

**PENNINGTON BOROUGH PLANNING BOARD
PENNINGTON, NEW JERSEY
MINUTES –REGULAR MEETING
MAY 11, 2016**

Mr. Reilly 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, Deborah Gnat, Eileen Heinzl, William B. Meytrott, Thomas Ogren, James Reilly, Vice Chair. Absent, Josh Levy, Katherine L. O'Neill, Douglas Schotland (Alternate #1), Winn Thompson, Chairman.

Also Present: Cory Kestner, Acting Board Attorney, Mason, Griffin & Pierson; Michael Bolan, Borough Planner; Carmela Roberts, Borough Engineer; John Flemming, Zoning Officer; Mary W. Mistretta, Secretary.

In the absence of Winn Thompson, Chairman, Mr. Reilly, Vice Chairman, chaired the meeting.

OPEN TIME FOR PUBLIC ADDRESS - Mr. Reilly asked if there were any issues that the public wished to address that were not on the agenda. There being none the open time for public address was closed.

AN ORDINANCE CONCERNING LAND USE AND LAND USE APPLICATIONS AND AMENDING THE CODE OF THE BOROUGH OF PENNINGTON

Ms. Heinzl stated that there were a lot of questions regarding the “restoration” section of the proposed Ordinance at the Council meeting and it was decided to remove that section until there was further clarification regarding it. Mr. Reilly asked if there was any one in the public who had questions or comments regarding the Ordinance. Mr. James Fedchin, 421 Reading Street, was sworn in and stated that he did not agree with the proposed changes regarding exceptions to site plan approvals for development that is being proposed for lots that are wholly or partly in the Borough. Mr. Fedchin stated that there is a large piece of land in Hopewell Township that borders his lot and he has concerns about what could be proposed for that land. He suggested that the Borough should have extraterritorial jurisdiction. This would require a treaty with Hopewell Township and would also include properties that were adjacent to lots like his. Mr. Reilly pointed out that the governing body would be the ones to approve the ordinance and he should appear before them. Mr. Kestner also pointed out that that an extraterritorial treaty would not be feasible under New Jersey law.

Mr. Blackwell made a motion to confirm that the Ordinance was in compliance with the Master Plan and they recommended adoption by Council. Ms. Gnat seconded the motion. Voting yes: Blackwell, Gnat, Heinzl, Meytrott, Ogren, Reilly. Absent: Levy, O'Neill, Schotland, Thompson.

APPLICATIONS

J & M Schragger, LLC, 212 S. Main Street, Block 703, Lot 14, R-80 Zone, Historic District, Application No. P16-001. James Schragger, attorney for the applicants explained that the Board had taken jurisdiction of the application at the April 13th meeting and due to time restraints the application was carried to May 11th. Mr. Schragger requested that the application be carried to the June 8th meeting due to the lack of eligible members to vote on the application which requires a D Variance. Ms. Heinzl made a motion, seconded by

Mr. Blackwell to carry the application to the June 8th meeting and the Board unanimously agreed. Mr. Reilly noted that no further noticing would be necessary.

J & M Schragger, LLC, 417 S. Main Street, Block 1002, Lot 12, R-100 Zone. Present: James Schragger, Attorney for the applicants, Z. Thomas Grybowski, President, Grybowski Group, PC., John and Michelle Schragger, applicants.

Mr. Kestner announced that Proof of Publication and Notice were in order and the Board could take jurisdiction. Mr. Reilly stated that the applicant was requesting a minor subdivision and a variance for the lack of frontage on a public street.

Z. Thomas Grybowski, was sworn in and gave his qualifications which the Board accepted. Mr. Grybowski stated that he was a licensed land surveyor and planner in New Jersey. Mr. Grybowski described the location of the lot which is on S. Main and approximately 378 ft. south of East Welling Avenue. There is an existing dwelling with a wood deck on the property which fronts close to the road. Also on the property are two wooden sheds on the property, two chain link fences and a shed in the rear corner of the property that belongs to the Pennington African Cemetery Association. There is also a gravel parking area that serves the dwelling. Access to the parking area is from S. Main Street by the adjacent gravel driveway which also provides access to the Pennington African Cemetery and is owned by them. Mr. Grybowski stated that the area is an older well maintained residential neighborhood consisting of two-story residential dwellings with off-street parking.

Mr. Grybowski stated that the applicants intend to build their own house in the proposed rear lot. The house on proposed Lot 12.01, the front lot, has the existing house and is only 5.6 ft. off the right-of-way line where 50 ft. is required for a front yard setback. All of the other zoning regulations for this lot meet or exceed the requirements. The cemetery driveway has been used by the occupants for an extensive period, but there is no existing easement for the driveway at this time. If the subdivision is approved there will be an easement agreement for both lots with the cemetery.

Mr. Grybowski stated that the purposes of the Land Use Law would be advanced by a deviation from the Ordinance requirement since the benefits of allowing this property to be developed as proposed outweigh the detriments. The lot will be similar in size to Ordinance standards creating a viable and more uniform environment. It also promotes appropriate population densities in the neighborhood being consistent with existing densities. It will also promote existing use of the land making the lot more compatible with the overall size of the lots in the neighborhood. There would be no detriment to the public good and there would be no adverse impact on the neighborhood. Not having street frontage will not alter the character of the neighborhood. The variance will not impair the intent and purpose of the zone plan and zoning ordinance since allowing the property to be developed as proposed will be a far more desirable and efficient use of the land and will add economic vitality to the property.

Mr. Grybowski was requested to describe the existing driveway, entered into evidence were Exhibits A-1 and A-2 Pictures of the driveway. The applicant will put in a new concrete apron and sidewalk at the entrance and will have pavers for about 50 ft. The driveway will be constructed with the Fire Official's approval meeting specifications in his review of May 10, 2016 to support the fire trucks. Mr. Blackwell asked who would remove the snow and maintain the driveway. Mr. Schragger responded that it would be the responsibility of the applicant to maintain the whole driveway.

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Mr. Flemming, Zoning Officer, was sworn in. Mr. Flemming asked if the applicant was removing any trees and Mr. Grybowski stated that he is not aware of any trees that had to be taken down. Mr. Schragger stated that the applicant had no intention of tearing down the existing house and that one of the positive things to granting the variance is that it will maintain the existing historical house and will allow them to build a new house on a conforming lot. Mr. Bolan asked if they were going to deed restrict the house. Mr. Schragger agreed that the applicant would grant a historic conservation easement on the house to the Borough. It would then be included in the Borough's Historic District and would include a deed restriction preventing the house from being demolished.

Mr. Grybowski stated that they had requested waivers for two checklist items. They have agreed to do them at the time of building permits and Ms. Roberts has agreed to this. They will adhere to the Borough Engineer's suggestions in her memorandum of May 6, 2016 and the Planner's memorandum of May 6, 2016. Mr. Reilly asked if they should be put in the resolution of approval and Ms. Roberts agreed. Ms. Roberts also suggested that the items submitted must have her approval at the time permits have been submitted. The applicant had no objection to this.

Mr. Bolan stated that it was important to listen to the public, since the most significant part of the application is the negative criteria and substantial detriment to the public good. Mr. Bolan stated that there were at least three important trees that would be within the building envelope that should be identified. Mr. Ogren suggested that it would be sufficient if the applicant acknowledged that the trees were there and agreed to plant three trees elsewhere. Mrs. Michele Schragger, applicant, was sworn in and stated that they would agree to this.

Mr. Schragger stated that they have been working on the easement with representatives from the cemetery, but it is unclear at this time as to who should sign the easement. The Association also did not want to sign the easement until the applicant received approval of the application. He also pointed out that the cemetery has the right to park two cars at the rear of the proposed lot and there is also a shed that they use. Mr. John Schragger, applicant, 417 S. Main Street was sworn in and stated that he had been requested to show a dwelling footprint on the proposed lot and indicated that if a variance was needed he would return to the Board. Mr. Ogren felt that the public good would be enhanced if the applicant would include public access to the cemetery in the easement and it was pointed out that it would be the cemetery's easement. Ms. Susan A. Witcher, 114 Crawley Avenue, representative of the African Cemetery, was sworn in. Ms. Witcher stated that they have an attorney who has been working on the easement and they are prepared to move forward, but have to decide who should sign the agreement. Mr. Bolan pointed out that the cemetery owns the driveway and they would have to agree to the suggestions that were made by the Fire Officials.

Entered into evidence was Exhibit A-3 Board showing how the proposed lot will conform with the other lots in the neighborhood. Mr. Grybowski stated that they analyzed 45 lots surrounding Lot 12 and across the street and 80% of the lots are 23,000 sq. ft. which is less than the lots proposed which are 29,284 and 24,668 sq. ft. Mr. Reilly asked if the Board had questions for the applicant and if they agreed with the recommendation of the Application Review Committee that waivers be granted for 8. A & B. Ms. Gnatt made a motion, seconded by Ms. Heinzl to approve the waivers and the Board agreed by voice vote.

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

Dianne Butcavage, E. Welling Avenue, stated that she has a large lot that she may be interested in subdividing and this opens up opportunities. Her property borders the access

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road and she has concerns about increased drainage and losing their privacy in the back yard. Ms. Butcavage stated that they already have drainage that runs down the length of their driveway and would not like to see it increased. Ms. Roberts stated that she would make sure that whatever drainage is generated does not go on to anyone else's property. It would not be any worse and hopefully would be better. Ms. Butcavage stated that there is a pool in her back yard and she had concerns about the privacy. Entered into evidence was Exhibit A-4 Pictures taken from the middle of the proposed lot of surrounding properties. It was pointed out that in the pictures taken the pool could not be seen.

Stewart Warren, 12 East Welling Avenue, was sworn in and stated that their property was one of the closest to the proposed subdivision and pointed out that the driveway being discussed was only wide enough for one car. His concern is the overall concept of taking a lot and allowing it to be cut in half and using an easement to get to the property. He stated that there are a number of lots in Pennington in which this could be proposed and he does not think it is a good idea. It will increase the density of the town and the characteristic of the town would not be improved.

Allison Neary, 8 East Welling Avenue, was sworn in and stated that she had a little lot on the corner and she stated that she also had concerns about increased drainage runoff. Mr. Reilly responded that the Borough Engineer would be reviewing the plans to ensure that there is no increased runoff.

Timothy Schwartz, 413 S. Main Street, was sworn in and stated that he lived on the property adjacent to Lot 12 and came to get a better understanding of the application and also had concerns about privacy and screening that would be provided.

Ms. Butcavage had further questions about the driveway and the proposed house. The applicant described the driveway and stated that the house on the proposed lot would be facing the driveway.

Laura Warren, 12 East Welling Avenue, was sworn in and agreed with the previous comments that have been made. She lives next to the Butcavage's and they get a lot of drainage run off and they have concerns about additional drainage. She also pointed out that an adjoining property on Baldwin Court has a flag lot that could be subdivided and there were others like it in the Borough and she felt that if this subdivision was approved the Board would be opening a can of worms. Mr. Reilly pointed out that if there were other applications they would have to be treated on an individual basis.

There being no other comments, the public portion of the meeting was closed.

Mr. Schragger stated that they have agreed to give an easement to the town to preserve the existing historic house at 417 S. Main and the applicant is going to fix a driveway that is in disrepair which will improve the appearance for the town and the easement for the driveway to the cemetery will only be for the use of the existing house and the proposed house. He feels that they have met all the criteria to grant the variance and the subdivision.

The Board agreed that they were glad to hear that the historic Toll House would be preserved and did not feel that approving the subdivision would be setting a precedent. The driveway which provides access to the cemetery will be improved and will have a nicer appearance. This is an unusual circumstance and although drainage is a problem on the adjoining properties the improvements will not increase drainage. The Board sees positive aspects to the application and there are no detriments to the Master Plan or Zone Ordinance.

Mr. Kestner reviewed the conditions the Board discussed. The applicant will meet the recommendations in the Fire Official, Roberts Engineering and Michael Bolan review memorandums. The applicant shall grant a Historic Preservation Easement which would prohibit demolition of the existing structure, but would permit expansion and improvement that would meet the criteria of the Historic District regulations. Three trees that will be removed shall be replaced on the property or within the Borough with approval from the Planner or Engineer. The public access and driveway easement shall be reviewed and approved by the Board Attorney, Planner and Engineer before filing. Mr. Kestner stated that the easement would be from the cemetery, the owner of the property, and they would be granting two easements, a right of passage to the applicant and a right of public access to the Borough. Snow removal and maintenance from the street to the cemetery will be part of the easement agreement and should be referenced in the deed. Ms. Roberts stated that this application is a little different than what we normally do and a lot of her work will occur after the fact and she stated that there will be additional escrow for review and inspections. Ms. Heinzl asked if her analysis of the drainage would be done at the time permits are submitted for construction and Ms. Roberts agreed. The applicant stated that the driveway would not be improved until the plans for the house are submitted. Ms. Roberts stated that because the driveway is so long and has some areas that are flat, she requested that an as-built for the driveway be submitted before the CO. Ms. Roberts asked if the applicant would be willing to put drainage pipes in the driveway if it was necessary for the drainage and Mr. Reilly stated that they had to get the drainage nailed down to be sure that it would not be increased. The applicant agreed to work with Ms. Roberts to see that the drainage from the driveway does not increase.

Mr. Ogren made a motion, seconded by Mr. Blackwell to approve the minor subdivision with a bulk variance for lack of frontage on a public street and with the conditions discussed. Voting yes: Blackwell, Gnatt, Heinzl, Meytrott, Ogren, Reilly; Absent: Levy, O'Neill, Thompson, Schotland. The hearing ended at 9:25 p.m.

ZONING OFFICER'S REPORT

Mr. Flemming stated that there is a property on 2 West Franklin Avenue, corner of N. Main and Franklin Avenue, and they would like to put on an addition. The architect approached him about a section in the ordinance that allows deviation in that zone regarding front yard setbacks, but it pertains to vacant lots. Mr. Flemming asked if this was rigid with just empty lots or could it be used with existing homes. In this case the addition would not be any closer to the property line or as close as the current house. The side of the house is on N. Main and considered a front yard. The home owner could build the addition using the required front yard setback, but it would be more balanced if this deviation could be used. Mr. Flemming suggested that "vacant" be removed since the Borough does not have any vacant lots. The Board discussed this and agreed that this section of the ordinance should be modified to include existing houses. Ms. Heinzl will remove "vacant" from 215-50 – Permitted yard area modifications. A. Front yards for discussion regarding an ordinance amendment at the next meeting. It will read: A. Front yards. In any residential zone where 50% or more of the lots within a distance of 500 feet on the same side of the street are developed, the front yard requirements for any [vacant] lot within such area shall be the average of the existing front yards on the developed lots."

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MINUTES – Mr. Blackwell made a motion, seconded by Ms. Gnatt, to approve the March 9, 2016 minutes and the minutes were approved by voice vote. Ms. Gnatt made a motion, seconded by Ms. Heinzl, to approve the April 13, 2016 minutes with corrections and the minutes were approved.

The meeting was adjourned at 9:45 p.m.

Respectfully submitted,

Mary W. Mistretta
Planning Board Secretary