15 ft. front yard on Cedarbridge as opposed to 18.5 ft. and to slide the whole house away from the neighbor. Mr. Shippen said a rotation may create an awkward angle for the garage. Mr. Doran noted that Cedarbridge is a 33 ft. wide street and it is supposed to be 50 ft. It is a nice rural street and the chance of it being widened out is probably slim. He addressed this in his report. He felt that pedestrians and kids walking are less likely on Cedarbridge than on Mill Road, but the Board needs to discuss this. Mr. Gemmel agreed that Cedarbridge is a nice rural street that has been that way for a long time and is unlikely to change much. He said for the most part installing curbs and sidewalks would be sidewalks going nowhere. Mr. Leeds disagreed and said he thinks Cedarbridge is a busy street and there are sidewalks along the other side of Wabash on the other side of Cedarbridge. Mr. Doran checked Google Maps on his phone. Mr. Leeds said the City put in the sidewalks and kids walk along Cedarbridge to the bike path. Mr. Doran said there are sidewalks from the bike path to this lot. There are none on Lot 2. Dr. Levitt shared his Google Maps screen as well. Mr. Leeds commented that why would the Board require curbs and sidewalks on Mill Road but not on Cedarbridge. Mr. Scharff said he doesn't see any drainage and if a curb was put in, where would it drain to. Mr. Shippen asked Mr. Doran if his Google Earth showed sidewalks on the south side of Wabash to Mill Road. He said there are sidewalks about half the length. Dr. Levitt said there is some curbing near the Verizon structure. Mr. Doran said there is an asphalt sidewalk and Mr. Shippen said this is where Wabash would have been if extended. Dr. Levitt said at the east end, there is no room to put sidewalk at the triangular end of the other lot. Mr. Leeds said the Board is not here to discuss how to engineer and design the sidewalks. That is up to the developer.

Mr. Barnhart said he was able to check his CAD file while the Board was in discussion and he said if there is a 10 ft. setback off Wabash, he can give 15 ft. sideward off Lot 4 from 18.5 ft. to 16.5 ft. It does help somewhat sliding the house toward Wabash. He can also give a 15 ft. side yard to the neighbor. He tried to rotate the structure and it didn't gain anything due to the irregularity of the lot. As to curbs and sidewalks, he understands the need since Northfield is a walking community and there are curbs and sidewalks everywhere, but there are functional difficulties here with the roadway. There is a 33-ft. right-of-way and there is only 3 ft. from the asphalt to the property line. Sidewalks would be difficult at best. Dr. Levitt suggested eliminating the grass strip and installing a 3 ft. sidewalk. Mr. Barnhart said they cannot do a 3 ft. sidewalk which would not meet ADA standards. There isn't room for a legal sidewalk. Mr. Doran commented that this is the reason that 50 ft. rights-of-way are standard and not 33 ft. Dr. Levitt suggested maintaining a level area of grass for children to walk on. Mayor Chau and Mr. Scharff agreed there should be sidewalks there.

Mr. Doran referred to his report. He said as to the variances, the Board needs to decide if it is a rear or side yard as to Lot 4. He said Mr. Barnhart has testified as to criteria and gave proper testimony as to the exceptional narrowness of the lot. Curbs and sidewalks are required and they will need a waiver. The right-of way as mentioned is 33 ft. where 50 ft. is standard and a dedication would require 8.5 ft. They will need a road opening permit for the driveway and concrete apron from the City, street trees 30 ft. on center. They also need to contact the Sewer Department for a sewer connection.

Dr. Levitt asked Mr. Doran to clarify the sidewalk issue. Mr. Doran said the Board could ask the applicant for a 2 ft. easement as opposed to a dedication. This would be an easement to the City where they can add a foot of sidewalk and still have a foot to the easement line. This protects the applicant from damage within that sidewalk, as with any sidewalk, and would allow them to put in a 4 ft. sidewalk. Mr. Gemmel asked for a few minutes to discuss this with his client. In the meantime, Mr. Leeds asked if the stairs are allowed to encroach on the 16.5 ft. setback. Mr. Doran checked on this and said there is an allowance in the Ordinance. Dr. Levitt said the measurement is from the house not the front porch. Mr. Shippen added that if they are moving the house, it will increase the distance.

While waiting for Mr. Gemmel, Dr. Levitt said the 15 ft. setback and lowering the roof will help the neighbor, but the Board needs to resolve the sidewalk issue. Mr. Fleishman asked for clarification if Mr. Barnhart had indicated how far they would move the house. Mr. Shippen said it was 5 ft. Mr. Fleishman said so there would be a 10 ft. setback off Wabash Dr. Levitt said he would call it a rear property setback and would handle it as a variance. Dr. Levitt asked Mr. Doran if drainage on the neighbor's lot is an issue. Mr. Doran said it would drain toward Cedarbridge and the applicant would have to supply grades to the Building Department indicating that the water would run to the street. Mr. Shippen asked Mr. Doran if the existing walkway reached the property line. Mr. Doran said it is short by about 5 ft. Mr. Shippen asked who connects them. Mr. Doran said the Board can tell them to tie it into the sidewalk. Mr. Shippen felt that the Board shouldn't ask them to construct something that is not on their property. Mr. Leeds agreed and said the City should be responsible for liability reasons.

Mr. Fleishman asked for clarification of the plan that everyone has been working with for the past hour. It is the plot plan dated December 15, 2020, by Arthur W. Ponzio and Assoc. and it was marked Exhibit A-1 for the hearing. Mr. Barnhart said it is not a new exhibit this evening and was part of the original application package, but it was marked as such for tonight's meeting.

Mr. Gemmel and his client were back after their discussion. They discussed curbs and sidewalks and Cedarbridge Road and they listened to Mr. Barnhart's testimony describing the difficulties with installing

curbs and sidewalks, and they looked at the neighboring property which is Lot 2, and it is clear that there will never be curbs and sidewalks there unless somebody tears the house down. They believe curbs will create a drainage issue. They would be amenable to some form of pedestrian walkway along the front of the property without installing curbing and they want to save the huge tree at the front of the property. Mr. Gemmel said dedication of the ground would make it difficult to fit the house on the property. Dr. Levitt asked what the applicant is proposing for a walkway and if they are proposing an easement for the public to walk through, or are they simply putting down gravel. Mr. Gemmel asked the Board for suggestions. He said asphalt would be acceptable and they heard possibly having it half in the right-of-way and half in an easement, but they don't want to install a huge sidewalk. He said the Board has the right to make the decision, but economics are a factor for them. Mr. Doran was asked how it should be structured. Mr. Doran wanted to check the Ordinance on this and thought the requirement is 4 or 5 ft. wide and a 2 or 3 ft. easement would be needed if it encroaches on their property. The material is up to the Board. Mr. Shippen asked Mr. Doran if drainage is an issue if curbing was installed. Dr. Levitt said we don't want to create a puddle on Cedarbridge and asked if the property was taking on any water. Both Mr. Doran and Mr. Barnhart didn't feel drainage was an issue since the lot builds up a little bit. Mr. Barnhart brought up the large, mature, specimen tree. He said the last time the City paved the street they went around the tree because they wanted to save it and the cartway gets a little smaller. If the Board would consider no curbing, they can keep the tree and would need to wrap the sidewalk. Mr. Brophy questioned whether it is common in town to require a sidewalk with no curb. Mr. Doran said usually curbs and sidewalks are both waived. Mr. Scharff said in relatively flat areas, curbing can cause a drainage issue. Mr. Barnhart said the street was repaved fairly recently. He said the curb will be an issue and will end up killing the tree. Dr. Levitt suggested not installing curbing in front of the tree like they have done on Rosedale. Mr. Scharff said if the curb is within 10 ft. of the base of the tree, it will kill it. Mr. Scharff and Dr. Levitt suggested crushed stone. Mr. Doran said that would not be ADA compliant if it is a public sidewalk. It needs to be a walkable surface. Dr. Levitt said it is 200 ft. of sidewalk and he suggested asphalt and to bring it behind the tree and skip the curbs. The applicants did not want asphalt or concrete. They discussed it privately. Mr. Leeds said the applicants knew going into this that they would need curbs and sidewalks. The area is close to the school and the other side of the bike path and he thinks they are needed. The only hardship he can see is the old tree it and it would be nice to keep it, but he sees no other hardship. Mr. Scharff said there are only two houses on that side. Mr. Shippen reminded that the sidewalk on Cedarbridge is 5 ft. from the end of his property. He shouldn't have to pay to connect them and you can't make him build a sidewalk on City property. Mayor Chau said there was a similar situation on Mill Road where residents gave a right-of-way to the County due to narrowness so they would be able to install curbs and sidewalks. Mr. Leeds didn't intend to imply that the applicant must install curbs and sidewalks on City property. Dr. Levitt suggested a dog-leg to connect it into the City property. He asked Mr. Doran if that was a problem. He said the applicant is only responsible to put the curb and sidewalk in front of their property. Mr. Doran said the existing sidewalk from the bike path to Tilton Road is 5 ft. short of the extended fence line of this property. Dr. Levitt suggested for that portion they would have to walk on the grass. Mr. Scharff said the City could also extend it. Mr. Shippen commented that we will have a sidewalk going nowhere on both ends. Dr. Levitt said at least kids would have a sidewalk to walk on in some areas. Councilman Utts commented the City is looking to obtain a grant for sidewalks on Cedarbridge from Oak Avenue to Route 9. Possibly they could add the 5 ft. extension at that time. He noted that it is a ways off, but a possibility in the future. Dr. Levitt felt keeping kids off the street is the issue here and he doesn't care if the sidewalks connect or not. Mr. Shippen said he drives down that street at least three times a day and he has never seen people walking down that side of the street and he didn't feel the sidewalk was necessary. Dr. Levitt suggested a level area of grass for kids to walk on. Mr. Shippen felt that the kids walk down the south side of the street, not this side.

Mr. Gemmel said his client has offered what Dr. Levitt suggested and would create a walkway along the front of the property. It would not be a sidewalk with a curb and it will end at the property to the east where there will never be a sidewalk. Dr. Levitt asked Mr. Fleishman if there was any liability. He said the Board does have the right to waive or require the curb and sidewalk. The attorney thought maybe a flagstone walkway or some type of pathway could work. He said it seems the Board is leaning towards a waiver of curbs and sidewalks here. Dr. Levitt asked Mr. Barnhart for ideas about materials. Mr. Barnhart said it seems the Board is looking to maintain the area as passable, but it would not be a public sidewalk as that would give the City liability. It is probably best to grade it and keep it as flat as possible as lawn. Materials can create liability and tripping hazards. Dr. Levitt agreed and said he is unsure if an easement or resolution will be required. Mr. Fleishman said this will be a condition of the resolution and the Board will accept an unobstructed lawn area to allow pedestrians to pass and cross. Mr. Gemmel accepted this for his client.

Dr. Levitt opened the public session.

Francis Justis of 100 W. Mill Road was sworn in. She had a few questions. She had concerns that when the house is built, there would be drainage problems on her property. She has a basement and she doesn't want runoff if their property is higher than hers. Mr. Barnhart said he does not believe there will be increased drainage and the City has an ordinance in place to protect against that. The applicant will have to provide a grading plan as part of the Building permit process to the Building Department. She asked about the other property on Mill Road and was assured this would not be a problem as well. She next asked for an explanation of a hardship variance. Dr. Levitt explained that a hardship is due to some unique configuration of the property and the property is unable to conform to required standards. Ms. Justis also confirmed that they will be moving the house. Dr. Levitt said the setback was moved from 10 ft. to 15 ft. which will allow for more sunlight and the roof was also lowered by 3 ft. She was happy with this as she also had concerns for privacy.

Michael Hubert of 1921 Cedarbridge Road was sworn in next. He said he lives across the street from Mrs. Justis and both of these lots. He said a 30 ft. high house will no longer allow him to view the bike path. He felt the house was wrong. Dr. Levitt commented that the Board had the applicant lower the house to 27 ft. He said his road is a mess and people speed down the street. He asked, since his lot is larger than the lot across the street, would the Board allow him to build an additional house on his lot. Dr. Levitt said he is always welcome to file an application. He said he has listened to this application for a number of hours and is disgusted by it. He doesn't feel there should be a house there. He is ok with the Mill Road lot but not this one. If they had put only one house across the two lots it would be acceptable. This is a beautiful neighborhood and he helps to take care of it by picking up leaves and litter, but he felt the Board should not approve a 3,000-sf house to be built here. He appreciated the expert opinions he heard, but he cannot approve of this house. Dr. Levitt thanked Mr. Hubert for his testimony.

Michael Gustray of 2113 Merritt Drive was sworn in. He apologized for speaking out of turn during testimony earlier. He stated that what Mr. Hubert is trying to ask is has anyone considered a smaller house on this lot? The lot is irregular and almost conform to R-1. The size of the house is what is most disconcerting. He said Mrs. Justis has legitimate concerns and it was a good start with the Board helping her situation. He referred to the artist rendering and gave dimensions and said the problems are with the way it is laid out and the house is too close to the street and the size of the house is too big for the shape of the lot. He asked if the applicant would consider changing the house to fit the lot. He suggested a one-story house in the shape of an "L". Mr. Gustray asked if there was a basement. Dr. Levitt said they

testified there was no basement. Mr. Gustray continued and said there is a 6 ft. slider facing Lot 4 in the northwest corner. The steps will infringe on the setback in the rear. He said if he understood correctly, the stairs in the front are not included as part of the setback. He said the number one problem is the house is too big. Dr. Levitt asked Mr. Gemmel if the applicant would consider making the house smaller. Mr. Gemmel referred to Mr. Doran's report and according to Mr. Doran's report, as to building coverage they are allowed 25% and they are at 22% and for total coverage they are allowed 40% and are at 30%. They are not pushing the envelope here. Essentially, they are building about a 2,000-sf house in two stories. Mr. Gustray said in Mr. Doran's review, they are building a 3,100-sf house. Mr. Doran worked with the math and said the square of 46 x 34 is 1,564 sf of bulk size for building coverage which includes the footprint of what they are building. The living space is somewhat smaller, but the size of the house is about 3,000-sf. Mr. Fleishman said that architecture is generally outside the purview of the Board's jurisdiction. The Board does not have the right to tell someone to build a smaller house. There is case law on this. The Board does have the right to talk about building coverage, lot coverage, and setbacks, but not to add conditions about color or siding for example. Dr. Levitt questioned that this is an undersized lot and they are requesting variances. The Board should be able to impose conditions. Mr. Fleishman said the Board can only deal with the criteria in the Ordinance and only consider legal criteria. Dr. Levitt said they are asking for setback variances because of the size of the house. Mr. Fleishman said the Board has the right to judge if the applicant is entitled to the variances. They prove this through case argument and the Board judges this based on criteria in the Ordinance and whether they can satisfy the legal criteria. The Board cannot tell them what size the house should be and it is not in the general jurisdiction of the Board to do this unless it involves whether or not the Board will approve a variance which would be a different story. Dr. Levitt thanked Mr. Gustray for his input.

James Clark of 1924 Cedarbridge Road was sworn in. Mr. Clark said four variances will be required for this house on this lot and he felt that was excessive. His home is on an irregular lot and all the setbacks are over what is required. He felt they are trying to squeeze the house on the lot and that it will lessen property values and the neighborhood and is not conducive to the character of the neighborhood. He bought his house because of the solitude and the large lot sizes and the neighborhood isn't even going to get a sidewalk for the children. He informed the Board that the sidewalk from the bike path is concrete not pavement. He thanked the Board for their time and efforts.

There was no one else from the public who wished to be heard.

Mr. Gemmel appreciated the time taken this evening. He said that this lot is a major challenge to put a decent size house on because it has two frontages and is a triangular shaped piece of property. You probably couldn't build a house on this property and comply with all of the requirements. That is why we have Zoning Boards and Municipal Land Use Law which says that you are entitled to relief so as to avoid a hardship. This property clearly has a hardship if it can't be built upon. He said there is no substantial detriment to granting these variances. The lot area variance is di minimus. When they finally determine exactly what the setbacks will be, there will be a significant setback off Cedarbridge Road and with the bike path and Wabash Avenue, there will be plenty of open space in that area. In agreement with Mr. Barnhart, this is a classic C (1) variance application based on the hardship and he looks forward to the day when we can all sit together in the same auditorium. Mr. Gemmel thanked the Board.

Dr. Levitt said he has struggled with this application a bit, but he agrees the applicant does have over 90% of the required square foot age for the lot and he thinks the changes made with the setbacks minimize the impact that this has. He asked the Board members for any additional comments and feelings on this. Mr. Shippen agreed that they face a difficult situation to do anything with the property

and they made a good faith effort to accommodate the neighbor's complaints to the degree in which they can including relocating the footprint of the house and the lowering of the roof. He felt they are entitled to request a hardship variance and we should vote on giving it to them or not. Dr. Levitt didn't agree that the property values would be lowered. He said usually any improvements will increase property values. Dr. Levitt asked for a motion on the variances and for Mr. Doran to review the variances. Mr. Doran said he needed two clarifications. If the back setback is moved to 15 ft. what will be the number for the front setback. Mr. Barnhart asked for a few minutes and asked Mr. Gemmel to call him on his cell phone. The Board continued discussion. Mr. Leeds asked Mr. Doran if the reason for there being no sidewalks is due to the tree. Mr. Doran said yes, it is in the testimony. Mr. Fleishman said he will include in the condition of the walkway that the large, old tree will be retained. Mr. Doran discussed an easement to ensure that the tree is not fenced in. Mr. Fleishman felt the resolution will be enforceable enough and he will include the word "open" in the resolution. Mr. Doran said fair enough. Mr. Gemmel returned to the meeting. Mr. Barnhart said that if the house is moved 10 ft. off Wabash and 15 ft. off Lot 4, and a 34 ft. dimension will be maintained for the depth of the house, this will put the front right corner of the house at 16.5 ft. from Cedarbridge. Mr. Doran said that was the number he was looking for and asked Mr. Barnhart to answer a question about the encroachment of the slider in the rear yard. It must be determined if it is a rear or side. Mr. Fleishman said Dr. Levitt has indicated it should be a 34 (d) rear lot line and he agreed with this conservative approach. Mr. Doran said there are sliders that will need a porch or stairs and this may be a problem later with the Building Department due to the encroachment. This will require a variance and is not shown on the plan. It needs to be decided what they will be doing there. Dr. Levitt asked Mr. Gemmel if they would be having a deck, steps, or a stoop. Mr. Doran said they cannot have a deck there. Dr. Levitt and Mr. Scharff agreed there can be no more encroachment. They can only fit steps or a 4 ft. stoop to the ground. Mr. Gemmel said they want a variance and that steps are fine.

Mr. Doran stated the variances. The first is a front setback from Cedarbridge Road where 25 ft. is required and 16.5 ft. is proposed. The second is a front setback on Wabash Avenue where 25 ft. is required and 10 ft. is proposed. The third is a rear setback where 25 ft. is proposed and 15 ft. to the house is proposed with an allowance for 4 ft. of steps. They can also do a stoop and turn it 90 degrees. The fourth variance is for lot area where 10,000 sf is required and 9,126 sf is proposed. There is a waiver for curbs and sidewalks. Dr. Levitt added that there is a condition that the applicant will maintain a cleared flat turf area to permit public walking that is unobstructed. The height of the structure will not exceed 27 ft. Mr. Barnhart clarified that the back porch steps can be the length of the slider. Dr. Levitt said yes, the 4 ft. is for the depth, not the width.

Mr. Scharff made the motion for the above variances, conditions, and waiver. Mr. Shippen seconded.

The vote was as follows:

Mayor Chau-no

Mr. Leeds-no

Chief Newman-yes

Mr. Notaro-yes

Mr. Roegiers-no

Mr. Scharff-yes

Mr. Shippen-yes

Councilman Utts-no

Chairman Levitt-yes

The vote was 5 to 4 in favor and the motion carries.

There was one resolution to memorialize for James M. & Marguerite E. Adams for a minor subdivision, Block 80, Lot 29 at 2200 Wabash Avenue. There were no objections or comments and the resolution was memorialized.

Mayor Chau announced the Steven Vain who was a Councilman in Northfield and recently was a member of the Planning Board has resigned as he sold his home and moved out of Northfield. Mayor Chau thanked Mr. Vain for his service.

Mayor Chau made the motion to close the meeting and Mr. Rowe seconded. Dr. Levitt closed the meeting at 9:57 p.m.

Respectfully submitted,

Robin Atlas, Secretary to the Board