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**PENNINGTON BOROUGH
REGULAR PLANNING BOARD MEETING MINUTES
AUGUST 11, 2010**

Chairman Thompson called the meeting to order at 7:33 p.m. and compliance with the provisions of the Open Public Meetings Act was announced.

Board Members Present: Mark Blackwell, Eileen Heinzl, William B. Meytrott, Thomas Ogren, Mayor's Designee, James Reilly, William Reuter, Winn Thompson, Chairman.

Absent: Jeanne Donlon, Katherine O'Neill, Anthony Persichilli, Mayor, Josh M. Levy, Alternate #1. Alternate #2 vacant.

Also Present: Edwin W. Schmierer, Board Attorney, Mason, Griffin & Pierson; Cindy Coppola, Borough Planner; John Flemming, Zoning Officer; Mary W. Mistretta, Planning Board Secretary. Absent: Kent Scully, Van Note Harvey, Planning Board Engineer

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

APPLICATIONS

Robert & Geri Stover, Block 301, Lot 10, 41 North Main Street, R-80 Zone.

Mr. Schmierer announced that Proof of Publication and Proof of Notice were in order and the Board could take jurisdiction. The applicants, Robert & Geri Stover were sworn in. The applicants are requesting bulk variances for existing accessory buildings. Mr. Stover explained to the Board that they have found some of their existing accessory structures are in conflict with the Ordinance and he wishes to remediate some of them and is requesting variances for the others. Mr. Stover stated that they have lived in the house for about 40 years and over this time he has built structures in the rear yard starting with a play house and has expanded them through the years. Plan of Survey, Frank R. Klapinski, Revised 7/30/10 was used for reference to the accessory buildings. Mr. Stover stated that the workshop was built in 2003 with all the proper permits and none of the issues were pertaining to it. There are five accessory buildings and the Ordinance allows the maximum of three. Mr. Stover is proposing the following: remove Shed A located in the southeast corner of the property; move Shed B, the garden shed, 6 ft over to the north; realign the walkway that goes to Shed B from the patio; remove the cupola from the covered pavilion which would adjust the height from 16 ft. to 11 ft., where 12 ft. is allowed; remove climbing ladder; remove extension of roof on play house, Shed C. Mr. Stover stated that the roof of the pavilion is less than 5 ft. from the property line, but the structure would be difficult to move as it ties into the other structures. Mrs. Stover explained that the roof and fans were added to the pavilion to help her cope with her asthma when she takes care of her grandchildren. Shed C was built 30-35 years ago and is a play house. The roof was replaced a few years ago with red metal roofing and at the same time it was extended downward to cover wood pellets and now extends over the property line. Among the pictures given to the Board were pictures showing the shed before and after the new roof extension. The height of this structure is 14 ft. Mr. Stover stated that he would like to maintain the grandfather status of this structure.

Mr. Thompson asked how the structures related to the design of the house and Mr. Stover responded that the house is blue and the work shed and other sheds are stained a blue

1 color and he feels that their design blends in with the design of the house. Mr. Stover stated
2 that electric went to Shed C, the patio and the garden shed from the house and they were all
3 protected with a GFI circuit. The work shed also has electric from a separate underground
4 cable. Mr. John Flemming, Zoning Officer, was sworn in and stated that the electric was
5 done without permits. Mr. Stover agreed, but stated that the cottage/work shop had been
6 done with permits and had been inspected. Mr. Reuter asked how the balcony in the play
7 area was accessed and Mr. Stover stated that the swing set and jungle gym were part of the
8 structure and either the climber ladder by the patio or a ladder in Shed C could be used at
9 the present time.

10
11 Ms. Cindy Coppola, Borough Planner, was sworn in. Ms. Coppola referred to her review
12 memorandum of August 5th. She stated that there are a lot of nonconformities associated
13 with the lot, but she had only reviewed the newer structures that have been built without
14 permits. Ms. Coppola stated that four variances were required: number of accessory
15 structures, the maximum is three where six would be remaining (work shop/cottage at the
16 rear, Sheds B and C, the pavilion (patio area), pergola and a play gym with an elevated
17 deck. If the deck is counted there would be seven structures. A variance is needed for the
18 requirement of a five foot setback from the property line. The play gym, balcony and Shed C
19 will be within the required five foot area even after the applicants remove the climber and
20 two feet of the roof on Shed C. A height variance is also required for Shed C which if
21 fourteen feet. A variance is also needed for lot coverage. The 9,012 sq. ft. lot is allowed a
22 maximum coverage of 3,903.6 sq. ft. and the coverage appears to be 5,016 feet. Ms.
23 Coppola stated that she spoke to Mr. Klapinski and he indicated that there was some
24 overlap of coverage and it is very difficult to give an exact amount.

25
26 In reviewing the proofs for the variances, Ms. Coppola stated that there does not appear to
27 be a hardship related to any exceptional situation that would not allow the applicants to
28 comply with the ordinance. She suggested that the Board may want to consider if they
29 would meet the granting of a “c(2)” variance. The benefits by granting the variances would
30 have to outweigh any detriment. Ms. Coppola stated that there is an extensive amount of lot
31 coverage and most of it is attributed to the driveway and walkways. Although the applicants
32 are proposing to remove the walkway south of the dwelling as well as a portion in the rear
33 yard area, there will still remain an extensive amount of stone and wooden walkways. Ms.
34 Coppola suggested that the Board may want to address the necessity of having so much of
35 the yard covered with walkways. The second part of meeting the proofs for a “c(2)” variance
36 is to show that there will be no substantial detriment to the public good and show that there
37 would be no substantial impairment to the zoning ordinance. Ms. Coppola noted that there
38 was substantial vegetation, but the Board would have to hear from the public to see if it is
39 enough buffering. Her greatest concern is the lot coverage as there have been issues in the
40 Borough with the ground not having good percolation and that changes to the grading cause
41 problems on and off site. Although the applicant testified that he had no problems on his
42 property it is unknown if there are problems on neighboring properties. Ms. Coppola
43 suggested that a condition of any approval should be the requirement of a grading plan. Ms.
44 Coppola pointed out that a condition from a previous resolution had not been met regarding
45 screening of air conditioner condensers. Mr. Stover stated that they installed a metal gate
46 that blocked the view of the condenser from the street. Ms. Mistretta stated that the Stover’s
47 had submitted a picture of the gate which she had presented to the review committee and
48 they felt it was acceptable, but it should have also been forwarded to Ms. Coppola.

49
50 Mr. Stover stated that there has never been any problem with water runoff from his property.
51 Mrs. Stover stated that the extension of the roof on one of the sheds did cause runoff to the

1 neighboring property, but once the extension is removed the runoff would not be a problem.
2 Mr. Thompson stated that he had requested a copy of the subdivision plan that the Board
3 had approved in 2003 and stated that there were differences in that plan and Mr. Klapinski's
4 plan. Ms. Coppola agreed and reviewed the differences including the work shed which is
5 shown to be 8-9 ft. off the rear property line on the subdivision plan and is shown as 1 ft. off
6 the rear lot line in Mr. Klapinski's plan. Mr. Stover stated that the work shed is 5 ft. off the
7 property lines, however, the roof overhang is closer. Mr. Reilly asked how the setbacks were
8 approved and Mr. Flemming explained that at the time the work shed was approved
9 setbacks were being measured from the building line and not the overhang. Mr. Stover
10 explained that some of the buildings existed at the time of the subdivision, but were not
11 shown on the plan which was for a lot line adjustment. Mr. Stover reviewed the
12 discrepancies with the other buildings. Mr. Meytrott asked who put the fence up on the
13 southerly property line and Mr. Stover responded that it was installed by the Himes family
14 about 18-20 years ago. Mr. Blackwell asked if the applicant was appearing before the Board
15 because of a complaint and Mr. Flemming stated that the neighbors had asked if the various
16 structures had permits. He investigated and found that there were numerous buildings that
17 did not match up with structures that he had on record. Permits could not be issued for them
18 retroactively as most of them violated zoning.

19
20 Mr. Thompson stated that the impervious permitted was 3,904 sq. ft. and the applicant was
21 requesting 5,083 sq. ft. and he asked if the applicant could reduce it further. Mr. Meytrott
22 noted that a good percentage of the impervious was the 1,168 sq. ft. of walkways. Mr.
23 Ogren stated that he went to the site and it is flat and he felt that the stone walkways were
24 not entirely impervious like concrete or blacktop and he has more concern about runoff from
25 the roofs of the structures that are close to a property line. He would also like to hear from
26 the neighbors regarding runoff and suggested that the applicant should consider putting
27 gutters on the structures. Ms. Heinzl stated that there is a lot going on in the backyard and
28 she would like to know how it is used and how it affects the neighbors. Mr. Stover stated that
29 there was a lot of activity during the days when his wife takes care of the grandchildren and
30 he uses the workshop quite often, but there is very little activity at night. Ms. Heinzl
31 addressed the issue of the number of accessory buildings and the impact they have on the
32 neighbors. Mr. Stover stated that he could eliminate some of the storage sheds, but the
33 pavilion, play area and Shed C are attached and are used a lot. There was discussion
34 regarding the swing set and whether it should be counted as an accessory structure. Mr.
35 Flemming stated that the regular swing sets are not counted as they are usually temporary,
36 but some of the more elaborate sets are shed-like and need permits.

37
38 Mr. Thompson opened the meeting to the public and asked if there were any comments or
39 questions.

40
41 Mrs. Anne Sobel, 39 N. Main Street, property owner to the south of the applicant, was sworn
42 in. Mrs. Sobel stated that they have noticed a diminished amount of activity this summer, but
43 stated that there has been a lot of noise from the backyard. She also noted that in the fall
44 when the shrubs are no longer green the red roof is an eye sore and they have a clear view
45 from her family room. Mr. Sobel also noted that there is a lot of noise all year long from the
46 cottage/work shed and that there is the sound of sawing all day long on Saturdays and he
47 feels that it is very noisy. Mrs. Sobel stated that the yard looks like a village and is out of
48 sync with the yards in Pennington that have green lawns. Mr. Sobel stated that they do have
49 drainage issues caused by a roof overhang.

50

1 Mr. David Campbell, 43 N. Main Street, property owner to the north, was sworn in. Mr.
2 Campbell asked if there was a plastic lining under the gravel of the pathway that ran along
3 the northerly property line. Mr. Stover stated that it was just gravel. Mr. Campbell stated that
4 when it rains heavily there is an accumulation of water along the fence, but it could be
5 caused by the natural flow of the water. Mr. Stover stated that there was not a lot of foot
6 traffic on this walkway and he could remove it. Mr. Blackwell asked Mr. Campbell about the
7 activity in the backyard and Mr. Campbell stated that there was a lot of activity and that Mr.
8 Stover was very active in the workshop.

9
10 Ms. Lee Herman, 45 N. Main Street, was sworn in. Ms. Herman did not feel that it was her
11 place to judge the color of the cupola and she did not feel that it was appropriate for
12 neighbors to have to weigh in on the facts, but thought they should be able to rely on the
13 Board. She felt that the Board should think about what they would have approved if the
14 application came in a timely fashion and abided by the rules. Ms. Herman felt that the
15 pergola was pretty, but felt that it was the entire mass that should be looked at.

16
17 Mr. Thompson asked Mrs. Sobel where the activity occurred at her house. She stated that
18 they had a terrace adjacent to their kitchen on the Stover side and they have a terrace on
19 the south side that overlooks the dentist's property.

20
21 Mr. Eric Holtermann, 45 N. Main Street, was sworn in. Mr. Holtermann stated that he has
22 been on the Sobels' terrace and the roofs of the structures were in prominent view from
23 there. He also stated that the roof extension from the work shed comes to his property line,
24 but does not bother him.

25
26 There was discussion whether the roof of the pavilion could be painted. Ms. Coppola asked
27 if Shed C and the pavilion could be moved and Mr. Stover did not feel that they could as
28 they were all attached. Ms. Coppola stated that the real problem was the 5 ft. setback and
29 the height of Shed C. Mr. Flemming felt that the roof could not be painted as it would peel
30 and he agreed that the pavilion was very large and could not be moved. Mr. Stover stated
31 that he planned to reduce the overhang of the roof on Shed C, but it would still have a 3 ft.
32 setback. Mr. Reilly asked if Shed C should be grandfathered because of its age. Mr.
33 Flemming stated that since it had been modified he feels that it is no longer grandfathered.

34
35 There being no further comments the public portion of the hearing was closed.

36
37 Mr. Thompson asked Mr. Schmierer for guidance regarding the term grandfathered and
38 regarding the structures that are all tied together. Mr. Schmierer stated that the problem was
39 the massing and total of everything in the backyard and the coverage issues. The Board has
40 to base their approval on the basis of a Flexible C variance since there is no hardship. The
41 Board would have to look at all the activity, the totality of all the structures and the coverage
42 issues and decide if they represent a reasonable use and zone plan for this property in the
43 neighborhood. Could the property sustain it appropriately and not negatively or substantially
44 impact any of the neighboring properties. Mr. Schmierer does not feel that any of the
45 structures should be considered grandfathered as they were never approved in the first
46 place. Mr. Schmierer stated that the following exhibits had been submitted: Exhibit A-1
47 Photographs of accessory structures, Exhibit A-2 - Frank R. Klapinski, Professional Land
48 Surveyor, Site Plan, revised July 17, 2010, Exhibit A-3 - 2003 Subdivision Plan.

49
50 Mr. Schmierer suggested that the applicant may want to ask the Board to continue the
51 hearing to enable them to address some of the concerns that have been raised. He

1 suggested that the applicants could return with a marked-up plan and Ms. Coppola
2 suggested that a list of all the changes would also be helpful. Mr. Reuter stated that he was
3 not unsympathetic in regards to preserving the play house, but he does not feel that any
4 justification has been shown for issuing a C-2 variance.

5
6 Mr. Thompson asked if the Board had any additional comments to give the applicant
7 guidance. Ms. Heinzl reiterated Mr. Flemming's suggestion that the Board should look at
8 the application as if nothing had been built and she suggested that the revisions to the
9 property would have to reflect what would have been accepted by the Board had the
10 applicant come in before the structures were built. Mr. Meytrott stated that he agreed and if
11 the plan had been presented before the structures existed there would be serious issues.
12 Mr. Ogren stated that he felt eliminating the pathway by the adjacent northerly property line
13 is a good idea and would help eliminate a potential drainage problem. He stated that he did
14 not have a concern with the 35 year old shed, but the pavilion was a concern since it is very
15 large and very close to the property line. Mr. Reilly suggested that the Board might get
16 better results if they gave the applicant more time to think about his plan and carry it to the
17 October meeting. Mr. Stover asked to have the hearing carried to enable him to rethink the
18 remediation problems in the backyard with the accessory structures. Mr. Blackwell stated
19 that he agreed with Mr. Reilly and made a motion to carry the meeting to the October 13th
20 Planning Board meeting. The motion was seconded by Mr. Reilly and the Board agreed by
21 voice vote. Mr. Flemming requested that Mr. Stover submit his revised plans by September
22 29th. Mr. Schmierer announced that the application will be continued at the October 13th
23 meeting and there would be no further noticing. The hearing ended at 9:30 p.m.

24
25 **MEMORIALIZATION OF RESOLUTION**

26
27 **Robert T. & Pendered D. Hoffman**, Block 601, Lot 41, 10 Queens Lane, R-100 Zone
28 Received variance approval for front yard setback for porch.

29 Mr. Reuter made a motion, seconded by Ms. Heinzl to adopt the resolution. Voting yes:
30 Heinzl, Meytrott, Ogren, Reilly, Reuter, Thompson. Not voting: Blackwell. Absent: Donlon,
31 O'Neill, Persichilli, Levy.

32
33 **James N. Morrison**, Block 904, Lot 10, 118 W. Welling Avenue, R-80 Zone
34 Received variance approval for front yard set back on Sked Street for air conditioner
35 condensers. Mr. Reuter made a motion, seconded by Mr. Reilly to adopt the resolution.
36 Voting yes: Heinzl, Meytrott, Ogren, Reilly, Reuter, Thompson. Not voting: Blackwell.
37 Absent: Donlon, O'Neill, Persichilli, Levy.

38
39 **AMEND LAND USE PROCEDURES, Chapter 34**

40
41 The Board discussed the proposed variance checklist and the following amendments:
42 Chapter 34-16B Appeals and applications – add Variance Application Checklist (attached to
43 minutes on record).

44 Chapter 34-9A. Applications – Amend submission time: "...Applicant shall file the completed
45 application, fees and required number of plans no later than [the first day of the month of
46 the month prior to the desired hearing date, but in no case less than] 30 days prior to the
47 hearing date."

48 Chapter 34-16B. Appeals and applications - Amend submission time: Line 12 remove [less
49 than 15 days] and add "later than 30 days."

50

1 Mr. Reilly made a motion to recommend the variance checklist and amendments to Council
2 with the Board's recommendation for adoption. Mr. Reuter suggested the following change
3 to number 6 of the checklist: change "indicating" to "including." Mr. Reilly accepted the
4 change and the motion was seconded by Mr. Blackwell and the Board agreed by voice vote.

5
6 **ZONING OFFICER'S REPORT**

7
8 Mr. Flemming announced that he received plans for a new house on Hale Street and that
9 the gross floor area was 6,600 sq. ft. He stated that the house met all the requirements
10 except for the provision that a house in the R-80 Zone cannot be over 4,500 sq. ft. The
11 plans for the house have been modified and the square footage for the first and second
12 floors is now 4,216 sq. ft. Mr. Flemming stated that the basement would have 284 sq. ft. of
13 finished space, but stated that he has never counted finished basements in gross floor
14 areas. There was discussion regarding this and it was agreed that only the space shown as
15 living space in the basement should be counted towards the living area. If the basement is
16 only 6 ft. high and is to be used as storage or laundry area it is not counted because it is not
17 immediately adapted as living area. Only the space shown as living space in the basement
18 should be counted towards the floor area. (Note: upon further examination of the Master
19 Plan this decision was amended, see Schmierer memorandum dated 8-24-2010.)
20

21 Mr. Flemming stated that the subcommittee has agreed that it would be beneficial to allow
22 three stories in the R-80 and R-100 Zones. He stated that the slope ordinance would help
23 prevent an existing 1/2 story from being torn off and replaced with a third floor. Mr.
24 Thompson suggested that this should be on the agenda for the next Planning Board
25 meeting.
26

27 Mr. Ogren stated that there are two inconsistent definitions in the ordinance regarding
28 basements and he suggested that one should be eliminated. This is pointed out in Mr.
29 Ogren's list of suggested zoning ordinance amendments that was distributed to the Board.
30 Mr. Ogren stated that he may also be submitting an amendment regarding the exemption of
31 small additions in commercial areas in the rear of a property. He was thinking of a 10 ft. x 10
32 ft. area which would usually be used for storage. Mr. Flemming agreed that this would help
33 the perception that Pennington Borough was business friendly. The only problem he could
34 see was regarding setbacks and impervious coverage.
35

36 Mr. Flemming also noted that the review committee is suggesting that educational uses be
37 allowed in the O-B Zone (Office-Business).
38

39 **WORK SESSION**

40
41 **King Georges Road** - Mr. Ogren reported on the King Georges Road project which has
42 been before Council. He stated that a condition of reconstructing the road was to place bike
43 lanes on either side of the road which would provide safer access to the Hopewell-Lawrence
44 Trail and to place a sidewalk on one side of the street going down to Delaware Avenue. He
45 stated that the sidewalk has been very controversial and Council has discussed it with
46 residents at two previous meetings and it will be on the September Council agenda. Mr.
47 Thompson stated that he had attended a Council meeting and spoke in favor of the concept
48 of bike paths and sidewalks. He stated that the other important factor in the project was that
49 the water main will be extended to tie into the Elizabethtown connection which will help the
50 water supply problem in the Borough. Ms. Heinzl stated that residents would like the bike

1 paths to be located on the stream side of the road, but it is not wide enough in some areas
2 and NJDOT (New Jersey Department of Transportation) guidelines would not allow it.

3
4 **Historic Preservation Element** - Ms. Heinzl stated that there have been two public
5 meetings and the committee has received a lot of input. People have commented that they
6 are afraid that this will add another layer of regulations and they are afraid that if the
7 ordinance is passed that it will later be modified and become an ordinance that they will not
8 like. Ms. Heinzl stated that Mr. Holtermann and the committee's hard work have gone a
9 long way towards getting people to come to the meetings and share their ideas, but it is still
10 a work in progress. The next public session is scheduled for August 24th.

11
12 **Variance Checklist** - In reference to the variance checklist, Mr. Reilly explained that
13 applicants will have an opportunity to apply to the Board for waivers and if the waivers are
14 not approved the application will not be heard. Mr. Reilly stated that the committee
15 discussed the requirement of as-builts and they agreed that they should be requested on a
16 case by case basis if the Board feels that they are necessary.

17
18 **MINUTES**

19
20 June 9, 2010 – Mr. Reilly made a motion, seconded by Mr. Reuter to approve the minutes
21 with a correction and the minutes were approved.

22
23 July 14, 2010 – Mr. Reilly made a motion, seconded by Mr. Reuter to approve the minutes
24 with a correction and the minutes were approved.

25
26 Since no new applications have been submitted, the Board agreed to cancel the
27 September 8, 2010 Planning Board meeting. There being no further business, Mr. Reuter
28 made a motion, seconded by Mr. Ogren to adjourn the meeting and the meeting was
29 adjourned at 10:15 p.m.

30
31 Respectfully submitted,

32
33
34
35 _____
36 Mary W. Mistretta
Planning Board Secretary