

**PENNINGTON BOROUGH PLANNING BOARD  
REORGANIZATION AND REGULAR MEETING  
MINUTES - FEBRUARY 8, 2017**

Mr. 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: Nicholas Angarone, Deborah Gnat, Eileen Heinzl, William B. Meytrott, Katherine L. O'Neill, James Reilly, Winn Thompson.

Absent: Mark Blackwell, Douglas Schotland. Also Present: Edwin W. Schmierer, Board Attorney, Mason, Griffin & Pierson; Michael Bolan, Planner; Mary W. Mistretta, Secretary.

**REORGANIZATION**

The following were sworn in as Planning Board Members for one year terms (1-01-2017 – 12-31-2017): Deborah Gnat, Council Representative; Eileen Heinzl, Mayor's Designee; William Meytrott, Borough Official.

The Board made the following professional appointments for the year 2017:

Edwin W. Schmierer, Mason, Griffin & Pierson, P.C. - Planning Board Attorney  
Michael P. Bolan, PP/AICP - Planning Consultant  
Brian R. Perry P.E., Van Note-Harvey Associates, PC - Engineer  
Carmela Roberts, Roberts Engineering Group, LLC - Special Professional Engineer

Mary Mistretta was appointed Planning Board Secretary.

The Hopewell Valley News was designated as the official daily newspaper for the Pennington Borough Planning Board. The Times of Trenton was designated as the official daily newspaper for the Planning Board when it was not possible to publish Legal Notice in the Hopewell Valley News and it is a timing issue.

The Board approved the following 2017 Planning Board meeting dates: February 8, March 8, April 12, May 10, June 14, July 12, August 9, September 13, October 11, November 8, December 20 and January 10, 2018.

The following were appointed to the Application Review Committee: Deborah Gnat, Eileen Heinzl, Katherine O'Neill, James Reilly and Nicholas Angarone as alternate.

Ms. Heinzl made a motion, seconded by Mr. Reilly to close the Reorganization meeting.

**REGULAR MEETING**

**OPEN TIME FOR PUBLIC ADDRESS** - Mr. Thompson 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.

**MEMORIALIZATION OF RESOLUTION**

**J & M Schragger, LLC**, 417 South Main Street, Block 1002, Lot 12, R-100 Zone. Application No. P16-002. Applicant received a six month extension of time to file subdivision deeds. Ms. Heinzl made a motion, seconded by Mr. Meytrott to adopt the resolution. Voting yes: Heinzl, Meytrott, O'Neill, Reilly. Not voting: Angarone, Gnat, Thompson. Absent: Blackwell, Gnat.

**ORDINANCE REFERRED FROM BOROUGH COUNCIL - AMENDING CHAPTER 215 OF THE CODE OF THE BOROUGH OF PENNINGTON CONCERNING ZONING, TO CLARIFY PROVISIONS AND TO ELIMINATE REGULATION OF ROOFTOP SLOPES**

Mr. Thompson stated that Council introduced this ordinance at its February 6<sup>th</sup> meeting and has referred it back to the Planning Board for a final review. The Board reviewed the ordinance and agreed that the suggested changes were in compliance with the Master Plan. Ms. O'Neill made a motion, seconded by Mr. Reilly and the Board voted by voice vote to refer it back to Council with their recommendation to adopt.

**HERITAGE AT PENNINGTON – Amended Resolution and Discussion Regarding Developer's Agreement**

Mr. Meytrott stated that he had a conflict of interest and recused himself from the discussion. Mr. Schmierer explained that a few things have changed since American Properties received their original approval and the changes should be made part of the record and memorialized. The first issue involves wording in the resolution that prevents the engineer from signing the plats. Mr. Schmierer explained that the Board realized the applicant would not be able to receive sewer capacity for the entire development, but they needed approval from the Board for all 80 units to apply for sewer approval from Stony Brook Sewerage Authority. Stony Brook has approved 44 units in Phase 1 instead of the 40 units that were originally shown in Phase 1. The remaining 36 units would be built in Phase 2 when they receive sewer approval. Mr. Schmierer suggested a clarification in the amended resolution with a condition of approval stating that the applicant shall receive sanitary sewer capacity for 44 units in Phase 1 and that the applicant cannot construct Phase 2 until they receive sanitary sewer approval for the remaining 36 units. This will enable the Engineer to sign the plats and they can then be filed with Mercer County. A statement will be placed on the plats to the effect that no construction/building permits shall be issued for construction in Phase 2 until this condition of approval for public sanitary sewer service for Phase 2 is satisfied and approved by the Borough Engineer. Mr. Thompson asked if there was a reason why the applicant did not apply for preliminary approval for Phase 2 and preliminary and final for Phase 1. Mr. Schmierer stated that in order to obtain the financing they needed for both phases they needed final approval for the whole project. They also needed final approval to apply for sewer capacity and to get approvals from NJ Department of Environmental Protection (NJDEP). There was discussion that it is an advantage for the Board to receive an application that is requesting both preliminary and final since they receive more information regarding the application.

Mr. Schmierer stated that it is the intention of the developer to have built all 16 affordable units when the development is completed, but an issue that had to be addressed was that more units are now being built in Phase 1 and there will be a fractional share of a unit that cannot be provided. One of COAH's rules states that if a developer owes a fractional share and it cannot be rounded up there is a formula that can be used. Mr. Schmierer reviewed the following statement that would be included in the amended resolution and Developer's Agreement upon the Board's agreement: "When the phasing plan consisted of 40 units in phase 1 and 40 units in Phase 2, the Board required 8 affordable units to be constructed in Phase 1 and 8 affordable units to be constructed in Phase 2 in accordance with all applicable COAH and UHAC Regulations. With Phase 1 now consisting of 44 units and Phase 2 consisting of 36 units, technically in each phase there would be a fractional affordable housing unit to be constructed in each phase (Phase 1: 8.8 affordable units; Phase 2: 7.2 affordable units.) The Applicant and Board remain committed to having 16 affordable housing units constructed on the Property. Once the Applicant seeks a Certificate of Occupancy for its 33<sup>rd</sup> market-rate unit in Phase 1, then the Applicant or its successor

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developer shall be required to make a payment for the fractional unit in Phase 1 to the Borough's affordable housing trust account in accordance with COAH regulations in the amount of \$121,781.60 which shall be retained by the Borough in an interest bearing escrow account to be returned to the Applicant if the 8 affordable units are built in Phase 2. If within five (5) years of the issuance of the 33<sup>rd</sup> market-rate unit in Phase 1, the Applicant or a successor developer was to complete the 36 units in Phase 2, 8 affordable units shall be constructed on the Property, or 7 units would be constructed and the fractional unit would require a payment by the Applicant or the Applicant's successor developer to the Pennington Borough Affordable Housing Trust Fund in the amount of \$30,445.40. The option to construct 8 units or construct 7 units and make a payment shall be at the sole discretion of the Board." Mr. Schmierer stated that if the Borough ended up with the money instead of the affordable unit they could buy an existing unit in the Borough together with money from the trust fund and make it an affordable unit and sell it, but he feels that it will not come to that point and it would be more beneficial to both the applicant and the Borough to have the 16 units built. Mr. Bolan stated that the applicant has already submitted a marketing plan for the affordable units and they plan on selling them and will hire someone to administer the sale of the units. If the affordable units are sold to someone that has been qualified the purchaser would not be able to rent them to someone else. Ms. Heinzl asked who would be responsible in 10 or 15 years if they do not follow their plan. Mr. Schmierer stated that the Borough's obligation is to just stay in touch with their administrative agency and they should receive copies of the leases or deeds. Mr. Reilly asked who would be paying the agency and Mr. Schmierer stated that initially the developer would pay to get it up and running and then it would probably be the responsibility of the homeowner's association.

Mr. Schmierer suggested that if the Board agreed to what was discussed he could revise the wording in the amended resolution and the Board could adopt it tonight so that it could have tonight's date. It would then be ready for Mr. Thompson's signature and they could move on with the finalization of the developer's agreement at Council. Ms. Heinzl suggested that on pg. 3, instead of "If at some future date" on pg. 3, the Applicant or a successor developer" be changed to "5 years" instead of "future date." Details regarding the COAH payment in lieu of a unit not being built will be in the developer's agreement. Ms. Heinzl made a motion and Mr. Reilly seconded the motion to adopt the amended resolution to be revised by Mr. Schmierer. Voting yes: Angarone, Gnatt, Heinzl, O'Neill, Reilly, Thompson; Absent: Blackwell, Schotland; Not Voting: Meytrott.

The Board next discussed the Developer's Agreement for American Properties. There was discussion about the money that will be contributed to the COAH trust fund in lieu of a fractional affordable for Phase 1, Mr. Schmierer stated that if the Borough ended up keeping the money it would be up to Borough Council on how it would be spent. Mr. Reilly suggested that the wording on the bottom of page 1 "up to 50% may be leased to low and moderate income veterans" be changed to the following wording "up to 50% may be reserved for low and moderate income veterans" as it sounds like you could not use more than 50%. Mr. Thompson stated that on page 3, D. Storm Water, the standards seem very specific and could never be modified. Mr. Schmierer agreed and stated that it could be changed to "or in compliance with the current Code regulations at the time of construction." Ms. Heinzl asked about the time line for the various documents that are required. Mr. Schmierer explained that once the Developer's Agreement is approved and signed the professionals will be reviewing documents that are submitted along with meeting various conditions and plans. The homeowners' association document should be received and approved before they rent or sell any units. Mr. Bolan stated that the Affirmative Marketing Plan has been reviewed and approved. Ms. Heinzl asked if the Borough's responsibility and the homeowner's regarding the water lines should be spelled out in the developer's agreement

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even though it is in the Borough Ordinance. Mr. Schmierer stated that he would be reluctant to go into great detail regarding items that are already included in the Ordinance.

Mr. Thompson stated that he was talking to a project manager from American Properties who said that they did not feel that they needed the water pump as they found out that the water pressure was higher than they originally thought. Mr. Schmierer stated that they should get administrative approval from the code official dealing with this. Mr. Thompson suggested that any administrative changes should be documented in a memorandum explaining why the change had been requested and sent to the Planning Board Secretary for the file. It was suggested that this should be added to the professional agreement. Ms. Roberts will be keeping track of any changes, required documents and conditions needed for the plans and easements to be signed and filed. Mr. Schmierer asked the Board members to send him any other changes or corrections they find to the Developer's Agreement.

Ms. Heinzl reported that there is a committee on Borough Council that has been looking into the landfill. They feel that now would be a good time to explore the best uses of the landfill and the surrounding lots. An environmental engineering firm has given Council a presentation and an estimate to do a preliminary assessment of the landfill. They would also apply for funding to cover the costs of doing a site investigation and ultimately site remediation. Borough Council agreed to have a funding provision for these activities and have introduced a bond ordinance to look into the redevelopment of the landfill. Ms. Heinzl asked what the proper procedure would be and Mr. Schmierer stated that someone would put the recommendation for a redevelopment plan together based on the study to the Planning Board. The Planning Board would either not adopt or adopt the recommendation and study and send it back to Council with their recommendation. It would then be up to Council to continue with the redevelopment and perhaps find interested developers who would put up funds for further planning.

Ms. Heinzl stated that Cugino's been qualified to bid on the liquor license and will have to turn in their bid by February 22<sup>nd</sup>. The minimum bid is \$174,000.

**MINUTES** – Ms. Heinzl made a motion, seconded by Ms. O'Neill to approve the December 14, 2016 minutes with corrections and the minutes were approved.

The meeting was adjourned at 9:40 p.m.

Respectfully submitted,

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Mary W. Mistretta  
Planning Board Secretary