

**PENNINGTON BOROUGH  
PLANNING BOARD MEETING MINUTES  
June 12, 2013**

Chairman Thompson called the meeting to order at 7:35 p.m. and compliance with the provisions of the Open Public Meetings Act was announced.

Board Members Present: Keelan Evanini, Eileen Heinzl, Josh Levy, William B. Meytrott, Thomas Ogren, Katherine O'Neill, Nadine Stern, Alternate, Deborah Gnat, Alternate, Winn Thompson, Chairman. Absent: Mark Blackwell, James Reilly, Vice Chairman.

Also Present: Cindy Coppola, Coppola & Coppola Associates, Borough Planner; Carmela Roberts, Roberts Engineering Group, LLC; Edwin W. Schmierer, Mason, Griffin & Pierson, Board Attorney; Mary W. Mistretta, Planning Board Secretary.  
Absent: John Flemming, Zoning Officer.

**OPEN TIME FOR PUBLIC ADDRESS** – Mr. Thompson asked if there was anyone in the public who had comments or questions regarding items not on the agenda, there being none the open time for public address was closed.

**APPLICATIONS**

**The Pennington School**, Block 502, Lot 4, E-1 Zone, Site Plan, Preliminary/Final. Application No. P13-003. Present: Daniel E. Haggerty, Stark & Stark, Attorney; Graeme McWhirter, Chief Financial Officer, The Pennington School; Herbert J. Seeburger, Jr., Project Engineer, Van Cleef Associates.

Mr. Schmierer announced that Proof of Notice and Proof of Publication were in order and the Board could take jurisdiction. Mr. Haggerty stated that The Pennington School was looking for approval for two modular office units that would be located behind the Campus Center. Mr. Haggerty stated that the school is in the process of drawing up plans for a new building that will be the Humanities Center. The Lowellden building will be relocated and the Lodge will be demolished as part of the project. The buildings are used for the admissions and development offices and the modular offices will provide temporary space for them while construction is going on. Graeme McWhirter, Chief Financial Officer of The Pennington School and Herbert Seeburger of Van Cleef Associates were sworn in. Mr. McWhirter stated that the smaller unit will house the Admissions Office with approximately six people and the larger unit will house the development office with eight people. The school intends to put the Development Office in the Lowellden building once it has been moved. The smaller unit will be removed and the Admissions Office will be moved to the larger unit. When the new building is completed the Administration Office and the Admissions Office will be moved to Old Main. Mr. Haggerty stated that they are proposing a time period of three years to allow the removal of both units as things do not always go as planned in construction. Mr. Thompson noted that the new location of Lowellden was not on the plans. Mr. Haggerty stated that the architect is working on the plans and they will be submitted in the future along with the plans for the new building. Mr. McWhirter explained that they are asking for approval of the modular units separately so that they could move the Admissions and Development Offices over the summer before the students return.

Mr. Seeburger entered the following exhibit into evidence: Exhibit A-1 Rendered Site Plan, May 8, 2013. Mr. Seeburger described the site and the proposed location of the trailers. The smaller unit is 1,206 sq. ft. and the larger 2,115 sq. ft. The trailers are placed in an "L"

shape in order to make use of the existing sidewalks. The trailers are shown on the plans as being 5 feet apart, but they will shift the larger unit so that they will be 10 feet apart as suggested by Ms. Roberts. The trailers will be set on blocks which will help the water flow and will not disturb tree roots. The only additional lighting will be by the exit doors. Mr. Haggerty addressed Ms. Roberts memorandum of June 6, 2013 and her comments regarding the checklist. He stated that the names of property owners within 200 ft. will be added to the plans. Mr. Seeburger stated that the setbacks will be placed on the plan and Mr. Thompson requested that he review them for the record. The following are setbacks from the nearest point of the trailers: front setback from Burd Street is 272.8 ft., the rear property line from Laning Avenue is 721.7 ft., the side yard from the railroad side is 568.8 ft. and the other front yard from Delaware Avenue is 586.2 ft. Mr. Haggerty stated that the setbacks and items requested in number 6 will be added to the plan. Mr. Seeburger stated that the trailers will not be visible from the surrounding properties. All utilities will come with the trailers and they will not be hooking up to the gas, sanitary sewer system or the water. Two poles will be installed for electric and telephone lines which will come from the Campus Center and one pole will be moved further away from the gas line. Mr. Seeburger stated that Matt Martin from Hopewell Township Fire Safety gave a cursory review and he did not have any concerns. Mr. Seeburger stated that there is room for fire apparatus access. Entered into evidence was Exhibit A-2 E mail from Mercer County Soil Conservation District stating that they have reviewed the plans and MCSC approval is not required. The applicant agreed to submit a foundation plan signed and sealed by a licensed engineer. Exhibit A-3 Vehicle Turning Diagram – The Pennington School, June 11, 2013. The exhibit shows the route that will be used when the modular units are delivered. Mr. Seeburger explained that they will be delivered in sections no longer than 10 – 11 feet each. Entered into evidence was Exhibit A-4 Photographs of the Site. Mr. Seeburger explained the photographs showing that there is enough clearance under tree limbs that will be in the path of the modulators and will not be disturbed. The only obstruction will be one light that may have to be taken down and will be put back. In response to comments regarding pedestrian safety, Mr. Seeburger stated that they will shift the smaller modular approximately 1.5 ft. to the north and large planters will be placed around the area of the both units.

Mr. Haggerty stated that he would like to review the items in Ms. Coppola's memorandum of June 5, 2013 that have not yet been covered. Mr. Seeburger addressed Item 6 which stated that all conditions of previous approvals have been met except for two items. One was regarding the amended site plan for the athletic field improvements which still show the future Library and future gymnasium additions. Mr. Haggerty stated that the addition to the Library has been eliminated as the proposed Humanities Building will be in the same area. Mr. Haggerty stated that the plans have been signed, but there was a note stating that the future additions are not part of the site plan approval. Mr. Haggerty stated that there was an amendment to the plan when they moved the bleachers and the press box. One of the conditions was that if there was amplification the speakers would not be directed towards the interior of campus, but towards the railroad tracks. Mr. Haggerty stated that this was a condition of approval, but was not noted on the plans. Mr. Seeburger stated that there was amplification and it is in the right place.

Mr. Haggerty reiterated that they would like to request a three year period for the trailers, although they hope to remove one within a year. Cindy Coppola, Borough Planner, was sworn in. Mr. Thompson asked if the school was going to have temporary signs on campus and Ms. Coppola suggested that they should be reviewed by the Zoning Officer. Mr. Haggerty stated that there would be signage placed around campus. Mr. Thompson asked if there was anyone in the public with comments or questions, there being none the public

portion of the hearing was closed. Mr. Evanini asked about the procedure if the trailers were still needed at the end of the three years. Mr. Haggerty stated that they would have to come back to the Board to request an extension of time. Mr. Levy asked if there would be a problem with cars parked on Main Street or Academy when the units were delivered. Mr. Seeburger stated that parking was not allowed within 25 ft. of the corners where they had to turn and parking on one side is prohibited on Academy and he did not think there would be a problem.

Mr. Ogren made a motion, seconded by Ms. O'Neill to approve the application with conditions. Voting yes: Evanini, Heinzl, Levy, Meytrott, Ogren, O'Neill, Thompson, Stern. Absent: Blackwell, Gnatt, Reilly. The hearing ended at 8:30 p.m.

## **PRESENTATION**

**Route 31 Redevelopment Study** – Mr. David Roberts gave a presentation regarding the study that involved Borough owned property that was the former landfill and is located between West Delaware Avenue and Broemel Place behind the retail center on Route 31. It consists of three properties Block 206, Lots 4, 5 and 12. The Fire House is adjacent to the property and the Post Office is across the street. Mr. Roberts stated that the study was funded by a grant from the Delaware Valley Regional Planning Commission (DVRPC). The study was done from different vantage points based on a scope of work that the Borough prepared for the DVRPC. A basic land use analysis in terms of the location and access to the site was done and environmental issues were looked at since it is a former landfill site and Lewis Brook begins on the site. The site is hidden from Route 31 and there are issues as to what it could be used for and what types of uses would be attracted to the site. The study also looked at the traffic issues. Mr. Roberts explained the process of the study and stated that there was an oversight committee that they met with at the start of the study and who reviewed the technical memorandums that were released during the study. He stated that there was an open public meeting several weeks ago with a power point presentation and he presented the exhibit boards that were shown at that meeting. There were seven technical memorandums that dealt with the various issues and they are included in the study together with an action plan. Mr. Roberts stated that there are several basic recommendations. One is to adopt the study into the Borough's Master Plan and this would layout the zoning changes that would be needed.

The site is broken up into small pieces because of the landfill. Lot 4 is about 1 1/2 an acre, Lot 5 is the largest lot and is a little over 7 acres, but when the landfill is taken out there is about 3 acres. The Department of Environmental Protection would have to verify the stream buffers and the lot would then vary from about 2 1/2 acres to 1 1/2 acres in usable area and would be broken up into smaller pieces because of the landfill shape. The garage area would be one piece that would be developable and Lot 12 where the old Public Works office was located would be about 9,800 sq. ft. The most potential for development would be on Lot 4 and a portion of Lot 5. There would be opportunities for clothing stores, jewelry stores, optical services and full service restaurants and services that would be adaptable to buildings of 10,000 sq. ft. or less. Ideally the existing gravel road should be rerouted to form one long frontage and have two-story buildings facing Broemel. Mr. Roberts described the Constraints Map (page 14) which showed the topography and Lewis Brook. One of the key issues to make the property work successfully is having it connected with the properties in the front. The other thing is the traffic situation at the intersection of Broemel and Route 31. Mr. Roberts also noted that the timing of the signals at Route 31 and Delaware Avenue are not pedestrian friendly and there are a lot of things that could be done to improve that

intersection. The key challenge to place a signal at the Broemel intersection will be the Department of Transportation. A new signal light will create gaps in the traffic on Route 31 and would improve pedestrian safety and traffic circulation.

Mr. Roberts referred to pages 48 and 49 showing alternatives A and B and explained the alternatives proposed. The largest building proposed would be next to the Fire House with a road wrapping behind it and would be approximately 10,000 sq. ft. He stated that they proposed replacing the garages with a new building and save the old Public Works office and the well house as the committee suggested that the building has historic significance. Mr. Roberts stated that they looked at several alternatives for zoning and recommend that the Borough rezone Lot 3 and that Lots 5, 6 and 7 all be changed to the B-H Zone (Business-Highway) and place an overlay on the Borough property and Lot 3. Mr. Roberts stated that the Board's next step would be to look at what has been proposed and decide if they are comfortable with it and could then consult the document to see what has to be adopted. He also suggested that the Borough professionals could give feed back from their perspectives. The final part would be to make it known to the development community that this opportunity is available and suggestions are included in the report.

Mr. Ogren pointed out that pages 46 and 51 were aerials showing the two alternatives. Mr. Roberts noted that the traffic study was pretty extensive and all the information is included in the report including projections for the two alternatives. He stated that there was public comment suggesting a village style on the site similar to how Pennytown looked. This site would be close enough to town that it would be walkable from town and to nearby shopping areas. Ms. Coppola asked if the buffer of the Lewis Brook had been confirmed by DEP. Mr. Roberts stated that they did not consult with DEP as they thought when a developer looked at the site more closely DEP could be consulted to see what constraints existed. Ms. Coppola asked about the recommendation that the Affordable Housing overlay be eliminated. Mr. Roberts stated that the committee recommended the removal of the overlay as they felt that there were other areas in the Borough that would be more beneficial to the Borough. Mr. Roberts stated that if this was agreed to there would have to be an amendment to the Housing Element and Fair Share Plan. Mr. Thompson stated that he was on the committee and he felt that the area was not suitable for affordable housing since it is so close to the highway and there are so many constraints limiting the buildable area. Mr. Roberts stated that they felt it was better to not try to develop the landfill part of the property as the costs would be prohibitive. There was discussion regarding the likelihood of getting a signal light at the intersection of Route 31 and Broemel Place. Mr. Roberts stated that when the Borough is in negotiations with a developer they can use the property and the study as a bargaining tool to try to get a contribution towards a traffic signal.

Mr. Ogren suggested that the Board should meet during the summer to discuss the proposals and if they agreed follow-up on some of the zoning recommendations. Mr. Thompson asked if there would be a presentation to Borough Council and Mr. Ogren stated that this was the last presentation on the report although there will be public meetings between Planning Board and Council when it will be discussed. Mr. Ogren stated that the Board would have to do all the Ordinance changes before Borough Council could put the property up for sale and offer it to a developer. Ms. Coppola agreed with Mr. Roberts that the report be incorporated in the Master Plan and if the Board had changes or additions they might do an overall reexamination of the Master Plan. Mr. Ogren commended Maser Consulting and the committee for an outstanding job on the study. Mr. Roberts thanked the oversight committee for their helpful input. The oversight committee consisted of Bill Meytrott, Eileen Heinzl, Winn Thompson, Josh Levy and Tom Ogren, Dan Pace, Eric

Kollevoll, Britt West and Harry Compton. Mr. Thompson added that the report was very thorough.

### **INTERPRETATION**

**Alisandra B. Carnevale, LLC** requested an interpretation of a 1994 Resolution of Memorialization for 134 South Main Street, Block 505, Lot 19.

Mr. Thompson stated that he had a conflict of interest, recused himself and stepped down. Ms. O'Neill chaired the meeting. Alisandra B. Carnevale, Esq., applicant, and Nicholas Carnevale, Licensed Architect and Planner in New Jersey introduced themselves. Ms. Carnevale explained that she was asking for an interpretation of a resolution that had limited the use of the first floor of 134 S. Main Street to a real estate office for Peyton Realty which is no longer in existence. Ms. Carnevale is requesting an interpretation to allow her to use the first floor for her law office. Currently she is located next door to Borough Hall at 32 N. Main Street and stated that she has outgrown the space and is looking to relocate her office to allow her to serve the Pennington community. Ms. Carnevale stated that she submitted a memorandum dated May 11, 2013 to the Board and a memorandum has been prepared by the Planning Board Attorney dated June 5, 2013 that concurs with her memorandum. It suggested that Ms. Carnevale inform the Board of the intensity that her office would have on the property to see if it is similar to a realty office.

Mr. Schmierer stated that the question is what was intended by the Board when Peyton Associates was approved as a real estate office. Mr. Schmierer noted that a resolution is also on tonight's agenda for an application that had requested to use the property as a two-family home in a single family zone. Mr. Schmierer stated that Ms. Carnevale was correct in analyzing how approvals are to run with the land and should not be attached to a given user, especially a user no longer in business. The question to the Board is whether to delete the term "Peyton Associates" and look at a reasonable business use in the first floor space which had been used before for business purposes. If the Board feels that the intensity of Ms. Carnevale's use is similar to what the previous Board envisioned as an appropriate use they could agree with the interpretation. Ms. Coppola stated that from a Land Use perspective they normally look at the use category. They can be very general or very specific and the Borough's tends to be more specific. There are three different definitions dealing with office uses: professional offices, business offices, executive and executive or general business office. In the Borough's Ordinance the definition of professional offices includes both real estate and attorney and are grouped in one land use category. Ms. Coppola stated that the real estate office and attorney's office would be considered under the same category.

Ms. O'Neill asked Ms. Carnevale to address the intensity of the use of her office. Ms. Carnevale testified that the hours of operation would be 8:30 a.m. – 6:00 p.m. and clients would be by appointment only. She has an average of four appointments a day. There would be three employees, including herself, at a maximum at any time. It would be a low impact on parking since there is ample parking available. There will be no changes made to the exterior of the building. They would make repairs to the roof and other general maintenance. She would be purchasing the property and it would be a single owner maintaining the building which would also give continuity to the area. Mr. Levy asked about signage and Ms. Carnevale responded that there is currently a sign bracket and she would maintain the same which held a four sq. foot sign. Mr. Ogren asked if the conditions of the previous resolution carry over if there was a different user. Mr. Schmierer stated that the

same square footage would continue, but the reference to Peyton Realty would be removed and there would be a supplemental resolution. Mr. Ogren also asked if the applicant would be limited to three employees since the previous resolution limited it to more employees. Ms. Coppola responded that the changes could be incorporated in the new resolution. She also stated that if the sign still exists the lettering could be changed and it could be used. Ms. O'Neill asked about the parking and Ms. Carnevale stated that there is parking in the street and there is ample parking in the rear of the building. She also stated that there is a garage that is not being used and a car could be parked there. Mr. Carnevale stated that there is an easement on the driveway that goes back to 1912. In further discussion regarding the previous resolution, Ms. Coppola pointed out that back when that application was approved there existed the right to have two-family residences, but the provision was removed when the zoning was changed. The Board back then probably assumed that once the real estate office left the space could be changed back to an apartment. Ms. O'Neill stated that she was on the Board back then and noted that the space had been used for businesses for many years previously to the real estate office. There was further discussion regarding the intent of the previous Board's approval. Mr. Evanini asked what makes this particular location special in terms of the R-80 District and why would the Board want a use variance there as opposed to any other location in the R-80 Zone. Mr. Schmierer stated that the Board was not being asked to approve a use variance application, but just requesting agreement that the use of an attorney's office lined up with the use that was previously permitted which are both included in the professional office definition. The Board should also consider that it is not appropriate to tie it to an entity that is no longer in business as it makes the permitted use unusable. Ms. Coppola stated that the Board should also consider that a use variance had been granted and it should have been granted for the use and not for a specific person. Ms. Heinzl commented that the interpretation should be of the use and not an interpretation of what the Board was thinking when they approved it. Mr. Ogren stated that there are properties with use variances that change constantly.

Ms. O'Neill asked if there was anyone in the public who had comments or questions. Ms. Gail Stratton, 138 S. Main Street, stated that they are the ones who use the driveway and she disagrees that there is ample parking available in the back. She stated that it would be impossible to get a car in the garage as it is falling down. She feels that the office will have a negative impact on the neighborhood. She stated that there may have been one person in the real estate office to answer the phone, but all the other employees were always coming and going and not in the building all the time. Parking on the street is already an issue and the office will have a negative impact. Ms. Stratton stated that she was here the other month and thought the matter regarding the first floor had been resolved. She stated that she would like to see the building go back to residential since it is in a residential zone. She stated that when Peyton Realty received approval they were under the impression that when they moved out it would go back to residential. Mr. Carnevale stated that it is not Ms. Stratton's driveway, but she has a right-of-way to pass through. He stated that the garage will be repaired and two cars will be able to park there and there will be adequate parking in the rear of the building. Mr. Carnevale stated that you cannot stop people from having the right to occupy a building that is legal in every respect. Mr. Brent Stratton, 138 S. Main Street, next to 134 S. Main Street stated that it was his understanding that the easement cannot be revoked. Mr. Stratton stated that there is just enough room for two cars to park in the rear of the property and the tenant on the second floor parks her car there. He also stated that the turn around room is very tight. Mr. Stratton stated that he felt a determination was made that neither of the uses were allowed and that there would be no choice, but for the house to go back to being a single family house which would be in conformance with the zoning that is in place. He pointed out other examples where the houses have gone back to

being residential homes in the area. Mr. Jeffrey Ullman stated that he was an attorney and was there on behalf of his son and daughter-in-law who live at 132 S. Main Street which is the property adjacent to 134. Mr. Ullman stated that the point was that this is a nonconforming use in a residential zone. The Supreme Court of New Jersey has made it clear that the objective of zoning is to reduce nonconforming uses to conformity as reasonably and speedily as it can be done justly. He stated that this application is to not allow a nonconforming use to wither away and die naturally, but to perpetuate it indefinitely and forever which is the opposite of what the Board's charge is. Mr. Ullman felt that the previous resolution clearly states that if Peyton Associates initiates any change in use of the property from real estate office use to any other type of commercial or business use the use variance for this space shall terminate. Mr. Ullman pointed out that if the applicant made a use variance application they would have to satisfy certain criteria and prove that the use has not already been abandoned. Mr. Ullman stated that the area is zoned single family residential and that is what this property should ultimately be.

There was further discussion regarding the use. Mr. Schmierer stated that the Board had to decide if this was a reasonable interpretation to allow a different type of professional office or should it be limited to a real estate office, even if the intensity is the same or less. Ms. O'Neill asked for comments from the Board. Mr. Levy stated that the resolution states real estate office and he feels that it was the intention of the Board and feels that the applicant should come back with a use variance. Ms. Stern stated that she was very conflicted, but feels that she would defer to the advice of the professionals. Ms. Heinzl stated that she would agree with Mr. Levy, but there was difficulty since both the real estate office and attorney's office fell under the same definition of professional office. She felt that with the advice from the Board's Attorney and Planner she would be in favor of the interpretation. Mr. Ogren agreed with Ms. Heinzl, but he does not feel that the sign should be included and that a variance is needed for the sign. Mr. Evanini stated that he was also conflicted. He felt that the Board's job was to interpret the intentions of the previous Board and not whether it was legal or not. Mr. Evanini felt that the intentions of the previous Board were to give approval to a specific business. Mr. Meytrott stated that he was guided by the testimony from the Planning Board Attorney and Planner and would agree with them regarding the interpretation. Ms. O'Neill stated that it was very hard to look back to what the Board intended in 1994 and she would prefer to have the applicant apply for a use variance.

Mr. Meytrott made a motion, seconded by Mr. Levy to accept the applicant's request for an interpretation subject to the representations of the intensity of use put forth on the record. Voting yes: Heinzl, Meytrott, Ogren, Stern; Voting no: Evanini, Levy, O'Neill. Absent: Blackwell, Reilly, Gnatt; Not voting: Thompson. The hearing ended a 10:30 p.m.

#### **MEMORIALIZATION OF RESOLUTION**

**Kinsale Propeties, LLC, Matthew Henderson, Managing Member, 134 South Main Street, Block 505, Lot 19 (old Block 13, Lot 24), R-80 Zone.**

Ms. Stern made a motion, seconded by Mr. Evanini to adopt the resolution. Voting yes: Evanini, Levy, Meytrott, Stern. Absent: Blackwell, Reilly, Gnatt. Not voting: Heinzl, Ogren, O'Neill, Thompson.

**WORK SESSION, CORRESPONDENCE**

Mr. Thompson suggested that the Board review the Route 31 Redevelopment Study at the next Planning Board meeting and discuss how to proceed. Two overriding issues will be the affordable housing and whether the report should be made part of the Master Plan.

**MINUTES** – February 13, 2013 – Ms. Heinzl made a motion, seconded by Ms. O’Neill, to approve the February minutes with a correction and the Board approved by voice vote.  
March 13, 2013 – Mr. Ogren made a motion, seconded by Mr. Meytrott to approve the March minutes and the Board approved by voice vote.

There being no further business, the meeting was adjourned at 10:40 p.m.

Respectfully submitted,

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Mary W. Mistretta  
Planning Board Secretary