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**PENNINGTON BOROUGH
REGULAR PLANNING BOARD MEETING MINUTES
APRIL 14, 2010**

Chairman Thompson 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: Jeanne Donlon, Eileen Heinzl, William B. Meytrott, Thomas Ogren, Mayor's Designee, Katherine O'Neill, James Reilly, William Reuter, Winn Thompson, Chairman

Absent: Mark Blackwell, Josh M. Levy (Alternate #1), Mayor Anthony J. Persichilli (Alternate #2 vacant)

Also Present: Cindy Coppola, Borough Planner; Kent Scully, Acting Borough Engineer, Michael W. Herbert, Acting Board Attorney for Huntsman application, Herbert, Van Ness, Cayci & Goodell; Edwin W. Schmierer, Board Attorney, Mason, Griffin & Pierson; John Flemming, Zoning Officer; Mary W. Mistretta, Planning Board Secretary.

OPEN TIME FOR PUBLIC ADDRESS – Mr. Thompson asked if there was anything that the public would like to address that was not on the agenda. Mr. Eric Holtermann stated that he would like to address a misunderstanding he had with the Zoning Officer regarding the need for a variance. Mr. Holtermann stated that it was his understanding from a conversation he had with Mr. Flemming in the Fall that he did not need a variance to install a small suitcase type air conditioner at the side of his house. When he recently submitted his permits Mr. Flemming informed him that he would have to apply for a variance. Mr. Holtermann explained that the air conditioner does not encroach any further than the roof overhang or the bay window. The distance from the property line to the bay window is 3 ½ feet and the air conditioner would be a little further from the property line and would not encroach any further into the setback. Mr. Flemming agreed and asked the Board if he could issue the zoning permit. The Board agreed that they did not have any objections to the Zoning Officer approving the permit for the suitcase type air conditioner unit as it did not increase the existing nonconformity of the side yard setback. Ms. Donlon suggested that a note should be made in Section 215-66.1 of the Ordinance that refers to air conditioners regarding this exception and Ms. Coppola stated that when Ordinance revisions were being done this could be added. Mr. Holtermann explained that there were two units, one was located further to the rear of the house and would not be visible from the street and he would screen the other unit. The height of the units is approximately 30 inches. Ms. Coppola suggested that it should also be noted that the Board based its finding on the facts that it is mechanical, as opposed to being an actual part of the house, the size, and the fact that it is not increasing the nonconformity.

There being no further comments from the public, Mr. Thompson closed the open time for public comments.

APPLICATIONS

Laura Huntsman & Stephen LeMenager, Block 205, Lot 14, 40 North Main Street, Town Center Buffer Zone. Variance Application P10-002

This application was scheduled and noticed for the March 10, 2010 Planning Board meeting. The applicant requested the Board to take jurisdiction of the application and carry it to the April 14th meeting to enable them to address comments in the Coppola & Coppola

1 Associates review memo of March 3, 2010. The applicant is requesting variances to replace
2 an existing 2-story barn.

3
4 Michael W. Herbert, Attorney with Herbert, Van Ness, Cayci & Goodell filled in as Borough
5 Attorney for this application since Mr. Schmierer has a conflict of interest. Mr. Herbert
6 announced that the Board had taken jurisdiction at the March 10, 2010 Planning Board
7 meeting. Mr. Keith A. Hone, architect for the applicant was sworn in and Mr. Herbert
8 questioned him regarding his qualifications. Mr. Hone described the location of the site and
9 the property. Entered into evidence was Exhibit A-1 Proposed Site Plan, dated March 17,
10 2010 showing a driveway on the southerly side of the building which goes to a fenced in
11 back yard and continues to the existing barn. The property was historically used as an inn
12 and tavern and as far as the applicants know the barn has always been on the property to
13 store the vehicles of the day. Placed into evidence were: Exhibits A-2 and A-3 Photographs
14 of the existing barn. Mr. Hone stated that he did a survey of the structure and found that
15 repairs to the barn would not be economically viable and he recommended that the structure
16 be taken down. The owners also consulted with two barn restoration companies and two
17 local contractors and they all concurred that the structure is beyond salvaging. Mr. Hone
18 pointed out photographs that show the deficiencies in the structure including the walls and
19 foundation. The homeowners are hoping to salvage and reuse some of the pieces from the
20 old structure as decorative pieces in the new structure. Mr. Thompson asked if there was
21 any historic value to the structure. Mr. Hone explained that it was built in two phases and
22 much of the framing and roof are newer and the original part of the barn that is left was not
23 built with the craftsmanship that you find with barns.

24
25 Mr. Hone stated that they would like to rebuild the barn as close as they can to the original
26 size, location and aesthetics. Entered into evidence was Exhibit A-4 Proposed Plan. A two-
27 bay garage with a shed is proposed to replace the barn. It would have a foundation with
28 footings and the ground floor would be constructed with concrete masonry. A staircase is
29 proposed to the second floor which would have insulated panels. There is no plumbing
30 proposed and both floors would have electrical power. Exterior lighting would be limited to
31 lighting at the doors. Mr. Hone described the different elevations of the barn, entered into
32 evidence was Exhibit A-5 Elevations of the proposed barn. The existing brick terrace will be
33 relocated by the east elevation facing the house. The new building is designed to have the
34 aesthetics of the existing barn. The siding will be vertical hung and painted barn red and the
35 roof will be dark asphalt shingles, except for the small overhang roof by the side door which
36 will have a metal roof. Skylights are proposed on the north side elevation.

37
38 The proposed building is 25 ft. in height from the existing grade which is 30 inches taller
39 than the existing barn. A trough drain in front of the doors is proposed to take water to an
40 existing dry well and will raise the base elevation about 8 inches. Mr. Hone stated that the
41 applicants consulted with an arborist to help address concerns in Ms. Coppola's memo. The
42 arborist's recommendation was to shift the building to the west to help protect the Cherry
43 and Magnolia trees. Mr. Hone stated that they are proposing to move the building 2 feet to
44 the West to give these trees and an Apple tree a chance for survival. The existing building is
45 11 feet off the property line and the proposed building would be approximately 8 ft. off the
46 property line.

47
48 Mr. Thompson asked why so many windows were being proposed for the second floor. Mr.
49 Hone stated that the owners' son would be using it as a play area and they would like to use
50 it as a multifunctional type space and have the natural light. He stated that the large scale of
51 the windows was to give it a more barn like appearance. Mr. Reuter asked if heat was

1 proposed on the second floor and Mr. Hone confirmed that it was proposed. Mrs. Laura
2 Huntsman was sworn in. Ms. Huntsman stated that if it was financially possible they would
3 like to have solar panels on the south side to provide the second floor with electric/solar
4 heat. She explained that the existing building has three big doors on the second floor that
5 are opened to provide light, but are dangerous and they are proposing large square
6 windows that would replicate the doors and provide light. Mr. Reuter asked where the dry
7 well was located and what drains into it. Ms. Huntsman explained that they currently have a
8 dry well that is close to the house and a new dry well is proposed behind the barn (west
9 side) that would collect the drainage from the gutters. Ms. Cindy Coppola, Borough Planner,
10 was sworn in and suggested that if the application was approved, a condition for
11 engineering review of the drainage issue to ensure that there is no negative impact to
12 property north of the site. Ms. Huntsman stated that there would be a downward barn-type
13 light by the door on the east side and lights on the south side by the garage doors. Mr.
14 Hone stated that they could select fixtures that would not allow light off the site.

15
16 Ms. Coppola reviewed her memo concerning the variances that would be needed for the
17 application. She stated that the real issue is that barns are not an explicitly permitted use in
18 the Town Center Buffer Zone, but permitted accessory uses were storage sheds and
19 garages, as well as other accessory uses which the Planning Board finds are clearly
20 incidental and subordinate to the primary use and enhance the character of the Town
21 Center Buffer Zone. The proposed building will be used as a two car garage and there will
22 be storage which is typical for garages, sheds or barns. The property is in the Historic
23 District recommended in the adopted Master Plan and in the 2010 proposed Historic
24 Preservation Plan Element and both recommend the preservation and reuse of historic
25 structures. Ms. Coppola suggested that the Board consider whether keeping the barn is in
26 keeping with the Master Plan and, if so, whether it is a typical ancillary use in the Historic
27 District and, therefore, may not require a variance. The variances that the applicant has
28 applied for are related to garages and the Board would have to determine if they apply. The
29 proposed building meets the setback requirements for detached accessory structures and
30 all the bulk requirements are met for a general accessory structure. Mr. Reuter noted that in
31 reference to the Historic Preservation Element, the Ordinance will focus on the streetscape
32 and street facing sides of the buildings and felt that the east façade is close to what the
33 existing barn looks like and did not feel that there would be any problem with Historic
34 Preservation.

35
36 Mr. John Flemming, Zoning Officer, was sworn in and stated that there was no ordinance
37 that covered sky lights and natural lighting is efficient. Ms. O'Neill had additional questions
38 regarding use of the second floor. Ms. Huntsman explained how her son would be using the
39 area as a play area with his friends and they would also use it as a recreation room. Her
40 husband may want to put a drafting table in the area to draw. Ms. O'Neill expressed concern
41 about the danger of overnight parties and barn bands that may be loud.

42
43 Mr. Thompson asked if there were any questions or comments from the public. Mr. Bob
44 Heino, 44 N. Main Street, stated that he was the adjacent neighbor to the north of the
45 property. He stated that the plans are a great idea because the barn is in bad shape and he
46 does not have concerns regarding the noise. He stated that there are two things that
47 concern him. One is that he just heard that the barn was being moved three feet closer to
48 the fence and the other is that the revised plan shows the barn will be 30 inches taller which
49 concerned him since it is in his southern exposure. He does not have a problem with the use
50 of the barn or the skylights and he feels that it will be a beautiful structure. Ms. Huntsman
51 explained that another reason they were repositioning the barn was to enable them to have

1 enough room to turn around and go out the driveway head first. Their builder pointed out to
2 them that they would have a difficult time turning around with the original plan that they
3 submitted. Mr. Ogren felt that in looking at the site plan there appeared to be ample room for
4 turn-arounds. Ms. Huntsman explained that tree roots have lifted part of the existing paving
5 and they would not be able to pave it again unless they cut into the tree roots. Mr. Hone
6 clarified that the dimension from the base of the garage to the edge of the pavement of the
7 driveway was 36 ft. Ms. Coppola stated that they usually recommend that it be no less than
8 25 ft. and the minimum for large lots was usually 33 ft. and she felt that 36 ft. was very
9 liberal. There was further discussion regarding this and Mr. Ogren felt that that the area was
10 more than adequate to move the barn back to the original site since the neighbor had
11 concerns about the height. Mr. Thompson stated that the prior plan that had been presented
12 was keeping the north side of the barn in its present position, but the down side would be
13 that the Cherry tree would be lost. Ms. Huntsman pointed out that the whole area would not
14 be blacktopped because of the existing roots of other large trees and the turn around area
15 would be too small with the original plan. Ms. Huntsman explained that in moving the
16 building an additional 2 ft. 8 inches to the north side they also moved it 2 ft. towards the
17 west, away from their house and their neighbor's house. Mr. Heino pointed out that if he
18 looks at the structure from his kitchen window he does not know if he wants it to be bigger
19 and closer. If it was staying at its existing site it probably would not affect him, but if it is both
20 taller and closer it will make a difference. Mr. Reuter asked why the barn was raised 2 ½ ft.
21 and Mr. Hone described the elements including the height needed for the garage doors and
22 the required minimum height at the head of the stairs and added that they also wanted to
23 replicate the pitch of the existing barn.

24
25 Ms. Coppola stated that there was no need for side yard variances and the slope ordinance
26 does not apply to accessory buildings. Ms. Huntsman noted that the structure is listed as a
27 barn on her tax bill. Ms. Donlon stated that the new building will function as a garage with
28 other little uses and is an accessory structure. Ms. Coppola stated that this would be a
29 permitted use under other accessory structures that are clearly devoted and subordinate to
30 the primary use and enhance the character of the Town Center Buffer Zone. The Board
31 agreed with the use clarified by Ms. Coppola. The Board agreed to grant a variance to allow
32 the structure to be painted barn red which would help keep its historic character in keeping
33 with the Master Plan. Ms. Coppola stated C-2 relief could be given as the benefits outweigh
34 the detriment and the Board agreed. The third variance is related to the size, garages shall
35 not exceed 750 sq. ft. in floor area and the proposed is 1,698 sq. ft. and the maximum
36 height allowed is 20 ft. where 25 ft. is proposed.

37
38 Mr. Thompson summarized the plans submitted and asked the Board for their thoughts. The
39 original plan for the building was to keep the north side of the new barn in the same location
40 as the existing barn and the plans were revised and submitted with a new location moving
41 the barn approximately 3 ft. to the north. Mr. Meytrott had concerns because he could not
42 determine the visual impact the barn will have on the adjacent property and he is not
43 convinced that moving it a little bit to the south will help remedy the problem. Ms. O'Neill felt
44 that the drawings made the building to appear very modern and she asked if it was the
45 technique. Mr. Hone responded that it was probably the technology and the lack of lighting
46 and landscaping. She also had concerns about the impact that the height will have on the
47 light and air on the adjacent property. Mr. Reilly asked if the applicant had considered
48 reorienting the building to east/west instead of north/south. Ms. Huntsman responded that
49 her backyard was long and narrow and it would cut off her backyard and look out of place.
50 Mr. Reilly stated that he has concerns regarding the impact the revised plan would have on
51 the neighboring property, but feels that if the proposed building were on the same site as the

1 existing it would be a very nice project. Mr. Ogren stated that the building was 36 ft. along
2 the property line and the dimensions were equivalent to a second house which would have
3 at the minimum 15 ft. setbacks. He understood the architect's explanation for the height and
4 that it would be hard to adjust, but he felt that the barn could be moved back to its original
5 setback without any adverse affect except for the Cherry tree which will not last forever, but
6 the building will be there for a long time. He stated that he would not approve the height
7 variance given that concern. Ms. Donlon agreed with Mr. Ogren regarding the Cherry tree
8 and related a personal experience where she reduced an addition to save a Weeping
9 Cherry tree and in two years the tree died and she was stuck with a kitchen that should have
10 been much bigger. Ms. Huntsman noted that it was not just the tree, but also to have the
11 ability to pull out of the garage. Mr. Ogren responded that the Planner had indicated that 36
12 ft. exceeds the required distance for the turning of cars and stated that unless there was a
13 traffic expert to dispute this he feels there is adequate room. Ms. Coppola reiterated that 36
14 ft. was excessive, but stated that she had not been to the site and did not fully understand
15 the difficulty regarding the tree roots. She stated that looking at the plan she felt that the
16 building could be put back at its original setback. Ms. Heinzl asked the applicant to indicate
17 where the tree roots were located. Ms. Huntsman pointed out the area with the irregular
18 blacktop with the tree roots and stated that they would minimize the driveway to avoid the
19 tree roots and have repositioned the building to accomplish that.

20
21 Mr. Thompson stated that they would finish polling the Board, but it seemed that they
22 needed more information to make a decision. Mr. Thompson stated that it would be helpful
23 to show the trees, Mr. Heino's house and garage relative to the barn. Mr. Flemming
24 suggested that the Board members may want to look at the site. Mr. Reuter stated that he
25 recognizes the neighbor's concern, but he does not see anything detrimental to the plan. He
26 feels that by just looking at the pictures you can see that there are plenty of trees and the
27 building would not be the dominate feature. Ms. Heinzl felt that there was a need for more
28 concrete information regarding the turning area and more details about the adjacent
29 buildings. Ms. Huntsman pointed out that the adjacent neighbors added a large two-story
30 addition which had an impact on what they could see from their house and they planted
31 arborvitae. She stated that they have been sensitive to their neighbor and it is one of the
32 reasons that they have also moved the building two feet back. They have also adjusted their
33 fence to accommodate the neighbor's garage which encroaches into the setback.

34
35 Ms. Huntsman requested to carry her application to the May 12, 2010 in order to provide
36 more information. She would not have to renote and it is not necessary for her architect to
37 appear, but Ms. Coppola suggested that the applicant should have Mr. Hone show the
38 driveway that is being proposed with dimensions so that the turning radius issue and the
39 distance from the front of the garage to the edge of the proposed driveway can be examined
40 based on the concerns of the Board. Mr. Thompson polled the Board and there were Board
41 members who felt that they would like to see more information before voting on the
42 application. Ms. Donlon made a motion, seconded by Mr. Meytrott to carry the application to
43 the May 12, 2010 meeting. The hearing ended at 10:00 p.m.
44 (Mr. Herbert left the meeting and Mr. Schmierer arrived.)

45
46 **The Pennington School** – 112 West Delaware Avenue, Block 205, Lot 1, and Block 502,
47 Lot 4. Present: Graeme McWhirter, Chief Financial Officer, Herbert Seeburger, Engineer,
48 Van Cleef Engineering.

49
50 Mr. McWhirter explained that Phase I involving the new softball field on Green Street had
51 been completed and all the performance bonds have been released. In Phase II they

1 installed a turf field on the main campus and relocated the sewage pumping station and
2 other site improvements, but because of economics they have not been able to complete
3 the proposed driveway at this time. The school is requesting the return of their Letter of
4 Credit and the cash portion of the performance guarantee. Kent L. Scully, Planning Board
5 Engineer, confirmed that 67% of the bonded improvements in Phase II have been
6 completed. Mr. McWhirter stated that when they were able to proceed with the rest of the
7 work they would put up the necessary bonds and performance guarantee. The turf field is
8 completed, but the lighting is not done and the bleachers have not yet been placed
9 according to plan. Mr. Seeburger stated that the stormwater system has been completed
10 under the turf field and there is nothing about the project not being fully built out that would
11 have any detrimental effect and Mr. Scully agreed. Borough Council has agreed to release
12 the Letter of Credit and the performance guarantee pending the Planning Board's approval.
13 Mr. Schmierer stated that he has seen this situation in a number of other municipalities
14 because of the economy. Mr. Reuter made a motion, seconded by Ms. Donlon to approve
15 release of the Letter of Credit, performance guarantee and inspection fees to The
16 Pennington School with the condition that they post a new performance guarantee and
17 engineering inspection fees in the amount agreed upon by the Planning Board Engineer.
18 Voting yes: Donlon, Heinzl, Meytrott, O'Neill, Reilly, Reuter, Thompson, Ogren. Absent:
19 Blackwell, Persichilli, Levy. The hearing ended at 10:15 p.m.

20
21 **MEMORIALIZATION OF RESOLUTION**

22
23 Stephen & Kathleen Mahle, Block 403, Lot 36, 151 East Delaware Avenue, R-100 Zone.
24 Ms. Donlon made a motion, seconded by Mr. Reilly to adopt the resolution. Voting yes:
25 Donlon, Heinzl, Meytrott, O'Neill, Ogren, Reilly, Reuter, Thompson. Absent: Blackwell,
26 Persichilli, Levy.

27
28 **WORK SESSION**

29
30 Mr. Flemming reported that the sub committee made a number of recommendations and the
31 Board suggested that they reduce the number. Mr. Flemming stated that the following have
32 been recommended for the Board's discussion:

33
34 Ordinance 215-50 – B - The Board has always used this at their discretion and it has not
35 been a right and, therefore, should not be included in the ordinance. The suggestion is to
36 keep the ordinance and allow the Zoning Officer to apply it or remove it.

37 Ordinance 215-50 - A - Mr. Flemming stated that he has concerns regarding tear downs if
38 this section is removed, but it would be up to the Board to keep it or remove it.

39
40 Mr. Ogren's FAR memo - Mr. Flemming felt that the Board should review and make a
41 determination whether or not the FAR is too liberal and if houses that are being built are too
42 large. Mr. Flemming pointed out that some of the houses did not go before the Board.

43
44 Variance Checklist - Mr. Flemming pointed out that if the Board approves a checklist they
45 should realize that the flow will change. He stated that in most towns it is not an issue as
46 they do not have the ability to make an application in April and have a hearing in May. He
47 stated that the Board would have to review waivers that are requested and this might require
48 the applicant having to come back to the Board the following month. Mr. Ogren had
49 questions about the waivers and Ms. Coppola stated that if there was a committee reviewing
50 the applications they could find that the waivers were diminimus and make a
51 recommendation to the Board to grant the waivers and the applicant could then notice the

1 meeting. Ms. Coppola stated that it would be helpful to the Board and the applicant to have
2 a checklist. Mr. Ogren asked what the next step should be and Mr. Flemming stated that we
3 did have a sample checklist that was provided by Ms. Coppola and would be distributed to
4 the Board.

5
6 **Expand Uses in Commercial Areas -** Mr. Flemming stated that the last item was his idea. He
7 feels that having vacant stores is not good and he would like to see the uses in commercial
8 zones expanded. Mr. Ogren stated that he would like to see restaurants allowed in more
9 areas and that the potential for restaurant development in the town is very limited. Mr.
10 Thompson stated that restaurant use is also very limited because of the grease trap
11 ordinance. Mr. Thompson suggested that we discuss the items at the next Planning Board
12 meeting.

13
14 **MINUTES** – Ms. O’Neill made a motion, seconded by Mr. Reilly to approve the
15 minutes of the March 10, 2010 Planning Board meeting and the minutes were approved by
16 voice vote.

17
18 Mr. Ogren made a motion, seconded by Mr. Reilly to adjourn the meeting and the meeting
19 was adjourned at 10:50 p.m.

20
21 Respectfully submitted,

22
23
24 _____
25 Mary W. Mistretta
26 Planning Board Secretary