

**PENNINGTON BOROUGH  
PLANNING BOARD MEETING - MINUTES  
NOVEMBER 14, 2012**

Winn Thompson called the meeting to order at 7:30 p.m. and compliance with the provisions of the Open Public Meetings Act was announced.

Board Members Present: Mark Blackwell, Keelan Evanini, William B. Meytrott, Katherine O'Neill, James Reilly, Vice Chairman, Nadine Stern, Alternate #1. Absent: Eileen Heinzl, Josh Levy, Thomas Ogren, Mayor's Designee. Also Present: Edwin W. Schmierer, Mason, Griffin & Pierson, Board Attorney, John Flemming, Zoning Officer, Mary W. Mistretta, Planning Board Secretary. Absent: Cindy Coppola, Coppola & Coppola Associates, Borough Planner; Carmela Roberts, Roberts Engineering Group, LLC.

**OPEN TIME FOR PUBLIC ADDRESS** – None.

**APPLICATIONS**

**Stephen & Kathleen Mahle**, Block 403, Lot 36, 151 East Delaware Avenue, R-100.  
Application P12-007.

Mr. Schmierer announced that Proof of Service and Proof of Notice were in order and the Board could take jurisdiction. Mr. Stephen Mahle was sworn in. Mr. Reilly announced that the Application Review Committee recommended that the requested waivers be approved and if a need for the information comes up it could be conditioned and made a motion, seconded by Mr. Evanini and the Board agreed by voice vote.

Mr. Mahle stated that he was before the Board approximately two and half years ago to redo the roof. He has completed space over the garage and would like to have air conditioning for the space. The air conditioner condenser would be installed approximately 7.18 feet from the westerly side yard boundary line, where a minimum of 15 feet is required and a side yard variance is being requested. Mr. Mahle presented photographs showing views of where it would be located. The neighbors on the west side of the property are approximately 100 feet away from where the compressor would be located and it would not be visible by them or from the street. Mr. Thompson asked if the condenser could be located behind the garage. Mr. Mahle stated that the lines would have to be run too far and part of their finished basement would have to be demolished and three mature bushes would have to be dug up. The contractor would not recommend running it that distance. There are two existing air conditioner condensers located on the east side of the house. Mr. Evanini asked for clarification regarding the addition at the rear of the house. Mr. Mahle explained that the survey was older and that the deck was replaced with an addition that went across the length of the garage. The Board agreed that the westerly side would not affect any neighbors and it was a hardship to place the condenser at the rear of the house. Mr. John Flemming, Zoning Officer, was sworn in. Mr. Flemming asked the applicant if he had any intention of installing a generator and Mr. Mahle stated that he did not.

The Board agreed that the condenser would not affect the neighbors and there was a hardship to install it elsewhere. Mr. Blackwell made a motion, seconded by Mr. Evanini to approve the application with conditions. Voting yes: Blackwell, Evanini, Meytrott, O'Neill, Reilly, Thompson, Stern; Absent: Heinzl, Levy, Ogren.

**Carl Fuccello**, Block 906, Lot 17, 422 South Main Street, R-80 Zone.  
Requesting Bulk variances for addition to the rear of existing house. Application P12-008.  
The application could not be heard due to noticing problems that were no fault of the applicant's. The application will be heard at the December 12, 2012 meeting. Renoticing is required.

### **ZONING OFFICER'S REPORT**

Mr. Flemming noted that the Application Review Committee thought that the survey that was submitted by the previous applicant was accurate and it made it very awkward for the Board to find that the addition was not included on the survey. He noted that this does not happen very often, but in the future we have to ask the applicant if the survey is accurate with the what is existing. Mr. Thompson noted that if they are not accurate in a more than de minimus way they should not be accepted. Mr. Flemming stated that in this case they could have even drawn in the addition.

There was discussion regarding generators and Mr. Flemming stated that generators are treated the same as air conditioner compressors in regards to meeting setbacks, including the above ground propane tank if one is included. Mr. Flemming stated that there is an impact on the neighbors, but he felt that the benefits far outweigh the detriments. Mr. Flemming stated that there are no standards in the ordinance for either air conditioner condensers or generators. If they are proposed within the setbacks a zoning permit would be issued.

Mr. Flemming stated that he had a complaint about Avanti's sign on Delaware Avenue having sharp edges and he would look into it. He also announced that a toy store was opening on N. Main Street.

### **MEMORIALIZATION OF RESOLUTION**

**Pennington Investments, LLC, Shoppes at Pennington, Villa Francesco's Restaurant,** Block 202, Lot 1, 21 Route 31 North, O-B Zone, Application No. P12-004. The resolution of approval for outdoor dining at Villa Francesco's located in Shoppes at Pennington was memorialized. Mr. Blackwell made a motion, seconded by Ms. O'Neill to memorialize the resolution. Voting yes: Blackwell, O'Neill, Reilly, Evanini. Not voting: Meytrott, Thompson, Stern. Absent: Heinzl, Levy, Ogren.

### **WORK SESSION**

**COAH** – Mr. Schmierer stated that the Supreme Court had met today to decide if COAH's growth share plan was permitted by the Fair Housing Act. Mr. Schmierer stated COAH's Round Three was based on the municipalities growth and not an assigned number as in the previous rounds. The League of Municipalities and some other municipalities argued that the fair way was a growth share. The opponents say that towns will figure out ways to not grow and, therefore, all the poor people will be stuck in the cities and not be able to move out to the suburbs. Mr. Schmierer stated that it was a public policy debate all day whether they would or would not permit growth share or send it back to COAH and tell them they have to do Round Three based on the old methodology. Mr. Schmierer felt that the two leading Judges felt that if the Legislature wanted to allow it to be done this way they should amend the Fair Share Act to specifically include the Growth Share or if the Legislature did not want it done that way they would have to go back to the old way. Mr. Schmierer feels that it will be up in the air for another two years. Mr. Schmierer stated that this discussion did not include the COAH Trust Fund money and added that the Borough was able to keep the money that was previously going to the State.

Mr. Reilly asked if all of the existing quotas do not apply any more if units are added as a municipality grows. Mr. Schmierer stated that the obligations for the First and Second Rounds still had to be addressed. In regards to the growth share if the town does not grow and it can be demonstrated, the town would not be penalized, but COAH would continue to evaluate the town's objective. They are looking at the availability of vacant land and what the zoning is and the probability of growth. The idea was all put in place before the building

crash in 2008 and the growth is far less than they expected back then. The builders feel that the old approach of assigning a number to a municipality and requiring it was a better approach.

**MINUTES** – August 8, 2012 – Mr. Evanini made a motion, seconded by Mr. Blackwell to approve the minutes with corrections and the minutes were approved by voice vote.

Ms. Mistretta verified that the eligible members for the Pennington Fire Company application were still available for the December 12, 2012 Planning Board meeting. Ms. Mistretta also noted that the professionals were meeting with the Fire Company tomorrow to iron out questions they had and outstanding issues.

Mr. Thompson announced that the Borough has a grant to do a study of the old landfill site. Mr. Ogren will be recommending a company to do a development study of the landfill at the Borough Council's next meeting. The objective would be to put together a package that can be put forward to developers and part of the process will include interaction with the Planning Board. They will be looking at it as an open slate in terms of the zoning and will try to determine what the best use would be based on the environmental and traffic constraints of the site and the overall market demand for the property. Mr. Ogren is Chairman of a committee consisting of Mr. Thompson, Mr. Levy and members from the Economic Development Commission and local real estate agents. The Landfill is located between Delaware Avenue and Broemel Place.

There being no further business, the meeting was adjourned at 8:40 p.m.

Respectfully submitted,

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Mary W. Mistretta  
Planning Board Secretary