

**SUMMARY NOTES  
OF THE MEETING OF THE  
ZONING BOARD OF APPEALS  
WEDNESDAY, JANUARY 4, 2017  
VILLAGE OF NORTHFIELD**

On Wednesday, January 4, 2017, the Zoning Board of Appeals met at 7:00 p.m. at the Village Hall Board Room located at 361 Happ Road to consider one (1) issue:

Members in Attendance:

Cheryl Charnas, Chairperson  
Richard Crotty  
J. Patrick Doherty  
Robert Hayward  
John Goodwin  
Bert Getz, Jr.  
James Appel

Members Absent:

OTHERS PRESENT: Building Commissioner Ron Johnson (see attached sign-in sheet).

Chairperson Cheryl Charnas called the meeting to order at 7:00 p.m. by introducing herself as the Chairperson and then introduced the Zoning Board of Appeals members.

Chairperson Charnas requested a vote on the approval of the October 4, 2016, summary notes. A motion was made by Member Patrick Doherty and seconded by Member Robert Hayward to approve the October 4, 2016, summary notes.

**The following vote was taken:**

**AYES: 7**

**NAYS: 0**

**ABSTAIN: 0**

**ABSENT: 0**

Cheryl Charnas, Chairperson  
Richard Crotty  
J. Patrick Doherty  
Robert Hayward  
John Goodwin  
Bert Getz, Jr.  
James Appel

**Motion Carried**

1. **243 CHURCHILL STREET** - Continuation of a request for a variation from Appendix A, Article VIII, Section 8.4 of the Village of Northfield's Zoning Code:

A) A 639.00 square foot variance from the maximum 2,861.00 square feet allowed by code resulting in a floor area ratio increase to 3,500.00 square feet

to allow for the construction of a new two story single family residence with an attached two car garage.

Ms. Jennifer Andrew, petitioner, was present and outlined their request for a floor area ratio (FAR) variance to allow for the removal of the existing one story single family residence and construct a new two story single family residence with an attached two car garage. Ms. Patricia Andrew, petitioner, was also present.

Ms. Jennifer Andrew explained they are hoping to build their dream home at this location. They would like to build a 3,000 square foot home with a 500 square foot garage. They did not realize the square footage of the garage is included in the FAR. Without the inclusion of the garage, the design would have been only slightly higher than the allowable FAR to accommodate their family. Ms. Andrew is an environmental architect and would like this to be a LEED certified home.

They currently live on Riverside Drive and have considered an addition to the home. They bought this home four years ago and the home has been in their family for 25 years so they have a long history with Northfield. They have met a lot of friends and would like to stay in the community.

Since they purchased the property, they had met many of the neighbors on the street. Most of their children go to school with the children on the street and play baseball with them. It felt like this could be home and a great place to raise their family.

The first time they heard about water issues on the street was at the last meeting. She felt they were blindsided by the petition from the neighbors being against the development due to the concern of flooding. It was brought to their attention the letter was generated by the wife of one of the Board members and felt it was a conflict of interest and that the cards were stacked against them. If they had the opportunity, they would have addressed the water issues at that meeting. They have done more research regarding the flooding concerns on the street and found out the Village has spent several thousands of dollars to help solve the problem and as far as they can tell, it has been an improvement.

There were some big storms this past fall. They checked on this property and there was not a lot of water on the site. There was some ponding in the back yard of the neighbor's yard, but not even close to the house. They have taken advantage of the free rain barrels offered by the Village for their property on Riverside Drive. They will also be using them at this property as well. They saw one property owner on Churchill further down the street that is using the rain barrels. As a matter of fact, no one that was present at the last meeting in protest is using the rain barrels. The neighbors are concerned about the water issues, however, they don't see any steps the neighbors are taking to help solve the water issues. So they feel like they have been put on the spot light because they are requesting the variance. After hearing the neighbor's complaints at the last meeting, they went ahead and talked to an engineer. The existing property is close to 2,000 square feet of impervious surface. They are allowed to put in up to 1,000 square feet of impervious surface and pay the fee in lieu of detention. They could easily design the house under 1,000 square feet and not put in detention. Most developers would do the same thing and not have to put in the detention system and pay the fee in lieu.

The engineer looked at the site and it is relatively flat. He did not see a lot of options. He came up with four catch basins and an underground pipe to retain the water and release the water slowly into the storm sewers. By code, they would be required to capture 300 cubic feet. The proposed detention system would capture well over 300 cubic feet. The cost to do this would be approximately \$20,000.00 to \$30,000.00. This is a significant amount of money, whereas, technically it would not be required by code if the development is under 1,000 square feet. If another developer came in, they would be allowed to build the same size house within the setbacks and not have to do this additional detention work. Most people would choose not to spend the \$20,000.00 to \$30,000.00 if they could only spend around \$5,000.00.

The Village has done their part in improving the flooding issues on the street. The Village Engineer has stated the new system is adequate in handling the amount of impervious surface and amount of storm water runoff from the proposed development. It is two separate issues. Them wanting a larger home verses putting in an underground detention system. The footprint of the proposed house does not go much beyond the existing house even though the FAR would be larger than what is allowed. From the street you will not be able to tell.

Member Doherty stated at the last meeting there were two areas of concern from the Zoning Board of Appeals members. The first being the storm water issues, which have been discussed at length. Secondly, it is the fact that the proposed FAR is significantly higher than the acceptable code level. A 639 square foot overage is 22 percent higher than what is acceptable by code. He asked if they considered the FAR. The presentation did not include much about it.

Ms. Jennifer Andrew said based on the neighboring homes within 250 feet, there were a handful of homes that were the same or over the FAR. The houses were most likely built before the FAR code was put into place. Beyond the dead end of Churchill Street, the homes are quite larger. This square footage is not unreasonable by any standards in Northfield especially for a six person family. Again, she did not realize the FAR included the garage space when she drew the plans and obviously that was her fault. They have looked at the floor plan many times and feels they have put in what they need as necessities as a family. They would like to have separate bathrooms for the boy and three girls on the second floor as they grow to be teenagers. It does not pay to build a house that would not be better off than what they are currently living in now.

Member Getz asked in reference to the site grading plan submitted what does 18" ADS HDPE N-12 mean.

Building Commissioner Ron Johnson said it is plastic black corrugated pipe.

Ms. Jennifer Andrew said the plans show for an 18" pipe, however, they could probably get it down to a 12" pipe since they are required to hold 300 cubic feet of storm water and as proposed it would be well over 500 cubic feet. This would save them about \$2,000.00.

Member Getz said it is not a requirement, but may want to have your neighbors tie into the catch basins to help the water over all. According to the memo from the Village Engineer, it states the proposed system should improve drainage of the adjacent lots by providing a positive drainage outlet in the back yard areas that does not currently exist.

Member Appel mentioned at the last meeting in regards to the water issue, since the new storm system had been put in place, there has not been any flooding on the street. He is not sure if the water, while it is a concern of the neighbors, is the most important point at this time. This Board has a relative narrow curve of what they can do. They do not create the ordinances or rules. They have the ability, when there are certain circumstances, to grant variances. There are nine points they have to consider and most importantly what is the hardship. At the last meeting and this meeting, Member Doherty asked if they have given any thought to changing the floor plan to be more in conformance. In response both times, the petitioner has answered with it would make too many compromises. He is not hearing there is really any hardship as defined by the code. Since the rules were in place when they bought the property and they have a blank slate to design whatever they want. He does not see how the Board would be proper in its duty to grant this variance when they have not been provided a clear hardship that they are trying to provide relief from.

Ms. Jennifer Andrew said she is not sure that was clearly stated at the last meeting. What they got from the last meeting, aside from the water issue, everyone felt the variance request was reasonable. But because of this water issue, they needed to investigate more, therefore, they hired an engineer to come up with a drawing and paid them thousands of dollars and then turn around and possibly pay more if they were required to install the detention system.

Ms. Patricia Andrew added the neighbor's letter did not state anything about the size of the house. It was the issue of the water problem and how much this development would contribute to the already present water issue. It was disappointing they found out at 2:00 p.m. the afternoon of the first meeting there was a water issue on the street. The letter stated they welcomed them to the neighborhood, but clearly stated how they were concerned about the water.

Ms. Jennifer Andrew said in the look of the house, it will look just like the one next door to the north. No one will know from the street. As far as the impact, they do not see it causing any concern environmental or aesthetically to have a bigger house on the site.

Member Doherty questioned the complaint letter submitted by the neighbors since he was not present at the September meeting.

Member Crotty said the letter was read and addressed at the last meeting. The petitioner has adequately responded to what was brought up in the letter. For him, the issue now becomes size. He personally had a problem at the last meeting about size when he was Acting Chairperson and his concern is still the size. He is not sure if anyone had the same concern.

Member Goodwin added his recollection from the last meeting, after the neighbors submitted the petition, the water issue became a priority. The Board needed to address the water issues before they looked at the size. He feels the petitioner has adequately addressed the water issues and now it comes back to the size of variance and the nine points they have to consider.

Ms. Patricia Andrew said it should be noted the letter came with about 20 signatures and most of them came from one neighboring house where several siblings live. The letter centered on the water issue. The same neighbors that signed the letter also said they didn't care what was put on the property. When they sent out the notices within 250 feet, no one brought up concerns about water. The proposed house is not going to change what already exists in the neighborhood.

Member Hayward asked if it was safe to say if the variance was not granted if they would sell the property as opposed to redesigning the home.

Ms. Jennifer Andrew stated if they cannot build what they want, they will most likely sell the property. There would be no point in investing that kind of money in the house when it would not improve their current situation. They looked at putting an addition on at their current house on Riverside Drive, however, they would need a variance to do that. They felt it would be better to build a new home to their standards and it could be more energy efficient being a LEED certified home.

Ms. Patricia Andrew added they are not sure at this time, but may build to Village regulations and then put the house up for sale.

Ms. Jennifer Andrew tried to do the bare minimum in the proposed floor plan. There is no dining room or office. They wanted a good size mudroom to contain all the children's belongings – backpacks, coats, boots, etc. The proposed house has a small living room. There are four bedrooms on the second floor with three bathrooms. The rooms are adequately sized. The laundry room is in the basement. This is an opportunity for them to expand and have a more spacious home, but by no means is the house going to be extravagant.

Chairperson Charnas questioned the storm water management requirements.

Ms. Jennifer Andrew responded by code if they add less than 1,000 square feet of impervious surface, they would have the option of paying the fee in lieu of detention in the amount of \$4.50 per square foot and then not have to provide detention on the property. Right now the existing house is a little less than 2,000 square feet. The proposed house with the walkway, driveway, etc. is around 3,000 square feet. So they could pay the Village around \$5,000.00 instead of putting in the underground detention system in the amount of \$20,000.00 to \$30,000.00.

Chairperson Charnas wanted to know the proposed total impervious surface for the new house.

Ms. Jennifer Andrew stated the design is to be under 1,000 square feet impervious surface. However, if they are required to install the detention system, then they would add more sidewalks and a patio.

Member Getz said in his opinion, he would rather have an engineered solution to solve the water issues on the property and alleviate some of the water on the neighbor's property. The fee in lieu just adds financial sources to the Village which in turn they see fit to use. This proposed detention plan would be much better for the neighborhood to solve the water issues.

Building Commissioner Johnson said by code the detention would not be required if the proposed development is under 1,000 square feet.

Member Goodwin noticed some of the neighbors are not present at this meeting and wanted to know if they received some notice of the proposed storm water detention plan.

Ms. Jennifer Andrew said she is not sure why the neighbors are not here. She did not show this plan to them. The last she spoke with one of the neighbors, he made it seem like the water problem was not an issue with him anymore. She does not know if that is the general feeling of the neighbors.

Member Hayward asked if the notice of the meeting was posted.

Building Commissioner Johnson stated a sign with the meeting date was posted on the property.

Member Doherty asked if any rooms in the proposed plan could be made smaller to make it closer to the FAR and more acceptable to Village code.

Ms. Jennifer Andrew answered not really on the first floor. The living room is already small. The bedrooms may be smaller, but there is currently not enough room to put a desk in the kid's rooms. The bedrooms could be made smaller, but it would not be enough to get them below the FAR. They would end up with bedrooms that you can't really move around in.

Member Getz asked when the building permit for 247 Churchill Street was issued and if it was before the FAR.

Ms. Jennifer Andrew said it was built in 2007. They did not need a variance and built within code.

Building Commissioner Johnson confirmed it was built in 2007 and built to all code regulations. The FAR was adopted in 2003.

Member Hayward asked for an explanation on the primary intent for the Village to impose the FAR.

Building Commissioner Johnson said there were several homes built that maximized the lot coverage. Under the old code they could build up to 35% of the lot. There were some homes built on the east side about 15 years ago that maximized the lot and shook a lot of heads. However, they were permitted at the time. The Village Board of Trustees said we needed to be more aware of the bulk of these homes on the lots. So when the zoning code was rewritten in 2003, the FAR was imposed to reduce the bulk on the lots. Garage space was included because they wanted to take in the whole bulk of the house not just the living dwelling space. It is all based on the size of the lot. All single family zoning districts have a .35 FAR. This does affect some of the smaller lots in the Village, there is no doubt about it.

Chairperson Charnas asked if anyone in the audience wished to speak.

Kathleen Hogan, 244 Churchill Street, stated for the record she did not write the letter that was presented at the last meeting. She did not sign it and was out of town at the last meeting. Her question for the Board is, where is the hardship. Her great fear is if the Board approves 22% over what is allowed by code without a hardship, it would set a dangerous legal precedent going forward. This could virtually make the existing code relating to the FAR meaningless. The petitioner has a clean slate to work from with nothing to work around other than the fact they would like a third bathroom on the second floor. Then anyone can come before the Board and be granted a variance. This could create a slippery slope. The petitioner picked a lot and designed a house later. There are other lots on the same street that are for sale that would fit this proposed house without needing a variance. They would love to have them as neighbors. She does not believe because the petitioner did not understand the code that the garage was included in the FAR that is a hardship in terms of the variance. There are many oversize houses being built at this time and have not needed a variance. In her opinion, there is no hardship proven.

Ms. Jennifer Andrew said each municipality is different in terms of the FAR and what is included. In the real estate listing, they only list the square footage of the home, not including the garage. She does not think it is a frivolous mistake that she did not realize the garage was included in the FAR. It does depend on the municipality. The notion that we should go and find a different lot to accommodate the house is not that easy. The variance will not have a negative impact on the surrounding properties. It will be an improvement. They are not looking to build a huge garage to accommodate their car collection. They just want to build a house to accommodate their growing family.

Ms. Patricia Andrew added they love Northfield. The schools are one of the best in the state. They value the education. Her mother lived in Northfield. When she passed away, they bought her house. They want to live where they are within walking distance to the park, school or library. All of Northfield is beautiful. Sure they could go find a bigger lot to build their dream home, however, they want to live in a neighborhood where everyone is looking out for each other and their children can walk to everything. That is very important to them.

Member Crotty addressed the legal issue. Though the code does in fact read hardship, there is a long series of court cases that says hardship is not the overriding principle. It is the

effect upon the neighboring properties. He is not sure whether or not this particular case does have a negative effect on neighboring properties. He pointed out this variance request is 22% over. If the code had been written differently where the garage was not included in the FAR, they would be at 190 feet over which is less than 5%. There was a property on the 300 block of Lagoon last year that was granted a FAR variance with the same situation and the attached garage being included. This property did not have a basement. He cannot remember what the exact numbers were, but he remembers it was substantially over the FAR.

Building Commissioner Johnson said the address was 336 Lagoon and they received a FAR variance for 792.50. He was going to mention later this property did not receive a building permit within the required time frame so the variance has expired and they have reapplied to appear before the Zoning Board of Appeals next month. This property is in the floodplain so they could not build a basement.

Chairperson Charnas asked if a detached garage is counted in the FAR.

Member Crotty answered a detached garage does not count.

Building Commissioner Johnson corrected Member Crotty and said a detached garage does count towards the FAR. It is still considered bulk on the lot. It is an accessory structure, but it is still included in the FAR.

Member Crotty apologized for the mistake and added most of the places he has practiced does not include a detached garage.

Ms. Patricia Andrew commented the code is a little confusing. The sale of the property went very fast. The property went on the market. They quickly sketched up the plans and within 30 days they closed on the property. It was after the closing, they found out about the garage being included in the FAR and that they would need to apply for a variance in order to build the home as proposed.

Member Appel said there are a number of issues and the only one that really matters is the size of the house. The water issues we talked about have been addressed. The power that the Board has is relatively narrow in granting variances. He takes it very seriously. The issues they are supposed to consider have been addressed in a fashion that would make approving this variance a responsible gesture on his part. His thought is the petitioner should either design a house for the lot or get a lot that fits their dream house.

Member Doherty suggested putting an addition on their house on Riverside.

Ms. Jennifer Andrew stated they would need a variance in order to add the amount of square footage they would want.

Member Doherty replied the Board is not here as their enemy.

Member Getz added his opinion has a different take on Member Appels comments. He appreciates the interpretation of the narrowness of the Board, but he feels there is an overarching consideration. That is, would the proposed structure improve the value of the lot and improve the value of the surrounding area or would it be detrimental. From what he can see from what has been presented, it would probably improve the value of the existing property which would ultimately translate into the tax base. It would also improve the hydraulics of the geography given what the engineer has provided for not just this property, but could potentially improve the neighbors to the south and north. He views this as being an improvement to what is currently there. It is an improvement in terms of the value of the property. He feels it will improve the water situation that is currently there. When you look at the nine questions the Board has to follow, some can be answered yes and some can be answered no. One of them was is the hardship brought on by the petitioner. He does not feel the hardship was brought on by petitioner, but could the petitioner do something different - absolutely. But when he looks the overarching aspect of the community they live in, does the net positive outweigh the narrowness of the code. From what he heard from the neighbors that came at the last meeting regarding the water issues, the plan would be net positive from a water stand point. From what he sees here, it is an improvement to the neighborhood.

Member Hayward echoes Member Getz's comments and agrees with most of his perspective. He would add when you look at legislative history for FAR and the fact that it does, out of proportionality, have a harder impact on smaller lots. There are a lot of communities out there with smaller homes that are not being redeveloped and that has a detrimental impact to the neighborhood. Here in Northfield we want to be thoughtful and mindful of the regulations by code, but want to be thoughtful about improving the surrounding value of the properties and encouraging thoughtful development. From a legal precedence standpoint, he is not concerned. The Board has the power to grant a variance based on the unique facts and circumstances presented in any given case. Had this been a spec builder trying to get 22% FAR to build a cat walk and all kinds of crazy stuff, it might be different. There are enough unique facts and circumstances here that he is not worried from a legal standpoint. Part of the hardship goes back to, and the reason why this Board has been formed, is certain regulations just create an undue hardship on certain properties.

Member Goodwin agreed with Member Hayward and Member Getz. Northfield is a community all about people and families. He sees a great family wanting to move to another property and doing the best they can trying to satisfy the neighbors. He is of the opinion that this is not a developer that is trying to flip a house here. This is a family that is trying to go to our Northfield schools and he likes that.

Member Doherty agreed with these comments.

Member Hayward asked if the variance is granted in this situation, does it run with the petitioner. For example, if the petitioner decided not to do this development and sold the property, would the new buyer be able to build under this variance.

Building Commissioner Johnson stated it goes with the petitioner. If the petitioner sold the property, the variance would become void.

There being no further discussion, the following motion was made:

**A motion was made by Zoning Board of Appeals Member Patrick Doherty, seconded by Robert Hayward to approve the following:**

**A) A 639.00 square foot variance from the maximum 2,861.00 square feet allowed by code resulting in a floor area ratio increase to 3,500.00 square feet**

**to allow for the construction of a new two story single family residence with an attached two car garage.**

Chairperson Charnas said the way the motion is currently made, the motion does not require the storm water detention.

Building Commissioner Johnson said he spoke with the Village Attorney. If the petitioner chose to build this home and it is less than 1,000 square feet, the Board cannot make it mandatory that they go above and beyond what is allowed by code and make them install the storm water detention.

Member Bert Getz requested a change to the motion to approve the above with the condition that is predicated on the engineering plan submitted by Chamberlin/Masse Engineering dated November 16, 2016, which contemplates the storm water solution they are representing.

Member Patrick Doherty withdrew his original motion.

Member Patrick Doherty seconded the motion made by Member Bert Getz to approve the following:

**A) A 639.00 square foot variance from the maximum 2,861.00 square feet allowed by code resulting in a floor area ratio increase to 3,500.00 square feet**

**to allow for the construction of a new two story single family residence with an attached two car garage located at 243 Churchill Street consistent with the site plan and Architectural exhibits received on August 2, 2016.**

Subject to the following development conditions:

- 1) An approval pursuant to any requested review by a Village consultant, staff member, Board or Commission shall be an approval of only those items specified in any motion, resolution, ordinance or written report. Under no circumstances shall such an approval be deemed to be the approval of any other matter by virtue of the fact that those other matters may appear on the supporting documents such as a site plan,**

engineering plan, or plat that was the subject of the review. Neither shall any such written approval be deemed to be an approval of any matter, which is within the jurisdiction of any other Village consultant, staff member, Board or Commission or any County, State or Federal Agency.

- 2) The petitioner shall comply in all respects with the ordinances of the Village of Northfield and nothing in this variance shall be construed as a waiver of any of those requirements.
- 3) Predicated on the engineering plan submitted by Chamberlin/Masse Engineering dated November 16, 2016, which contemplates the storm water solution they are representing.
- 3) This variation will be in effect until January 4, 2018.

The following vote was taken:

AYES: 4

J. Patrick Doherty  
Bert Getz, Jr.  
Robert Hayward  
John Goodwin

NAYS: 2

Richard Crotty  
James Appel

ABSTAIN: 1

Cheryl Charnas, Chair

ABSENT: 0

**Motion Carried**

Ms. Jennifer Andrew asked for clarification if they are required to put in underground detention.

Building Commissioner Johnson stated the variance has been granted with the approval of the engineering plan as submitted. The Board is not going above and beyond the code. The plan has engineering and the Board approved it as submitted. The petitioner could not come back with the other home unless they met the FAR.

Ms. Jennifer Andrew asked in order to build above the FAR they have to install the underground storm water system.

Building Commissioner Johnson answered that is correct, which has been proposed.

Ms. Patricia Andrew questioned if it is a significant savings to install the 12" pipe rather than the 18" inch as shown on the plan, would they need to come back before the Board for approval.

Building Commissioner Johnson stated they would not have to come back before the Board. This could be approved administratively by staff. If the engineer can indicate the proper capacity is there, then the Village Engineer can approve it.

Ms. Jennifer Andrew said the plan is there showing they are accommodating the 100 year storm with this detention system. For the 100 year storm, they are required to contain 300 cubic feet. The system will most likely exceed that because based on standard piping sizes, in order to get to the 300 cubic feet often times you end up rounding up. Whereas, the 12" pipe just barely could hold enough and unfortunately the next size up was an 18" pipe. The 18" pipe would end up holding a lot more than is required by code.

Member Getz added as a building and homeowner he would error on the side of having more capacity than not if he was making the type of investment they are considering.

Ms. Jennifer Andrew said they will and will most likely end up with holding more than 300 cubic feet, but that being said the 100 year storm is already a significant capacity storm and they will be above that because of the nature of the design and materials. She can't say how much they will be over, but they will accommodate the 100 year storm.

There being no further discussion, upon a motion made by Member Crotty and seconded by Member Hayward, the Zoning Board of Appeals adjourned their meeting at 8:20 p.m.

cas 1/10/17

*Approved 4/5/17*