

**PENNINGTON BOROUGH
PLANNING BOARD MEETING MINUTES
MAY 13, 2015**

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

Also Present: Michael Bolan, 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 – Mr. Reilly asked if there was anyone in the public who had comments or questions regarding items not on the agenda, there being none the open public address portion of the meeting was closed.

APPLICATION

PAUL FRANK, Block 904, Lot 8, 122 West Welling Avenue, R-80 Zone. Application No. P15-003. The application is for bulk variances and a use variance for floor area ratio to construct a two-story addition to the existing house and a two-car garage. Mr. Frank asked if the Board would carry his application to the June 10th meeting to give him time to obtain additional information that the Borough Engineer has requested. Mr. Schmierer had indicated that the proof of publication and notice were in order and the Board could take jurisdiction. Ms. O'Neill made a motion, seconded by Mr. Meytrott to carry the application to the June 10th meeting and the Board unanimously agreed by voice vote. The applicant does not have to do any further noticing.

INTERPRETATION - JAMES M. MORRISON, CURLIS CENTER, LLC, Block 703, Lot 30, 250 S. Main Street, O-R Zone. Requesting interpretation of use. Application No. P15-004

Mr. James M. Morrison was sworn in. Mr. Reilly announced that this was a request for an interpretation concerning the use of a new tenant in the building which is in the Office Residential Zone. Mr. Morrison stated that they are seeking the Board's interpretation of an existing use variance for the middle space of the building that has been retail since the building was constructed. He explained that historically past Boards have always been favorable for retail use at 250 S. Main Street, since the building began as the Howe Nursery retail store. Mr. Morrison stated that the building was being used as the Mill Flower Shop and continued as that when they purchased the property in 1984. Mr. Morrison stated that they felt the space was too big and divided it into three spaces and the middle space continued as the flower shop and they rented out the space on each end of the building. In 2003 a use variance was granted to use the end space as a spa and salon while the other space was an office use. Mr. Morrison stated that Ashton Whyte was the latest tenant in the middle space and they would like to continue retail for that space under the previous use variance. Mr. Ogren stated that there are big differences in retail uses and he did not feel that the use variance covered all types of retail uses. He felt that the previous proposed use as a hair salon would be more comparable to the spa, but felt that the coffee shop was a totally different use which would generate traffic and safety concerns in the morning with the Toll Gate School across the street. Mr. Morrison stated that there would not be any cooking on the premises and there are 34 parking spaces available. Mr. Morrison felt that the coffee shop should still fall under the retail use since they are not doing anything of a restaurant nature. Any food brought in would be prepared off premises. Mr. Ogren felt that it should go through the variance process to give the public an opportunity to comment. Ms. O'Neill questioned if coffee would be consumed on the premises and if other permits would be needed. Mr. Morrison stated that it would be consumed on the premises and they would have to go through the permit process including the Health Department. Mr. Morrison referred to the Borough's Master Plan and stated that the use would

promote business around town. Mr. Evanini asked how specific the original use variance was worded and Mr. Morrison referred to a letter written by Ms. Szalontay, former Borough Clerk, dated July 27, 1992, regarding the use variance for the Mill Flower Shop space that was taken over by Ashton-Whyte. Mrs. Becky Morrison was sworn in and explained that when the Mill Flower and Gift Shop was sold there were two other tenants in the building, an interior decorator and a dentist office. Mr. Reilly stated that historically the Board has considered various uses for the property, but there was an application in the 1980's for a video rental store which was a more intensive use and was denied by the Board. He felt that there has not been a carte blanche grant of rights to operate any retail establishment and it seems that the Board considered the intensity of the video store and denied the use.

Mr. Reilly reported that at the time the Application Review Committee considered the interpretation it was for a hair salon. The Committee discussed that there were three types of permitted uses for that property: office, residential, or a Ashton-Whyte type use which was a grandfathered use and any other kind of application, retail or otherwise, should require an application for a use variance. Mr. Flemming stated that there is no definition in the code for retail, but there is for a restaurant and the Board would have to decide if a "coffee shop" would be considered a restaurant use. Mr. Reilly stated that the issue was also the issue of the intensity of the use and expansion of a nonconforming use. Ms. Heinzl felt that even if retail was defined very broadly the analysis would have to be very particular to the type of retail use. The Board also has to consider if a coffee shop is a lateral move in comparison to the existing use. Mr. Schmierer stated that there has been a history of use variance approvals for the property which does not permit retail. The history of the prior Boards show that they did not treat what was going on in the center as globally retail, but wanted to control the intensity and type of use and uses which were not either residential or office needed to come before the Board for approvals. Mr. Schmierer also pointed out that previously there was discussion regarding the rezoning of this property, but Ms. Coppola (former Borough Planner) had said that it was not possible since it would be considered spot zoning.

Mr. Morrison stated that they would not be expanding the building, but the Board felt that the use would be more intense regarding traffic. Mr. Bolan pointed out that the 2003 approval was very specific regarding number of employees and customers and this is the type of information that is needed to control the expansion of the intensity. Mr. Reilly asked if anyone on the Board had further questions or comments. Mr. Schmierer suggested that a resolution should be done for the record that the Board's finding that any type of retail activity in the O-R Zone needs to be reviewed on a case by case basis and there is no provision for global retail and the applicant may come back with a use variance application. Mr. Ogren made a motion that the Board considered the request for an interpretation regarding a retail use and agreed that it not be allowed and required a use variance application, motion seconded by Ms. O'Neill. The Board unanimously agreed by voice vote. (Present: Evanini, Gnat, Heinzl, Levy, Meytrott, O'Neill, Reilly, Ogren, Stern. Absent: Blackwell, Thompson). The discussion ended at 8:10 p.m.

APPEAL - DAVID & DIANA BUTCAVAGE, Block 1002, Lot 19, 10 East Welling Avenue, R-80 Zone, Appeal of Zoning Officer's Decision.

This is an appeal to the Zoning Officer's denial of a zoning permit to replace the existing garage. The existing garage is located on the common boundary line with the property immediately to the west. The zoning code requires that detached accessory structures should conform to setbacks of not less than five feet from the side or rear yard. Mr. Reilly stated that Mr. & Mrs. Butcavage would like to demolish their two-car garage and replace it with a one car garage with a work area in the same location. David & Diana Butcavage were sworn in. Mrs. Butcavage stated that they have a shared driveway with 8 East Welling Avenue and the garage has existed since the house was built in 1930. It is now structurally unsafe and slipping off the foundation and they would like to replace it in the same location. Mrs. Butcavage indicated that the door and window configuration would be different, but it would be on the exact same footprint. The neighboring house also has a garage next

to that location and there is currently 6-8 ft. between the two garages. Mr. Flemming is requesting that they move the proposed garage 5 ft. away from the property line and this would require them to readjust the driveway and remove some mature trees as well as an established hedgerow that are on the property. Mr. Flemming stated that all the hardships mentioned were correct and could be used when applying for a bulk variance, but the question tonight was whether you can tear down a building and have the automatic right to rebuild in the same location if it is a nonconforming structure or nonconforming property. Mr. Flemming felt that it should be the goal of the Board and the Zoning Officer to bring properties into compliance as much as possible. Historically when buildings are being torn down he always request that they be placed in a conforming location and that is why he would not approve a zoning permit for this case. Mr. Flemming stated the code states that any nonconforming structure existing at the time of the passage of the ordinance may be restored or repaired in the event of partial destruction. He stated that this building will be totally destroyed and will be a blank slate and the garage could be brought back to conformity and if this is not possible a bulk variance application should be submitted to the Board. Mr. Reilly pointed out that Chapter 215-57 of the code book states that “a nonconforming building may be reconstructed, but not enlarged or extended unless the building is changed to a conforming building ...” Mr. Flemming stated that our ordinances are based on the Municipal Land Use Law and the ordinance clearly states partial destruction is allowed.

Mr. Schmierer stated that if the applicants decided to repair or fix the existing building it would be permitted. It could be fixed and left as a nonconforming structure in the exact location. In this case they want to replace the building on the same footprint and the language of the Borough’s code does not capture a new building, but refers to an old building staying in the same spot and being repaired. Mr. Flemming stated that the applicant would also be able to build a better designed garage with a bulk variance. If they were to rebuild it in the same footprint everything would have to be exactly the same. Mr. Meytrott asked if there were any changes on the proposed garage. Mr. Greg Fontaine, A & E, was sworn in. Mr. Fontaine stated that he disagreed with the Zoning Officer. He stated that the garages were built to accommodate the shared driveway which leads right to the garages and he does not think it made any sense to go through the ordeal of a variance and additional costs to simply rebuild a garage. He stated that the new garage would be three feet higher to allow for more storage. Mr. Reilly stated that the change is an expansion of a nonconforming structure and would need a bulk variance under Municipal Land Use Ordinances. Ms. Stern asked if any of the existing foundation would remain or any part of the garage and Mrs. Butcavage stated that they would like it air tight to help keep critters out so there would not be any existing garage left. Mr. Flemming stated that the construction official would most likely want a new foundation under the new building to meet building codes.

Mr. Reilly asked if there was anyone in the audience who had comments regarding the appeal, there being none, the public comment period was closed. Mr. Evanini felt that based on previous applications, one being a fence, that the applicant needs bulk variance approval. Mr. Meytrott stated that if the garage was rebuilt with the exact dimensions of what exists he would be inclined to uphold the appeal. The Board members were sympathetic with the applicants, but felt that their hands were tied with the ordinance that is based on Land Use Law and the majority felt that they would have to file an application for a bulk variance. Ms. O’Neill made a motion, seconded by Ms. Stern to deny the appeal and uphold the Zoning Officer’s decision. The Board agreed by voice vote (Evanini, Gnatt, Heinzl, Levy, O’Neill, Reilly, Ogren, Stern with Mr. Meytrott voting no). Absent: Blackwell, Thompson). The discussion ended at 8:35 p.m.

RESOLUTIONS

CARL FUCCELLO, Block 908, Lot 1, Vannoy Avenue, R-80 Zone, received minor subdivision approval for property at Block 908, Lot 1, Vannoy Avenue, R-80 Zone.

Mr. Meytrott made a motion, seconded by Ms. Heinzl to adopt the resolution.

Voting yes: Heinzl, Meytrott, Ogren, Reilly. Absent: Blackwell, Thompson. Not voting: Evanini, Gnatt, Levy, O'Neill, Stern.

ANTHONY T. LOMMA, Block 403, Lot 12, 208 King George Road, R-100 Zone, Bulk Variances, Application No. P15-002.

Mr. Lomma asked if he could address the Board about a change he would like to make to the front of his house. It does not require any approvals, but he felt he should refer to the Board. Mr. Lomma was sworn in. He would like to construct a front porch which he feels would give a better visual appearance by coming out further and will help balance the garage. Mr. Lomma presented a revised plan dated May 13, 2015, Martin A. DeSapio, AIA. The Board agreed with the applicant that the porch would be a visual improvement to the house and since the garage would not be protruding as much it would be more conforming. Mr. Schmierer stated that he would add a paragraph to the resolution referring to this approval. Ms. Heinzl made a motion, seconded by Mr. Ogren to adopt the resolution and approve the change to the front façade of the house. Voting yes: Heinzl, Meytrott, Ogren, Reilly. Absent: Blackwell, Thompson. Not voting: Evanini, Gnatt, Levy, O'Neill, Stern.

ZONING OFFICER'S REPORT

Mr. Flemming suggested that a section should be added to the Borough's ordinance that would state "in the event of partial destruction less than (decide on a number) can be rebuilt." This would help eliminate future problems with nonconforming structures. Mr. Bolan stated that the ordinance is inconsistent with the Municipal Land Use Law. The ordinance states "reconstruction" and the Land Use states "restored or repaired" and that wording would also help clarify it for administrative purposes.

Mr. Flemming reported that there is a new tenant for the former ZA Restaurant space in Old Mill Square on W. Delaware Avenue. It will be a little specialty grocery store that also has a restaurant component. Mr. Flemming stated that it is a conforming use and he would approve it.

The frame shop on S. Main Street has a prospective tenant for the property, but they would like an office use which is not a conforming use in the Town Center Zone and they would have to come to the Board for a use variance. . Mr. Flemming stated that this building has gone through a variety of uses throughout the years. Mr. Ogren stated that the four properties that are carved out in this area are rather isolated from the Town Center and do not relate to the uses on the other side of the street and the Board should consider changing it to Town Center buffer zone.

MINUTES – Mr. Ogren made a motion, seconded by Ms. Heinzl to approve the April 8, 2015 minutes and the minutes were approved by voice vote.

There being no further business, the meeting was adjourned at 9:10 p.m.

Respectfully submitted,

Mary W. Mistretta
Planning Board Secretary