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**PENNINGTON BOROUGH
REGULAR PLANNING BOARD MEETING MINUTES
NOVEMBER 10, 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 (arrived 7:35 p.m.), James Reilly, William Reuter, Winn Thompson, Chairman, Joshua M. Levy, Alternate #1. Absent: Mark Blackwell, Anthony Persichilli, Mayor. Alternate #2 vacant.

Also Present: Edwin W. Schmierer, Board Attorney, Mason, Griffin & Pierson; Cindy Coppola, Coppola & Coppola Associates (arrived 7:40 p.m.), Borough Planner; John Flemming, Zoning Officer (arrived 7:35 p.m.); Mary W. Mistretta, Planning Board Secretary. Absent: Kent Scully, Van Note Harvey Associates, P.C., 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.

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MEMORIALIZATION OF RESOLUTION

St. Matthew's Memorial Garden, Block 704, Lot 8, 300 South Main Street – requested an extension of time for preliminary and final site plan, bulk and use variance approvals for one year. Mr. Thompson recused himself and Ms. Donlon chaired this part of the meeting. Mr. Schmierer stated that the Permit Extension Act is still in force until next year, but the practice has been to come to the Board to request extensions. Mr. Reuter made a motion seconded by Mr. Meytrott to approve a one year extension. Voting yes: Donlon, Heinzl, Meytrott, Ogren, Reilly, Reuter, Levy. Absent: Blackwell, O'Neill, Persichilli. Not voting: Thompson.

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Amend Zoning Ordinances

Mr. Thompson stated that the Board would have to wait until the January meeting to approve any amendments, but asked if anyone had any comments or questions. Mr. Ogren asked why overhangs were included in setback calculations as surveys or architectural plans do not normally take overhangs into consideration. Mr. Flemming responded that the Board had a situation where the building approved was very close to the property line and after it was built the soffits ended up hanging over the property line. Cases have also come up where garages have very large overhangs and instead of being five feet from the property line they end up two and half feet off the property line. There was further discussion clarifying this.

Mr. Reilly pointed out that 215-12, E Garages should be changed as the committee agreed that they have approved bathrooms in garages and they felt that they should be allowed along with heating, but no cooking facilities would be allowed. Mr. Thompson questioned the reference to non profit uses and felt that it inferred that non profit uses would be allowed. It was agreed that "non profit" should be eliminated since it could be confusing.

Mr. Reuter referred to the definition for "Setback Line" and suggested that it should either be a street line or property line. Ms. Coppola stated that where the lot fronts the street, the

1 setback requirements are measured to the street line, but where there is a side yard setback
2 next to another property the setback is measured to the lot line as opposed to the street line.

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4 Mr. Ogren referred to 215-5 Yard requirements and suggested that in D. the same
5 qualification should be made as in C., “This subsection should not be construed to prohibit
6 the parking of a motor vehicle on a driveway located in a front yard.”

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8 Mr. Thompson stated that the Board will have another opportunity to discuss the
9 amendments at the January meeting.

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11 **APPLICATIONS**

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13 **Robert & Geri Stover**, Block 301, Lot 10, 41 North Main Street, R-80 Zone. Mr. Schmierer
14 announced that the applicants had renoticed and the proofs were in order. The hearing is a
15 continuation from August 11, 2010 to enable the applicants to rethink the remediation
16 problems in the backyard and address the Board’s concerns. Mr. Schmierer announced that
17 Ms. Donlon and Mr. Levy have listened to the tapes for the August hearing and are qualified
18 to vote on the application. Ms. O’Neill recused herself as she is within 200 ft. of the
19 applicants’ property.

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21 Mr. Schmierer reminded applicants that they were still under oath. Mr. Stover stated that he
22 is proposing to bring everything into compliance. Mr. Stover referred to the revised Plan of
23 Survey, Block 301, Lot 10, dated September 16, 2010. He stated that they will do the
24 remediation proposed at the August meeting and in addition propose the following: relocate
25 the covered patio at least 5 ft. from the property line; remove the cupola from the covered
26 patio which will reduce the height from 12 ft. to 11 ft.; remove the pergola, the bridge over
27 the play area; remove frame shed C; remove stone walkways on south side of the house
28 and other areas and replace with ground cover. Mr. Stover stated that this will bring the
29 number of accessory buildings to three and the height of the patio and setback into
30 conformance. The total lot coverage would be reduced to 4,754 sq. ft., but would still need a
31 variance. Mr. Stover explained that the stone would be taken from the path on the south
32 side all the way to the play area and when frame shed C is removed the stone will be
33 removed from that area. Stone will also be removed from the north side of the house and
34 replaced with mulch. Ms. Coppola stated that she felt that both the negative and positive
35 criteria have been met by the applicant. Light, air and open space have been advanced by
36 the changes and the applicant previously testified that there were no drainage issues or
37 concerns from the neighbors regarding drainage and the lot coverage would only be 433 sq.
38 ft. more than permitted. Ms. Coppola suggested that the Board would want to look at this as
39 a Flexible C Variance, that the benefits outweigh the detriments. She does not feel that the
40 small amount of additional impervious coverage being requested would be detrimental to the
41 zone plan. There is substantial vegetation and the buildings are not visible to the general
42 public.

43
44 Ms. Donlon felt that the Borough Engineer should look at the property to determine whether
45 he feels there are any drainage problems. Mr. Schmierer stated that Mr. Flemming was still
46 under oath from the last hearing. Mr. Flemming suggested that the Board place a time line
47 on the work that is proposed. Mr. Stover stated that he would have everything completed by
48 June 30th. Mr. Flemming reminded the applicant that he would have to obtain any
49 necessary permits before moving the structures.

50
51 Mr. Thompson asked if there were any questions or comments from the public.

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2 David Campbell and Jennifer Murray, 43 N. Main Street, property owners to the north, were
3 sworn in. Mr. Campbell felt that the applicants had gone to great lengths to bring the
4 property more into conformance, but he has concerns regarding the covered patio being
5 moved closer to his property and asked how many feet it would actually be moved. The roof
6 line is one foot from the southern property line so the structure would have to be moved four
7 feet. There was discussion regarding the possibility of reducing the size of the structure, but
8 the applicant said this would require rebuilding the structure. Mrs. Campbell had concerns
9 because they have a tiny lot and the applicants already have a large work shop to the rear
10 of their property and she feels that bringing the covered patio closer to their yard will be
11 overwhelming, especially with the bright red roof. Mr. Campbell suggested that if the roof
12 was a more organic color it would not seem so overwhelming. Ms. Heinzl asked if there
13 was a limitation to the size of accessory structures. Mr. Flemming stated that there are
14 limitations, but the problem with this structure is how it is defined. He stated that the closest
15 definition for this structure would be a gazebo and the maximum size is 200 ft. The structure
16 is 250 sq. ft. and would need a variance. There was discussion regarding the gazebo. The
17 Board agreed that the gazebo would be less intrusive if the red tin roof was replaced with
18 shingles that were a more subdued color and were similar to the shingles on existing
19 buildings. Ms. Heinzl asked for clarification that the structure would only be moved 4 ft. and
20 not any closer to the northern Campbell/Murray property line. Mr. Thompson responded that
21 wording would be placed in the resolution regarding this.

22
23 Ms. Lee Herman, 45 N. Main Street, thanked the Stover's and the Board members for their
24 thoughtful consideration of the application. She also stated that she did not feel that the
25 burden should be on the public to point out zoning infringements. Ms. Herman agreed with
26 the Board and felt that replacing the red tin roof with new shingles would be an
27 improvement. She suggested that a time frame should be set for the work to be done and
28 that the flag pole is monitored. Mr. Stover stated that he will start work right away, but he will
29 also have to obtain permits for some of the work which will hold it up.

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31 Ms. Kate O'Neill, a neighbor within 200 ft., was sworn in and stated that she wanted to
32 speak on behalf of the character of the applicants. She stated that Mr. Stover was a very
33 good and generous neighbor and that Mrs. Stover has done a beautiful job landscaping the
34 back yard. She stated that she is sure they will do a good job with the work that has to be
35 done.

36
37 There being no further comments the public portion of the meeting was closed.
38 The Board agreed that variance approval is needed for impervious coverage and for the size
39 of the gazebo. Mr. Schmierer reviewed the conditions that were suggested: remove the flag
40 pole, drainage plan to be discussed with the Borough Engineer, time line to remove the
41 various structures and implement the revised plan no later than June 2011, get proper
42 permits, change tin roof to asphalt similar to the color of the work shop, structure shall be
43 moved 5 ft. off the south property line. Mr. Reuter made a motion, seconded by Ms. Donlon
44 to approve the application with conditions. Voting yes: Donlon, Heinzl, Meytrott, Ogren,
45 Reilly, Reuter, Thompson, Levy. Voting no: none. Absent: Blackwell, Persichilli. Not voting:
46 O'Neill. The hearing ended at 9:05 p.m.

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48 **ZONING OFFICER'S REPORT/WORK SESSION**

49
50 Mr. Flemming stated that he had received a request from the Pennington Fire Company to
51 replace their sign with an electric sign for public announcements. The announcements can

1 be programmed instead of having to manually put the letters up and will be used only for
2 public announcements. The present sign area will not be expanded. Mr. Flemming stated
3 that he did not feel that it fell into Chapter 215-38 B. Prohibited Signs. The Board agreed to
4 allow the sign as long as the message was not revolving and felt that the sign would be
5 more attractive than the one that is presently there. Ms. Coppola suggested that he
6 stipulate that there would be no movement in the sign, such as rotating or flashing. Mr.
7 Thompson suggested that Mr. Flemming write the Fire Company a letter with the Board's
8 approval and stipulations.

9
10 Ms. Heinzl stated that she has heard complaints about contractor signs in front of homes
11 where work is not being done. Mr. Flemming stated that there has been a problem with an
12 architect's sign where there is no work being done and it has been a problem. He stated that
13 it is hard to regulate. If he sees a sign where no work has been done in the last six months
14 he will call the contractor about the sign. Mr. Flemming suggested that Board Members e
15 mail him if they notice any signs that they feel have been there a long time or should not be
16 there for other reasons.

17
18 Mr. Thompson stated that the Pennington School had the turf field lights installed. Ms.
19 Coppola stated that she would contact them to arrange a light test.

20
21 Mr. Schmierer stated that he had sent out a memo regarding the Appellate Division's
22 decisions regarding COAH. He stated that one of the decisions was that the growth share
23 methodology had been invalidated and suggested that municipalities use the methodology
24 similar to that used in the first and second rounds. The COAH offices have not received any
25 direction and are at a stand still at this time. Ms. Coppola stated that she has not heard
26 anything regarding Pennington's request for certification. Mr. Thompson questioned if there
27 would still be a COAH obligation if the YMCA were to pursue plans for the Capital Health
28 site and Ms. Coppola responded that there most likely will still be an obligation to provide
29 affordable housing on that site as it is tied to the Borough's Second Round and not related
30 to growth share.

31
32 Mr. Schmierer reviewed his memo regarding proposed construction of a new house at 214
33 Hale Street. He responded to a question as to whether any finished part of a cellar to be
34 used as habitable space should be included in the calculation of permitted total floor area
35 under Section 215-8 of the Zoning Ordinance. Mr. Schmierer stated that the Ordinance is
36 not perfectly clear, but in reviewing the Reexamination of the Master Plan there is a clear
37 finding that states that the maximum floor area ratio should exclude basements, but should
38 include all gross square footage of habitable floor space above the finished grade. Mr.
39 Schmierer stated that the plan has been scaled down from the original plan submitted. Ms.
40 Coppola stated that this should be clarified when the Board is doing zoning amendments.

41
42 King Georges Road – Mr. Ogren reported that the public supported the need for sidewalks
43 on King Georges Road and they have been put back on the plan for lower King Georges
44 Road.

45
46 Historic Preservation Element – Ms. Heinzl stated that the working draft of the Ordinance
47 has been shared with Council and is on the Borough web site. She stated that it would be
48 introduced in the winter or spring of next year. She stated that there have been three public
49 sessions which were very well attended. The Committee focused on only the exteriors that
50 could be seen from the street and did not address interiors of homes. They focused on
51 protecting structures from permanent changes. Board Members could e mail any comments

1 that they may have to Ms. Heinzl. Mr. Ogren stated that it does not regulate demolition and
2 he feels that it is the biggest threat to the town, as it is usually an out of town developer that
3 wants to demolish a house and they may not be as concerned about the appearance of the
4 town as the residents. Mr. Ogren stated that he felt the Ordinance for the FAR in the R-80
5 Zone was too large and was an incentive for developers to demolish a house and replace it
6 with a much larger house. There was discussion about lowering the FAR in the R-80 zone
7 and it was suggested that the sub committee look into revising the ordinance.

8
9 The Board discussed the sub committee's recommendations regarding the definition of
10 "story." Ms. Coppola suggested that if the Board were to eliminate the suggested paragraph
11 regarding stories it would essentially allow four stories. After discussion, it was suggested
12 that the paragraph remain and consider the following changes to B. (2): "floor above the
13 basement is more than [six] three feet for more than 50% of the total perimeter of the
14 building or is more than [12] (change to 7 or 8 ft.) at any point.

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16 MINUTES - Mr. Ogren made a motion, seconded by Mr. Reilly to approve the August 11,
17 2010 minutes.

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19 There being no further business, the meeting was adjourned at 10:00 p.m.

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21 Respectfully submitted,

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24 _____
25 Mary W. Mistretta
26 Planning Board Secretary