

**PENNINGTON BOROUGH  
PLANNING BOARD MINUTES  
REGULAR MEETING  
OCTOBER 10, 2019**

Mr. Reilly called the meeting to order at 7:30 p.m. and announced compliance with the provisions of the Open Public Meetings Act.

Roll Call: Nicholas Angarone, Vice Chairman, Mark Blackwell, Deborah Gnatt, Eileen Heinzl, Mayor's Designee, Cara Laitusis, Alt. 1, Douglas Schotland, James Reilly, Chairman. Absent: William B. Meytrott, Katherine L. O'Neill.

Also Present: Edwin W. Schmierer, Mason, Griffin & Pierson, Planning Board Attorney; James Kyle, KMA Associates, Planner; John Flemming, Zoning Officer; Mary W. Mistretta, Secretary.

**OPEN TIME FOR PUBLIC ADDRESS** – Mr. Reilly asked if there was anyone in the public with comments or questions for any item that was not on the agenda. There being none the open time for public address was closed.

**MEMORIALIZATION OF RESOLUTION**

**Mark Neary**, 8 East Welling Avenue, Block 1002, Lot 18, R-80 Zone, Application No. P19-003. Bulk Variances to construct a garage. Mr. Angarone made a motion, seconded by Ms. Laitusis to approve the resolution with amendments. Voting yes: Angarone, Blackwell, Gnatt, Heinzl, Laitusis, Reilly. Not voting: Schotland. Absent: Meytrott, O'Neill.

**Goodwill Industries of Southern New Jersey & Philadelphia**, 14 State Highway 31, Block 206, Lot 3, Business Highway Zone. Interpretation and Appeal to the Zoning Officer's Decision and Use Variance if needed. Application P19-004.

**APPLICATIONS**

**Jonathan Bichsel**, 9 East Curlis Avenue, LLC, 11 E. Curlis Ave LLC Block 801, Lot 21, R-80 Zone, Application No. P19-005. Ryan P. Kennedy, Esq., Stevens & Lee, Attorney for the applicant.

Mr. Reilly stated that the application was an appeal to the Zoning Officer's decision regarding the above referenced property. Mr. Kyle stated that he would have to recuse himself as he recently did work for Mr. Bichsel. John Flemming, Zoning Officer, stated that it is his opinion that the property was illegally converted into two residences somewhere around 1991-92. He stated that everything he has pieced together indicates that after 1994-95 there has been activity that is beyond a single family. Mr. Flemming distributed copies of a request dated 1991 for a certificate of occupancy for the building at 9 Curlis Avenue that states "building" singular and does not reference number 11. Numbers 9 and 11 are on the same lot. Mr. Flemming showed plans from 1991 for a building permit application for number 9 and the garage is clearly noted without any reference to an apartment. After 1991 there was activity, but permits for internal modifications are not required and there are no zoning records showing that two residences were approved. Mr. Flemming stated that in 2012 two water meters were put in, one to replace the one at 9 and one was an addition to what became 11. Up until that point one water meter served the property. Mr. Reilly asked if anyone could have two water meters installed in their home. Mr. Flemming stated that you could have an additional water meter at that time, but the

policy has now changed. Ms. Laitusis asked what the property tax records showed. Mr. Flemming stated that the tax records go back to 1992 showing the two properties, but the problem is that earlier tax records before that are not available. Mr. Flemming stated that he can only go by the files and felt that the owner who did the conversion should have requested approvals. References to 9 and 11 do not exist until the 90's and In order to be a legal preexisting nonconforming use, they would have to predate the ordinance or there had to be variance approval.

Mr. Flemming introduced Rick Smith, Superintendent of Public Works and Water and Sewer Operator and asked Mr. Smith what would have been the standard configuration when the sewers were put in. Mr. Smith stated that the sewers came in the late 1970's or early 1980's and two units should have had two separate connections. There is one sewer line coming off the sewer main on East Curlis and goes to the basement of number 9 and through the foundation wall to tie into the sewer line for 11. Mr. Smith stated that the water line for the property has recently been upgraded. There is one service line that is metered at the curb going to the foundation at number 9 where it splits and goes to 11. There is one utility bill that is under number 9. Mr. Smith stated that most of the two-family homes have separate connections and each unit is tied in separately. Mr. Smith found a permit for 9 East Curlis in 1984 and there was no reference to number 11. Ms. Heinzl asked what zones in town permit two-family homes and Mr. Flemming responded that there were none. Mr. Flemming stated that most of the houses that were built 80 or 90 years ago that pre date the ordinance actually look like two-family houses and are legal. Some of the Victorian houses that have been broken up have multiple uses, but are not necessarily two-family. Mr. Flemming stated that there are a number of double houses on one lot and he always encourages realtors or buyers to request a letter from him stating that it is a legal use when they find something unusual or not quite in sync about the property and he would then do the research on the property. Mr. Flemming stated that if the Board felt that this is a preexisting nonconforming use then the matter is settled, but if the Board did not feel that it is a preexisting nonconforming use the owner can request permission to keep the two units. Mr. Flemming thought that the property was modified to a two-family residence sometime in the early 90's without approvals and he considered it a one family residence.

Ryan Kennedy, Stevens & Lee, attorney for the applicant, distributed a packet of documents to the Board to help walk them through the history of the property. Also distributed was a copy of an article supplied to him by the Hopewell Valley Historic Association that referred to 11 Curlis Avenue that shows it existed prior to the 1991 document. Mr. Schmierer verified that since it was an informal hearing no one had to be sworn in. Mr. Kennedy stated that a few neighbors came and he asked if one of them could address the Board before his presentation. Sandy Long, 15 East Curlis Avenue, stated that she has lived at that address since May 2002 and that during that whole time it has been a two-family home and had renters when she moved in. Ms. Long stated that the property looked like it was two lots. Mr. Flemming stated that he had no doubt that the property was a two-family residence in 2002. Mr. Kennedy reviewed the documents he had distributed which included photographs of the property which is across from Toll Gate School and a survey dated May 22, 1990 done for Kevin Burke which shows numbers 9 and 11 as separate items. Mr. Burke was a developer and he has indicated to Mr. Kennedy that it was split up when he bought the property. The survey that was done prior to him purchasing the property confirms this. Ms. Laitusis asked about the space above the driveway and Mr. Kennedy stated that there were bedrooms for number 11. Mr. Kennedy pointed out a deed dated May 30, 1990 from the Thurman's to the Burke's. This shows that the survey was done before the Burke's purchased the property and it shows two units. The Thurman's purchased the property in 1955 and was owned by them until 1990 and during that period it was split up. Mr. Kennedy stated that they reached out to the historical society and they found a notice from a newspaper dated 1957 announcing an award to Jay C. Neary who lived at 11 East Curlis Avenue. They received this late in the day and did not have time to do any further checking on it. Mr. Kennedy agreed with Mr. Flemming that there are not a lot of records, but

they have evidence that when the Burke's purchased the property in 1990 it was purchased as two units and found evidence that it existed in 1957. Mr. Kennedy stated that the zoning ordinance was put in place in 1978 and that would be the date when existing two-family units were grandfathered. There are property cards that indicated two units in 1992. Mr. Kennedy agreed that records could not be found that would prove the second unit was ever approved. Mr. Flemming questioned Mr. Blackwell who stated that he used to play there all the time and remembered that there was a garage with cars in it and he noted that the property card dated 1992 indicates a garage. He stated that it would have been around the mid 60's when he played there. In 2003 the apartment was completely renovated by the Hoagland's and the permits show an existing kitchen on the second floor. Mr. Kennedy reviewed the documents he submitted and stated that originally when the neighborhood was subdivided it was probably sized for two houses and at some point a single building with two units was built on the single large lot.

Mr. Reilly stated that he did not see any hard evidence that it predated 1978. The units could be taxed without consulting the zoning officer or having any prior zoning approvals. Mr. Schotland asked Mr. Schmierer about the legalities since taxes have been paid on two units. Mr. Schmierer stated that the question is if the appellant has convinced the Board reasonably that this property was used before 1978 for two-family purposes and is a pre existing nonconforming use. Mr. Schotland stated that he was convinced it was and stated that things were done in a much more informal way back then. Ms. Laitusis stated that she was not convinced that it existed before 1978. Mr. Angarone stated that he did not feel that the newspaper by itself was enough proof. Ms. Gnatt agreed with Mr. Angarone that there was not enough evidence. Mr. Blackwell stated that he felt the space was converted in the 90's well after the zoning ordinance. Mr. Reilly pointed out that there is no date on the newspaper article and Mr. Kennedy stated that he would be able to provide that if it would be helpful. Ms. Heinzl also agreed that there was not sufficient evidence and it is located in an area of all single family houses and Mr. Reilly agreed. Mr. Kennedy asked the Board if they could carry the appeal to the November 13, 2019 meeting. Mr. Blackwell made a motion to carry the appeal to the November 13, 2019 meeting, seconded by Ms. Gnatt. Voting yes: Angarone, Blackwell, Gnatt, Heinzl, Schotland, Laitusis, Reilly. Absent: Meytrott, O'Neill.

**John & Gabrielle Shamsey**, 107 King George Road, Block 302, Lot 5, R-80 Zone.

Requesting variances to replace a garage. Application No. P19-006. Present: Gabrielle Shamsey, Robert C. Pisano, PE, Pisano Development Group, LLC, Doug Raynor, Applicant's Builder.

Mr. Schmierer announced that Proof of Notice and Proof of Publication are in order and the Board can take jurisdiction. Gabrielle Shamsey and Robert C. Pisano were sworn in. Mr. Pisano stated that he was the Licensed Professional Engineer that prepared the zoning plot plan. Mr. Pisano gave his qualifications that the Board accepted. Mr. Reilly stated that waivers were requested for number 4 – requirement to provide a current survey and for 6 a and b. The applicants provided a 2001 survey, but provided a plan showing the changes since that survey and the proposed garage; 6a – showing stormwater control measures and 6b is not applicable since no basement is proposed. Mr. Schmierer stated that the waivers could be addressed at the end of the hearing.

The applicants propose replacing the existing garage that is in disrepair with a new detached garage approximately on the footprint of the existing garage. The proposed garage would be 87 ft. wide and the footprint 750 sq. ft. Mr. Pisano stated that there is an existing asphalt driveway and they would like to replace the garage in approximately the same space, but it would have a slightly different shape. Mr. Pisano pointed out the pictures showing the existing garage is in very bad condition and is not usable. They requested a side yard setback which is not required since the setback required is 5 ft. and the setback would be 9 ft. They are requesting a variance for the height which would be 24.5 ft. and the requirement is no more than 20 ft. They are trying

to mimic the configuration of the house and this would require a higher roof. Mr. Pisano explained that the property slopes down and the garage is further down and lower than the house. The impervious is shown to be 5,406 sq. ft. including the proposed garage and the zone requirement is 5,894 sq. ft. Mr. Pisano stated that they had a report from the Application Review Committee (ARC) and a review memorandum from Kyle-McManus Associates dated October 2, 2019. Mr. Pisano stated that they resolved the questions from the ARC memorandum dated September 17, 2019 and reviewed them. The ARC questioned the footprint of the garage and felt that it was 780 sq. ft. Mr. Pisano explained that there is a notch where the outdoor kitchen is planned which would not count towards the sq. footage.

Ms. Shamsey stated that she felt the garage was original when the house was built in the late 30's and it is pretty dilapidated. She stated that she is an artist and would like to be able to use the second floor to paint. They would also like to be able to put their cars in the garage which cannot fit in the present garage. They would like the garage to fit in with the house and they feel the new garage would be an improvement to the property and the neighborhood. Mr. Pisano felt that there were no negative criteria and the positive criteria would outweigh the negative. The proposed garage is in the same location of the existing garage and is consistent with the surrounding structures. It is also replacing a structure that is practically falling down with architectural features that are consistent with the homes in the area. Stucco and wood materials would be used to mimic the features of the house. Doug Raynor, builder, was sworn in and described the niche that would include the cooking area and stated that the second floor would go over the niche and could be included in the foot print. James Kyle, Borough Planner, was sworn in. He felt that Mr. Raynor raised an interesting point regarding the foot print. It would be closed off with two sliding barn doors and it was up to the Board if they felt it should be included. Mr. Raynor stated that the foundation would follow the walls of the garage and would not include the kitchen area. John Flemming, Zoning Officer, was sworn in. Mr. Flemming asked what the measurement would be when they closed the barn doors. Mr. Pisano stated that it would be 26 ft. x 30 ft. Mr. Flemming suggested that the applicant add this area and request a variance which would give the builder more options for the kitchen area. The total area would then be 780 sq. ft. Mr. Kyle stated that he defines a footprint by what is on the ground not necessarily what is in the air. Mr. Pisano stated that they would request a variance for the footprint. Mr. Pisano noted that the applicant is building a new front porch that is not part of this application, but it has been included in the coverage which is below the maximum.

Mr. Reilly asked if there were any questions or comments from the public, there being none the public session was closed. The Board did not feel that there were any negative criteria and agreed that it was consistent with other structures on the street. Mr. Blackwell felt it was a great project, but suggested a condition of engineer approval to make sure that water does run into their neighbor's property. Mr. Reilly asked if they were planning to install gutters or downspouts. Mr. Pisano stated that they will maintain what is there now and install gutters and downspouts that would run down to the creek. Mr. Blackwell made a motion to approve the application for variances for height and the footprint, the waivers requested, and include a condition for engineering approval. Mr. Flemming suggested that the applicant supply plans to the engineer to review prior to construction. Mr. Kyle suggested that a plot plan with grading should be submitted. The motion was seconded by Ms. Gnatt. Voting yes: Angarone, Blackwell, Gnatt, Heinzl, Schotland, Laitusis, Reilly. Absent: Meytrott, O'Neill. The hearing ended at 9:30 p.m.

## **NEW BUSINESS**

**American Properties Realty Inc., Heritage at Pennington, Block 102, Lot 1,**

Request to amend condition of approval. Application No. P15-009.

Present: Greg Kanter, American Properties, David Roskos, attorney for the applicant.

The Board amended the original approval in February 8, 2017 to include 44 units in Phase I instead of the approved 40 units since Stony Brook Regional Sewerage Authority (SBRSA) gave approval for four additional units to be included in Phase I. Phase 2 would then include 36 units. A condition of the approval was that no construction/building permits be issued for Phase 2 until the applicant obtains sewer approval from SBRSA and a TWA permit. The applicant was permitted to do limited site work in Phase 2.

Mr. Kanter stated that there are three units left to sell in Phase I and they would like to continue on building Phase 2. The infrastructure including water and sewer lines and curbs have been installed and they would like to start construction on Phase 2 while they are waiting for the sewer permit. Borough Council has given them approval to submit a TWA (Treatment Works Approval) permit to NJDEP (New Jersey Department of Environmental Protection) and SBRSA has also signed off on it with the condition that they are not allowed to connect to any sewer until the sewer plant is completed. According to Stony Brook they are about two to two and half months away from completing the sewer plant. Mr. Kanter explained that they would like to get ahead of the winter with construction and they would build at their own risk. They would like to put the foundations in while there is no dust and hopefully would be finished with the foundations by April or May of next year and would then start with the framing. They are requesting relief from the condition restricting them from starting Phase 2 since the sewerage plant is so close to completion. Mr. Roskos stated that they understand that there would be no CO's issued until they have the sewer completed. They understand that it is a 90 day permit and the State would have to act on it by January. Mr. Reilly stated that the downside would be if something goes wrong, but it does seem unlikely with what has been presented. Mr. Angarone asked Mr. Kanter to explain the TWA permit to the Board. Mr. Kanter stated that it was a State permit allowing SBRSA to extend sewer into Phase 2. Mr. Schmierer explained that when the application came before the Board in 2016 Stony Brook did not have the sewer capacity for 80 units and the Board was concerned that there would not be enough for Phase 2 and put the condition on the approval. Mr. Kanter explained that this would also help minimize the impact on the residents. Mr. Blackwell has spoken to people at Stony Brook and they are moving along and he stated that they had no objection to the request.

Mr. Reilly asked if there were any questions or comments from the Public, there being none the Public Comment period was closed. Ms. Heinzl requested that the approval be conditioned that any outstanding escrow balances would be paid. Mr. Blackwell made a motion, seconded by Ms. Gnatt to waive the condition of approval with the conditions that were discussed. Voting yes: Angarone, Blackwell, Gnatt, Heinzl, Schotland, Laitusis, Reilly. Absent: Meytrott, O'Neill.

#### **ORDINANCE REFERRED BY BOROUGH COUNCIL**

#### **ORDINANCE AMENDING AND SUPPLEMENTING THE CODE OF THE BOROUGH OF PENNINGTON, CHAPTER 163, CONCERNING SITE PLAN REVIEW, INCLUDING A REQUIREMENT THAT OWNERS OF MAJOR DEVELOPMENTS REPORT AND ANNUALLY CERTIFY REGULAR MAINTENANCE AND REPAIR OF THEIR STORMWATER MANAGEMENT MEASURES.**

Ms. Heinzl explained that there were two amendments to the ordinance. The first component is a requirement that owners of major developments annually inspect their stormwater management measures and infrastructures and certify to the Borough that all required maintenance and repairs have been completed. The second improvement to the ordinance is a suggestion from the Environmental Commission and it has been added in 2. C. This requires that the applicant submit a statement whether any State or Federal environmental investigation or enforcement action affecting the site has been initiated or is ongoing within the most recent five years. Mr. Kyle stated that the stormwater measures are designed to effectuate the Master Plan and now that the Borough has its own stormwater permit Council has to take action to

ensure that the permit is not jeopardized by what someone else in the Borough is doing. Mr. Kyle stated that it would not be inconsistent with the Master Plan. Mr. Blackwell made a motion, seconded by Ms. Gnatt, to inform Borough Council that the Board finds that the ordinance is not inconsistent with the Master Plan and recommends adoption of the Ordinance. The Board voted unanimously by voice vote (Meytrott and O'Neill absent).

### **WORK SESSION**

Andrew Fosina, Fire Safety – an e mail from Mr. Fosina was distributed to the Board regarding a fire breaking out in an apartment on Denow Road. The building had residential sprinklers which activated and fully extinguished the mattress fire prior to the arrival of the fire company. There was minimal water damage and this was a clear demonstration of the importance of residential fire sprinklers. Mr. Fosina thanked the Board for their continued support of residential fire sprinklers.

**MINUTES** – August 14, 2019 – Mr. Blackwell made a motion to approve the minutes with corrections, seconded by Ms. Gnatt and the Board approved the minutes by voice vote.

Ms. Heinzl made a motion, seconded by Mr. Blackwell to adjourn the meeting at 10:00 p.m. and the meeting was adjourned.

Respectfully submitted,

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Mary W. Mistretta  
Planning Board Secretary