

**PENNINGTON BOROUGH  
PLANNING BOARD MEETING MINUTES  
JUNE 13, 2012**

Chairman 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, Eileen Heinzl, Joshua Levy, William B. Meytrott, Thomas Ogren, Mayor's Designee, Katherine O'Neill, James Reilly, Winn Thompson, Keelan Evanini, Alternate #1, Nadine Stern, Alternate #2; Absent: Mary Anne Heino  
Also Present: Cindy Coppola, Coppola & Coppola Associates, Borough Planner; Edwin W. Schmierer, Mason, Griffin & Pierson, Board Attorney; John Flemming, Zoning Officer; Mary W. Mistretta, Planning Board Secretary  
Absent: Carmela Roberts, Roberts Engineering Group, LLC.

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

**OATH OF OFFICE** - Mr. Schmierer gave Ms. Nadine Stern the Oath of Office. Ms. Stern was appointed as Alternate 2 on the Planning Board to an unexpired term ending on December 31, 2013.

**APPLICATIONS**

**Donald B. Allen, III**, 321 Sked Street, Block 705, Lot 5, R-80 Zone, Application No. P12-005.

Mr. Schmierer announced that Proof of Notice and Proof of Publication were in order and the Board could take jurisdiction. Ms. Stern and Mr. Reilly are neighbors of the applicant and recused themselves from the hearing and stepped down.

Mr. Donald B. Allen, III was sworn in and described his application. The existing house is a single family ranch and the applicant is proposing to add a second floor with two additional bedrooms and one bathroom. The applicant would also like to extend the attached one-car garage 8 ft. towards the north property line making it large enough for two vehicles. A variance is required for a side yard setback for the expansion of the garage. The addition to the garage would be 11.1 ft. from the side property line where a 15 ft. side yard is required and the proposed combined side yard is 27.66 feet where 30 ft. is required. Entered into evidence was Exhibit A-1 Board containing photographs of the property and existing house. Mr. Allen pointed out that the proposed garage would not exceed beyond the existing driveway in front of the garage. Mr. Allen explained that they are building the addition to the house as his children are a little older and the family needs more room. They like the area and would rather add an addition than look for a larger house. Mr. Allen stated that he would like a two-car garage to keep both of his cars in the garage and he feels that with the addition the house would have five bedrooms and should have a larger garage. Mr. Allen felt that the curb appeal of the property would also be enhanced with the renovations and would help raise surrounding property values. Mr. Allen pointed out that there is a row of Arborvitae approximately 7 ft. tall and a fence that will provide buffering for the property to the north.

Ms. Coppola, Borough Planner, was sworn in. Ms. Coppola noted that her memo referred to the expansion of the garage to the south, but verified with Mr. Allen that the north arrow is

incorrect on the site plan and the expansion would be towards the north. Ms. Coppola asked Mr. Allen to describe the materials that will be used on the house and garage. Mr. Allen stated that the entire house and garage would be resided with vinyl siding, sconce lighting will be located on either side of the garage and would not hold more than 100 watt bulbs. Mr. Ogren asked how far the neighbor's house was from the property line and Mr. Allen estimated that it was approximately the same distance as his existing garage and pointed it out on the aerial. Entered into evidence was Exhibit A-2 Internet aerial map of applicant's property and surrounding properties. Mr. Ogren stated that a lot of houses on the street have two-car garages and he felt that the garage would balance out the overall view of the house. Ms. Heinzel felt that the proposed dormer helps break up the roof and would allow light in the storage area. Ms. Coppola pointed out that if the expansion for the garage was not being proposed there would not be any room for the dormer and she agreed that the dormer was an architectural element that helped break up the garage roof and gave interest to the front elevation. Mr. Allen testified that the area over the garage would be for storage and there would not be any access from the second floor. A pull-down staircase is proposed in the garage to access the storage area and an air conditioner unit will be installed in the storage area. Ms. Coppola noted that the front porch was on the side of the house and encroaches into the garage space and this prohibits the applicant to take advantage of the full front of the garage. Adding six feet and staying within the setbacks would not help as a garage door to accommodate two cars would not fit. Mr. Allen stated that they also looked into an access for the garage from the north, but there is not enough property. There was discussion regarding the removal of the porch and Ms. Coppola pointed out that this was the main entry and it would be difficult to change it to the front of the house since that was the bedroom area.

Ms. Coppola recommended that the Borough Engineer review the current grading and the orientation of the downspouts to make certain that there would be no impact on the neighboring property.

Mr. Thompson asked if there was anyone in the public who had questions or comments.

Mr. James R. Reilly, 323 Sked Street, was sworn in. Mr. Reilly stated that he and his wife thought the plan was nice and would be an enhancement to the neighborhood. Mr. Reilly stated that the water flow from Mr. Allen's property goes slightly towards his property and runs to the back of his property to a row of trees which they have always referred to as Lake Reilly. He stated that the water usually disappears in a day and he does not feel what is proposed will make it any worse and he does not have any objections to what is proposed. There being no further comments, the public portion of the hearing was closed. Mr. Ogren asked if they were going to keep and protect the Arborvitae during construction. Mr. Allen stated that they were keeping them. Ms. Coppola reviewed the positive and negative criteria discussed by the Borough and stated that it could be considered either a hardship or that the C2 criteria has been met and the benefits of the application outweigh the detriments. The application meets the parking requirements and Ms. Coppola does not see any detriment to the zone plan. Mr. Blackwell made a motion to approve the application and explained that he did feel there was a hardship. He added that the approval should be with the condition of Borough Engineer approval of the rain spouts and grading. The motion was seconded by Ms. O'Neill. Voting yes: Blackwell, Heinzel, Levy, Meytrott, Ogren, O'Neill, Thompson, Evanini. Not voting: Reilly, Stern; Absent: Heino. The hearing ended 8:10 p.m.

## **MEMORIALIZATION OF RESOLUTION**

**Odette Adrian**, 413 Sked Street, Block 906, Lot 8, R-80 Zone. Applicant was denied a variance to locate a six foot deer fence within the front yard setback. Mr. Ogren made a motion, seconded by Mr. Blackwell to adopt the resolution. Voting yes: Blackwell, Heinzl, Ogren, Reilly. Not voting: Meytrott, O'Neill, Thompson, Evanini, Stern. Absent: Heino.

## **WORK SESSION**

Mr. Ogren reported that Capital Health is not interested in proceeding with a proposal that was discussed by the Board several months ago. The proposal was to ask Capital Health if they would be interested in donating approximately three acres of their site that would be used for affordable housing.

Ms. Coppola noted that Council had approved the Borough's first affordable apartment. She stated that there is a big concern that the State was tracking money in municipalities' housing trust funds for potential seizure as of July 17<sup>th</sup>. She stated that there are a number of attorneys who feel that there is no legal mechanism for the State to seize the money, but the State has already included the money in their budget. A number of municipalities have been working to get their Spending Plans approved and are trying to get contracts with developers to be able to put the money into designated funds. The COAH staff has been slow to approve the Spending Plans because there has been the question as to whether or not they have the authority to approve them, but it is Ms. Coppola's understanding that they are now starting to approve some of them. Municipalities are trying to get money out of their trust funds by any legal way that their attorney's recommend. She stated that the Borough has an approved Spending Plan from the Second Round and still has an unmet need from the Second Round. The Second Round Spending Plan allows the Borough to spend money out of the trust fund for affordability assistance which is mandated under the affordable housing rule. A minimum of 30% of what is collected must go to affordability, 20% may be spent on administration and the rest of the funds are for the accessory apartment program. Ms. Coppola stated that the Borough has over \$100,000 in jeopardy and she feels that it is important to try to keep the money.

Mr. Schmierer stated that there is Legislation which would extend the July date for two years, but the Governor's Office has said that they would veto it. Mr. Schmierer stated that they have advised other communities to figure out how they want to use the money and transfer it out of the three-party housing account to a separate trust account called a "trust reserve account." This would be set up for a specific purpose such as affordability assistance, administration or other uses. The Acting Commissioner of DCA (Department of Community Affairs) has said that to consider the money committed you must have a contract, but the municipal attorneys disagree and feel that as long as the money is committed for a certain purpose, whether there is a contract or not, you have done what you needed to do. Mr. Schmierer stated that he would recommend that Borough Council put together a resolution to set aside money for administrative expenses and affordability assistance as it would help protect the money to go towards affordable housing in the Borough rather being taken by the State. He suggested that Borough Council discuss this and he would consult with Mr. Bliss, Borough Attorney, and the CFO (Chief Financial Officer) regarding the procedure. Mr. Schmierer stated that the Borough did not need DCA approval to transfer the funds. When the trust fund monitoring report is done, the funds are still reported even though they are not in the account. The Board agreed that this was a good idea to try to save the money for affordable housing in Pennington. Mr. Schmierer

suggested that the money be lumped together for the three categories, administration, affordable accessory apartments and the unmet need. Mr. Thompson asked about the costs from the trust fund for the accessory apartment. Mr. Schmierer thought that their firm billed approximately \$2,200 and the owner would receive \$25,000.

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

Mr. Flemming stated that he felt a Certificate of Occupancy was necessary for houses that are being sold and for rentals. He stated that just recently a house was found to have a second illegal living area and it was only caught because of an appraiser calling to make sure that it was a legal two family home. Mr. Flemming stated that with a CO this would have been caught. He does not feel that all zoning would be checked unless there was something that stood out during the inspection. Housing inspections are either done by the New Jersey Housing Code or the BOCA Housing Code and inspections are done for minimum standards. Mr. Flemming stated that this had never been adopted before because it was always felt that the vast majority of properties in Pennington exceeded minimum standards. Mr. Flemming stated that CO Inspections would include rentals whenever there was a change of tenants to make sure that the unit/house meets minimum standards.

Mr. Thompson stated that his issue with CO inspections is that a lot of time the focus is on mechanical parts of the house. Mr. Thompson felt that there was a need to address issues like the sidewalk ordinance before a home was sold. It's unfair for an individual to buy a house with a sidewalk that does not meet the ordinance standards and finds out in a year or so that the sidewalk has to be repaired or replaced. Mr. Thompson stated that it would also be helpful to check resolutions to make sure that everything is compliant and to see that any open building permits are closed. Mr. Flemming stated that if this was an unwritten procedure it would be great, but if it was part of the requirements of the housing inspector he feels it is beyond what housing inspections include.

Mr. Flemming reported that the Pennington School would like to modify the headmaster's house and he asked the Board to verify that it could be treated as a single family house since it was part of The Pennington School. Mr. Schmierer stated that he had spoken to Dan Haggerty, Attorney for Pennington School, and he agreed that the house is for the private use of the headmaster and her family. They have dinners and social gatherings, but they are not directly related to the school's activities. Mr. Schmierer agreed with Mr. Flemming that even though the house is not on a separate lot, it is clearly a single family home and is exempt from site plan review and he did not feel that there would be any purpose to bring them to the Board for the addition. Ms. Coppola added that it is in the Education Zone where one family dwellings are in the separate use category and any single family home in that zoning district would be treated as they would in any other zoning district and she also agreed with Mr. Flemming.

Mr. Flemming received a complaint from Mr. Stout who lives next door to Mr. Stylianou, 144 West Franklin Avenue. Mr. Stout claims that the neighbor is dumping on the property and changing the grading which is causing runoff to his property. Mr. Flemming stated that he advised Mr. Stout that there was no zoning issue involved as he has no jurisdiction over regrading. He advised Mr. Stout that it may be an issue with Mercer County Soil Conservation, NJDEP or EPA. Mr. Flemming feels that this is between the neighbors and asked the Board if it is something the Borough should be getting involved in. Mr. Schmierer stated that one neighbor is creating a nuisance for the other neighbor and it is a civil problem. Mr. Thompson recused himself from this discussion.

Ms. Coppola and Mr. Schmierer left the meeting.

**WORK SESSION (continued)**

Lawrence Hopewell Trail – Mr. Ogren stated that the extension of the trail has been before Council many times, but has not been before some of the Boards and Commissions. It has been around for close to three years and it is now coming close to getting Federal approval to start construction. Mr. Ogren brought it to the attention of the Planning Board as the Reexamination of the Master Plan, 2005 refers to extending the sidewalk from King George Road to the Bristol-Myers Squibb site and beyond to the Watershed. Mr. Ogren stated that the proposed plan is not for a sidewalk, but to construct an 8 ft. wide pedestrian/bike path from the Stony Brook bridge up to the existing Lawrence Hopewell Trail. Mr. Ogren stated that all the plans and specifications have been completed and all the permits required for the project have been approved and they are just waiting for NJ DOT and the Federal Highway Administration to give the ok. Mr. Thompson stated that he feels the Lawrence Hopewell Trail is good planning and the proposed connection is an essential part to connect the Borough with the overall trail. Mr. Blackwell stated that it would have to be elevated and Mr. Ogren responded that it would be a costly project as there is no shoulder in that area and it would require a 600 ft. concrete retaining wall. The estimate for the project is over \$400,000.00. The Federal grants total approximately \$290,000.00 and they are looking to bridge the gap with Open Space money. Mr. Blackwell made a motion, seconded by Mr. Levy and the Board voted by voice vote that they support the proposed extension of the Lawrence Hopewell Trail and find that it is consistent with the Borough Master Plan. The Board requested that this be conveyed to Borough Council members. Mr. Levy asked if the portion of the trail going through Mercer Park would be paved and Mr. Ogren responded that it would not, but most of the extension into the Borough would be asphalt.

Revised Variance Checklist – Mr. Reilly stated that this is the final checklist with all suggested changes and will be distributed to applicants. If the Board finds that there is not enough information or has other changes it can be tweaked at a future date.

**MINUTES** –May 9, 2012 – Ms. O’Neill made a motion, seconded by Mr. Meytrott to approve the minutes with corrections and the minutes were approved by voice vote.

There being no further business, the meeting was adjourned at 9:15 p.m.

Respectfully submitted,

*Mary W. Mistretta*

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Mary W. Mistretta  
Planning Board Secretary