

**PENNINGTON BOROUGH  
PLANNING BOARD MEETING - MINUTES  
AUGUST 8, 2012**

Vice Chairman Reilly called the meeting to order at 7:40 p.m. and compliance with the provisions of the Open Public Meetings Act was announced.

Board Members Present: Mark Blackwell (arrived 7:55 p.m.), Eileen Heinzl, Joshua Levy, William B. Meytrott, Thomas Ogren, Mayor's Designee, Katherine O'Neill, James Reilly, Vice Chairman, Keelan Evanini, Alternate #1. Absent: Mary Anne Heino, Winn Thompson, Chairman, Nadine Stern, Alternate #2. 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.

Mr. Reilly, Vice Chairman, chaired the meeting in the absence of Mr. Thompson. Mr. Reilly announced that he would change the order of the agenda as a Planning Board member had been delayed.

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

**MEMORIALIZATION OF RESOLUTION**

**Donald B. Allen, III**, 321 Sked Street, Block 705, Lot 5, R-80 Zone, Application No. P12-005. Ms. O'Neill made a motion, seconded by Mr. Meytrott to adopt the resolution. Voting yes: Heinzl, Levy, Meytrott, Ogren, O'Neill, Evanini; Absent: Blackwell, Heino, Stern, Thompson; Not voting: Reilly.

**ZONING OFFICER'S REPORT**

Mr. Flemming stated that he received a zoning permit request from Trenton Cyrus Lodge #5 located at 131 Burd Street to install a small shed in the rear and an elevator on the south west exterior side of the building. Mr. Flemming stated that the shed meets the required setbacks and he could approve it, but he is asking the Board if he could approve the elevator which is needed to make the meeting room handicapped accessible. Mr. Schmierer stated that the Lodge would have to request a waiver of site plan review from the Board. Mr. Ogren asked if this would fall into the amendment that was recently approved regarding a 500 ft. addition. At this point the missing Planning Board member arrived and it was decided to continue this discussion after the application was heard.

**APPLICATIONS**

**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. Present: Daniel L. Haggerty, Stark & Stark; Vincent A. Piacente, AIA, Inside Architecture; James C. Findley, Hopewell Valley Engineering, PC; Eugene Lorenzetti, Owner and Manager, Shoppes at Pennington; Nestor Gonzalez, one of the three owners of Villa Francesco's Restaurant.

Mr. Meytrott recused himself as he is affiliated with Straube Regional Center and works closely with Shoppes at Pennington. Mr. Reilly stated that the checklist was in order and the Board agreed and declared the application complete. Mr. Schmierer announced that Proof of Notice and Proof of Publication were in order and the Board could take jurisdiction.

Mr. Haggerty, the applicant's attorney, introduced the above referenced professionals and described the application. He stated that Villa Francesco's owners would like to construct a patio for outdoor dining to help keep the restaurant competitive. In the original approval the

restaurant was a conditional use with specific conditions. The applicant is requesting two D-3 variances for lot coverage and parking. The lot coverage variance is requested for 500 sq. ft., 0.5% over the permitted coverage of 60%. Mr. Haggerty stated that there could be up to 60 people on the patio, but there would only be a total of 40 seated at the 10 tables proposed. There are 124 existing parking spaces and eight banked parking spaces. An additional 20 parking spaces would be required, but the applicant is not proposing any additional parking spaces.

Mr. Vincent A. Piacente, AIA, Inside Architecture was sworn in by Mr. Schmierer. Mr. Piacente is a New Jersey Licensed Architect who has previously appeared before the Board. Mr. Piacente entered into evidence Exhibit A-1 Site Plan of overall site of Shoppes at Pennington, Sheet 1, Cover Sheet, Hopewell Valley Engineering, PC, July 9, 2012 and Exhibit A-2 Board with enlarged prints, plans and notes, Sheet A-01, Inside Architecture, July 6, 2012. Mr. Piacente described the site and patio which will be located on the Route 31 side of the building. The patio and walkway will be approximately 1,027 sq. ft. and will be constructed from permeable pavers. Entered into evidence was Exhibit A-3 Three photographs of area around Shoppes at Pennington, August 8, 2012. Mr. Piacente pointed out where an existing window will be removed and replaced with a door to be used by customers using the patio. Entered into evidence was Exhibit A-4 Proposed outdoor patio with table layout, July 18, 2012. The tables would have market-type umbrellas and market lighting is proposed. Mr. Piacente presented a string of market lighting that would be strung from the building to the edge of the patio and would be very subtle lighting. The only other lighting would be what is required by the door.

Mr. Levy asked if wheel stops would be installed in the parking spaces that are in front of the proposed door. Mr. Piacente stated that there is a double curb, but they could also install wheel stops. Mr. Haggerty stated that they would also address this with their engineer.

Mr. John Flemming, Zoning Officer, was sworn in and asked when the outdoor lights would be shut-off. Mr. Haggerty stated that they would comply with the requirements in the original resolution, they would be turned off at closing or 11:00 p.m. whichever is earlier. Mr. Flemming inquired about music and Mr. Piacente responded that the intent is to contain it within the dining area.

Mr. James Findley, Hopewell Valley Engineers was sworn in. Mr. Findley stated that he is a New Jersey Licensed Professional Engineer and has previously testified before the Board. Entered into evidence was Exhibit A-5 Site Plan, Sheet 2, Grading Plan and Details, Hopewell Valley Engineering, P.C., July 9, 2012. Mr. Findley pointed out the proposed walkway to the main patio area and explained that there is a six inch step to the area on the side and a small wall to separate it from the main patio area. The pavers are pervious and water will be allowed to recharge through the stone bed below the pavers. They are proposing solid concrete pavers that are manufactured with 3/8 inch spacers around the edge. Mr. Findley stated that they are improving the drainage with additional inlets and are resizing the pipes. Mr. Haggerty clarified that the applicant agrees to address all of the comments raised in Ms. Roberts' memorandum of July 31, 2012 and her e mail of August 8, 2012 and revised plans will be submitted for her approval to confirm that all of the issues have been addressed. Mr. Flemming asked who would inspect the construction of the patio to ensure that it is installed correctly. Mr. Haggerty suggested that it would be acceptable to have the Borough Engineer inspect it or watch the installation. Mr. Haggerty stated that the applicant's engineer could also provide certification that it has been installed properly, subject to the Borough Engineer's review. Mr. Reilly agreed and felt that it could be one or the other and could be a condition of approval if the application is approved. Mr. Haggerty suggested that they address Mr. Levy's concern about the safety of the new door. Mr. Levy suggested that there may also be a problem with egress for wheelchairs. Mr. Findley proposed that they install wheel stops where needed and ensure that vehicle traffic can

safely get by. There was discussion regarding the width of the cartway and Mr. Blackwell stated that there is enough access for the fire truck.

Mr. Haggerty next addressed Ms. Coppola's memorandum of July 19, 2012. Mr. Findley addressed item D.1 and stated that no trees would be disturbed, but there are four shrubs by the existing sidewalk that will be relocated. Regarding item 2, Mr. Findley confirmed that all required plant material will be relocated on the site. Regarding item 3, Mr. Findley stated that there is currently lattice around the air conditioning units that will remain. In reference to item b, any landscaping will be relocated or replaced on the outer edge of the sidewalk. Mr. Haggerty stated that time limitations will be adhered to in regards to the lighting. Mr. Reilly asked about item 5.a, grading and how it would affect handicapped accessibility. Mr. Haggerty stated that the proposed step would be eliminated and the area will be made handicapped accessible. There was discussion regarding music for the patio. Mr. Blackwell stated that the restaurant already has music outdoors and you cannot hear it in other areas of the shopping center. Mr. Evanini asked why live music would be excluded if it was also kept soft and ambient. The Board agreed that music would be allowed as long as it was contained in that area.

Mr. Ogren asked about the width of the sidewalk, as he thought four feet was narrow. Mr. Piacente stated that the sidewalk starts at four foot wide and then tapers out a little wider. It was noted that the servers would also be using the sidewalk and Mr. Piacente stated that they would widen it to five feet. This would be a very de minimus increase in coverage. Mr. Reilly addressed item 5 regarding a d.(1) variance for outdoor dining and Mr. Haggerty agreed with Ms. Coppola's interpretation and did not feel it was necessary.

Mr. Eugene Lorenzetti, managing member of Pennington Investments, LLC, owners of the Shoppes at Pennington was sworn in. Mr. Lorenzetti stated that there are 124 parking spaces in the center and there are 8 banked spaces. He testified that there is always plenty of parking in the center. Entered into evidence was Exhibit A-6 Eight photographs of parking areas taken at various times. Mr. Lorenzetti described the hours of the businesses and how varied their busy times were. Mr. Lorenzetti stated that customers at Villa Francesco's have been requesting outdoor dining and he feels that it would help the restaurant maintain a successful business.

Mr. Flemming stated that there were several little problems that he would like to address. He stated that the bagel store had outdoor dining and there was an "open" sign in Villa Francesco's that had not been approved. Mr. Lorenzetti stated that they were approved to have picnic tables on the original plans, but they relocated them to the bagel store next to the mulch bed. He stated that there is landscaping which buffers them from Route 31. Entered into evidence was Exhibit A7 Photographs of existing picnic table by the bagel shop. Mr. Ogren stated that the tables are not permanent and could be removed and he did not see them as an issue, especially if they were approved in the original resolution. Mr. Lorenzetti explained that the "open" sign is used on the back of the restaurant as there is no visibility to Route 31 showing there is a restaurant located there. He stated that it is a small sign that will alert people to their existence. Mr. Flemming stated that neon signs are prohibited, but if it was in a window and did not flash he felt it would be permissible with permission from the Board. Mr. Lorenzetti agreed that they would move it to the window and stop the flashing. He also suggested that they may change it to say "open patio." Mr. Reilly asked if it would then be consistent and Mr. Flemming responded that it would be consistent with his practice. There was also further discussion about the safety of pedestrians on the sidewalk by the parking spaces and if wheel stops were necessary. Mr. Haggerty stated that they would meet whatever the distance requirement is to ensure that people can walk safely on the sidewalk. The Borough Engineer will review these issues for the final revised plans. Mr. Nestor Gonzalez, Villa Francisco's Restaurant, was sworn in. Mr. Gonzalez stated that a lot of customers have been asking for outside seating and he would like to be able to offer

it to his customers. He stated that there is a lot of parking available especially on weekends and he does not feel that there would be a problem if outdoor dining is added. There was discussion regarding the umbrellas and Mr. Flemming stated that if vendors names were on the umbrellas the applicant would need a sign variance. The applicant agreed that only the restaurant name will appear on the umbrellas in an appropriate scale and detail. Mr. Reilly noted that there was no one in the public for comments or questions.

The Board felt that there was a very thorough presentation for the outdoor patio and the variances being requested were de minimus. Mr. Blackwell made a motion, seconded by Mr. Levy to approve the plans that were presented with the revisions and conditions discussed. The sidewalk plans and installation of the patio should be reviewed and approved by the Borough Engineer. The Board agreed to market-type umbrellas with the restaurant name as discussed; a neon sign may be placed in the window. The Board agreed that music, either recorded or live, would be permitted as long as it was contained to the site. Voting yes: Blackwell, Levy, O'Neill, Reilly, Evanini; Absent: Heino, Thompson, Stern; Not voting: Heinzl, Meytrott, Ogren. The hearing ended at 9:45 p.m.

### **WORK SESSION**

**COAH UPDATE** – Mr. Schmierer reported that the Borough received a letter from the State requesting \$301,000 from the COAH Trust Fund and indicated that it was due the following Monday. The amount included funds that have been received and not used in the last four years. Mr. Schmierer stated that Borough Council adopted a resolution on July 10<sup>th</sup> committing \$195,000 for programs that Ms. Coppola felt could be funded and the balance of the \$301,000 would be sent to the State. Mr. Schmierer stated that the definition and the process of how the Governor will get the money is still undecided. A lawsuit has been filed with the Appellate Court by the N.J. League of Municipalities trying to get direction and guidelines before the money had to be sent in. The court issued guidelines, but declined to prevent the letter from going out from COAH (Council on Affordable Housing). The League would be back in Court to argue that the letter from COAH does not comply with what the Court said should be done. The Court said that the COAH Board, not the executive director, should send an explanation to the municipalities explaining how they calculated the numbers and the towns should have a chance to respond and have a hearing with the COAH Board if necessary. This will still be ongoing, but in the meantime the Borough will respond. Mr. Schmierer reminded the Board that our Spending Plan had been submitted to COAH two years ago and was still waiting for review and approval. There was discussion about this procedure and that it was not legal.

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

Mr. Flemming stated that there are a lot of companies coming out with pervious pavers and he feels that the concept should be encouraged, but the installation is critical. There are standards recommended by the companies, but patios do not need a building permit and there is no way to ensure that they are installed correctly. Mr. Blackwell stated that even if the pavers are installed properly dirt will build up around the pavers and eventually become packed down and the water will just run off. Mr. Levy stated that the Environmental Commission discussed porous pavers. The Commission felt that a percentage could be credited towards pervious coverage based on the specifications given for the percentage of permeability that could be applied. Mr. Levy stated that they could also limit a certain amount of square footage. Mr. Flemming stated that it would be difficult to enforce this as there are postage size lots next to larger lots. Mr. Flemming explained that there is an existing problem with 228 S. Main Street, where there was a house approved on a small lot and the new owners have put porous pavers over the whole backyard. Mr. Flemming advised the home owners that he would check with the Board regarding the pavers and would get back to them. There is no need for a building permit and there is no enforcement

on the installation of the pavers. Mr. Ogren stated that he was initially inclined to encourage porous pavers and amending the ordinance, but he agrees that the foundation is critical and not all porous pavers are the same and he does not feel that we could fashion an ordinance simple enough to deal with it. He felt that someone could come in with a variance for porous pavers, but he does not think it should be a matter of right. Mr. Flemming and the Board agreed with Mr. Ogren.

HOME OCCUPATIONS – Mr. Flemming stated that he had a request for a zoning permit for a home occupation at 132 S. Main Street. It is an online business and they have to get certification that what they are doing is legal. It is an on-line store selling baby carriers. There would not be any signs and rarely would anyone come to the house. Mr. Flemming stated that our Ordinance 215-89 regarding home occupations is very general and he suggested that we should have a tiered system as certain home occupations should not need Planning Board approval. The Board agreed that a sub committee should look at other ordinances regarding this to present to the Board for discussion. Ms. Heinzl, Mr. Ogren and Ms. O'Neill volunteered to look into other ordinances. Mr. Flemming stated that as the ordinance now stands the request for a home occupation at 132 S. Main St. is a conditional use and would have to come before the Board. Mr. Flemming also suggested that at some point the conditional uses should be reviewed as some of them are archaic.

CYRUS LODGE Exterior Elevator/lift – (continued from beginning of meeting) Mr. Schmierer stated that the Masonic Lodge should write a formal letter to the Planning Board indicating what they want to do and request a waiver of site plan review, as it is an expansion of a nonconforming use. Assuming that the Board receives the letter, Mr. Schmierer suggested that the Board may want to make a motion tonight if they agree to waiver site plan review. Mr. Blackwell made a motion, seconded by Ms. O'Neill to waive the need of site plan approval, subject to receipt of the letter from the Lodge requesting a waiver of site plan review. All Board Members present agreed, except Mr. Meytrott, who is a member, and Mr. Evanini abstained and the motion carried.

**MINUTES** – June 13, 2012 – Mr. Ogren made a motion, seconded by Mr. Levy to approve the minutes with corrections and the minutes were approved by voice vote.

There being no further business, the meeting was adjourned at 10:30 p.m.

Respectfully submitted,

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Mary W. Mistretta  
Planning Board Secretary