

**PENNINGTON BOROUGH
PLANNING BOARD MINUTES
REGULAR MEETING
DECEMBER 8, 2021**

Mr. Reilly, Chairperson, called the meeting to order at 7:30 p.m. and announced compliance with the provisions of the Open Public Meetings Act. He stated that the meeting was being held via a Zoom webinar and access to the meeting had been noticed.

BOARD MEMBERS PRESENT: Mark Blackwell, Seung Kwak, Cara Laitusis, Katherine O'Neill, James Reilly, Nick Angarone, Joe Lawver, Jeanne Van Orman

BOARD PROFESSIONALS PRESENT: Edwin W. Schmierer, Mason, Griffin & Pierson, Planning Board Attorney, John Flemming, Zoning Officer, James Kyle, KMA Associates, Brian Perry, Engineer, Van Note Harvey

REGULAR MEETING

OPEN TIME FOR PUBLIC ADDRESS

Mr. Reilly asked if there was any member of the public who had joined the meeting and had comments. There were no participants and no comments.

ZONING OFFICER

Mr. Flemming reports that there are no updates for him to share. He has read Mr. Kyle's memo on Starbucks and has no additions or comments to note. Mr. Flemming signed off.

OLD BUSINESS

There are no Resolutions of Memorialization for this meeting and no other old business.

NEW BUSINESS

Application P-21-014, Frontier Development for 5 Route 31. Application for a bifurcated use variance. The Board will consider the use variance this evening. If approved, this will be followed up with a site plan.

Proof of notice is in order and Mr. Schmierer swore the presentation team in. The team includes: Duncan Prime, Prime and Tuvel; James Kinosian, Stonefield Engineering and Design, John Corak, Traffic Engineer, Stonefield Engineering and Design; Lizanne Kile, Starbucks Coffee Company; Alex Dougherty, Professional Planner, McDonough & Associates; Jim Leach, Frontier Development.

Frontier requested a waiver of checklist item 6A, storm water management and drainage control. A motion to grant or deny the waiver is in order. There being no motions to approve or deny, Mr. Kyle has been sworn in and recommended that the Board hear a presentation from the applicant to why the waiver should be considered. Mr. Duncan requested that this item be waived and defer storm water management question until the site plan is presented. Mr. Lawver made a motion to defer the storm water management plan, item 6A, until site plan consideration and Mr. Angarone seconded.

Pennington Borough Planning Board Minutes – December 8, 2021
Regular Meeting

Roll Call:

Angarone-Yes
Blackwell-Yes
Kwak-Yes
Laitusis-Yes
Lawver-yes
O'Neil-Yes
Reilly-Yes
Van Orman-Yes

The motion to defer the storm water management plan waiver was adopted.

Mr. Prime stated that this presentation is only for the D variance for a conversion of the TD Bank to a Starbucks restaurant with a drive-through. This specific variance is for the drive-through which is currently not a permitted use. The canopy over the drive-through on the existing building will be removed. The site will be reconfigured to include additional parking and a drive-through order and pick-up lane will be added behind the building. Existing driveways will be maintained in their current form and there are no other variances requested at this time.

Engineer Testimony

The board qualified Mr. Kinasian as a professionally licensed engineer in NJ.. Mr. Kinasian showed the aerial view of the site which is Exhibit A1. Mr. Kinasian discussed the proposed site location relative to other properties in the area. Mr. Kinasian discussed site specifics including the current 60.6% impervious coverage ratio which is noted as an existing non-conformity. Another existing non-conformity noted is the combined total of the side yards which exceeds the 75 feet combined. There are 14 parking spaces in front with 9 in the rear for a total of 23. Further east on the property there is an above-ground basin originally intended to collect storm water. Access to the site is via an existing unrestricted two-way drive along Route 31. In addition there is a one-way egress to the adjacent parking lot to the south with a formal easement agreement. There were no questions from the Board regarding the current conditions. Mr. Kinasian presented the proposed site plan dated November 7, 2021, which was included in the application. The main focus of the design is re-purposing the building to include a drive-through in an adequate and safe way. The proposal includes removal of the existing drive-through canopy and moving the drive-through to the northern side of the building away from pedestrian interaction and parking. It also extends the drive-through lanes to three sides of the building instead of two. This design will allow for the majority of operations to be pushed back from Route 31, parking and pedestrians. Parking in the rear would be 9 angled spaces and in front would be consistent with the current configuration, with the removal of one space to allow for a dedicated pedestrian lane. Similar to current conditions, traffic circulation would continue to be two-way in front of the building and counterclockwise on the other three sides. Other changes include movement of current trash area, expansion of the sidewalk in front of the building to include a small seating area, and additional landscaping. These changes will reduce the impervious coverage which will naturally reduce storm water runoff. There will be extensive engineering specifications to address the storm water should this application be approved. Full design will look into the existing basin as well as other details. Mr. Blackwell asked about the island between the pick-up window and the access to exit. Mr. Kinasian explained that there will not be an island but a striped area. Mr. Blackwell's concern was with fire truck access so the striped area is preferable to an island. Ms. Laitusis appreciates that the southern exit was closed and asked if there would be any changes to Route 31 access. Mr. Kinasian explained that there are no restrictions in place and the traffic engineer would be discussing more specifics in his presentation. Mr. Angarone reiterated that closing off the southern exit is a good idea and asked if there would be plans to have some sort of pedestrian access via that route. Mr. Kinasian explained that details regarding the southern exit have not been worked out and might include an agreement with the adjacent property for a pedestrian right of way or, barring

that, a physical barrier to discourage pedestrian traffic from that direction. Mr. Angarone mentioned the pre-existing storm water issue in that area and has offered to discuss with the applicant the possibility of a storm management plan for the site that may exceed the current guidelines. Mr. Reilly asked for clarification regarding the pedestrian plan for access to the south. Mr. Prime suggested that this issue would be addressed in the traffic presentation.

Applicant Representative Testimony

Mr. Prime introduced Lizanne Kile from Starbucks Company. Ms. Kile is a Senior Store Development Manager and her job responsibilities include looking for new sites in NJ and negotiating leases. Ms. Kile testified that a drive-through is critical to this site because of the changes in customer behavior brought on by the Covid 19 pandemic. Anticipated hours are 5:30am-10:00pm Monday -Saturday and 6:00am-9:00pm on Sundays. There would be 25 employees total with 5-6 on per shift. Ms. Kile believes there is ample parking at this site to accommodate staff and customers. There were no questions for Ms. Kile.

Traffic Engineer Testimony

Mr. Prime introduced Mr. Corak who specified that he is a licensed professional engineer and an expert in traffic and transportation engineering. With no objections, Mr. Corak has been qualified by the Board as an expert witness. Mr. Corak showed exhibit A1 and discussed the traffic impact study that has been completed. The site on Route 31 will require a DOT approval even if there are not substantial modifications. The currently hatched area is proposed to be changed into a dedicated left turn lane for the site so as not to impede the movement of south going traffic. A traffic count looking at pedestrian and vehicular movement was conducted on a typical week day from 7:00am-9:00am, 2:45pm-3:45pm and 4:30pm-5:30pm. Predominant pedestrian traffic during the morning saw 24 pedestrians cross route 31 and at school dismissal there were over 100 pedestrians crossing Route 31. Route 31 vehicular traffic appeared equal from north and south and built up when the light at Delaware and 31 was red and dispersed appropriately when the light changed. The traffic signal seems adequate to process the vehicles in a timely and efficient manner. The forecast of future volume without the Starbucks looked at projected growth rate in both vehicular and pedestrian traffic and does not expect a significant increase in either form of traffic. A forecast of traffic with the addition of the Starbucks with a drive-through was conducted. Mr. Corak noted that the traffic study was conducted prior to the decision to close the southern egress from the site. The traffic study considered a restricted left turn access onto route 31 and the expectation that the DOT would limit left turn exits from the Starbucks. A Starbucks-type facility is considered "pass by" use which draws traffic from persons already using the roadway. Because of the "pass-by" nature of this site, it is believed that this development would not have any adverse effects on traffic on the roadway. Traffic would remain generally consistent with current conditions. A specific look at the positives and negatives of the inclusion of the drive-through showed that current design specifications, including the drive-through line wrapping around the building and being separate from pedestrian traffic, were an overall positive and does not increase the overall traffic. A drive-through also reduces the amount of backing up in the parking lot which helps to increase overall safety. Drive-through access also increases ADA compliance and meets accommodations. Two options have been considered looking at pedestrian access from the south where there is currently one-way egress. One option being explored with the property owner, is to have direct pedestrian access from the parking lot to the south via a dedicated pedestrian lane. It appears there is room for a pedestrian lane in the existing lot to the south but it is unknown if the owner will agree. A second option is to restrict pedestrian access from the southern lot via a physical barrier. Mr. Agarone asked that in the event no agreement can be made with the owner to the south, what contingencies are in place for people who will still go through this way. Mr. Prime specified that the site owner is not a co-applicant and no agreement exists but the applicant will strive to make access to their site as safe as possible for pedestrians. Mr. Angarone also asked if the pre- application with DOT gives any indication that the left turn lane would be approved.

Mr. Corak explained that the take away from the meeting with DOT is that, although not promised, the left turn lane into the proposed site is something that would be permitted by the DOT. Mr. Angarone expressed hesitation to approve the variance without the existence of the left turn lane. Mr. Corak explained that the DOT process for approval can take more than a year and that the site might be approved as a right turn in, right turn out only situation. Mr. Angarone asked for specifics on future traffic impact with or without the Starbucks. Mr. Corak said that the increase would be 1-2 seconds and overall level of service would increase 3.8 seconds in the morning, 1.4 seconds during the after school hours and 1.6 seconds during the evening. A typical motorist would not notice this as a delay and it is within the DOT allowable ranges for impact of development. During the morning, the LOS is currently a C overall and evening is a D overall. With the addition of the drive-through, the morning LOS goes from C-D. Mr. Blackwell inquired if the traffic study had considered the back-up of cars travelling northbound and whether or not the study looked at the impact of half days of school. Mr. Corak indicated that they had considered northbound traffic and had not conducted the study on a day when students had a half day. Mr. Corak stressed that pedestrians have preference at the intersection and the increase in foot traffic would be short-lived and facilitated by crossing guards. Mr. Blackwell asked about the closing off of the southbound entrance and its impact on the trash receptacles for the current occupants for the site to the south. Mr. Corak assured the Board that they would work out the best options for the landlord to the south. Ms. Laitusis asked about the danger of crossing the entrance and exit of a gas station if the southern access is blocked. Ms. Laitusis also asked for clarification on how vehicles would exit the site. Mr. Corak states that there is no data that can ascertain which path is safer for pedestrians but stressed that they are willing to work to find the safest path possible. Regarding the exit, the expectation is that the DOT would limit exits to right turns only. If drivers want to travel south from the site, the anticipation is that they will go north and figure out how to get back to a south bound route. Mr. Kwak has asked about traffic that may want to continue west toward CHS but detour to Starbucks. The next available left turn is Pennington Harbourton Road and the Starbucks may increase traffic turning there. Mr. Corak explained that Pennington Harbourton Road was not within the study area but that most drivers settle in to a routine that allows them the quickest route to their destination. Mr. Angarone asked about the current Starbucks site south on Route 31 and whether that location existing has an impact on the traffic study. Mr. Corak stressed that this traffic study is independent of the current Starbucks location 2 miles south on Route 31. Mr. Reilly mentioned that keeping the south access open may be a solution to the traffic question but it also raises a safety question for the school students.

Licensed Professional Planner Testimony

Mr. Prime introduced Mr. Dougherty, Licensed Professional Planner, McDonough Associates. Mr. Dougherty explained that he is licensed in NJ and has been recognized as an expert witness based on his credentials. The Board accepted Mr. Dougherty as an expert witness based on his testimony with no objections. The site in question, the former TD bank site, is surrounded by retail and customer adjacent sites and the applicant is interested in a variance for a drive-through site at this location. Mr. Dougherty believes that the presenters have met the relief that is necessary in that the drive-through increases accessibility and customer service; it improves use of the land; the project promotes a positive aesthetic, the drive-through will increase the safety, usability and integration into the community; the Zone impact would be minimal because restaurants are allowed and drive-throughs are allowed but not for restaurants. The positives of allowing for the drive-through far outweigh the detriments; the plan has profound impacts on safety and the project plan, in most cases, represents an improvement on current conditions. The drive-through also helps to minimize accidents that may happen due to backing up in the parking lot. The addition of the drive-through makes the establishment more enjoyable and safer for all involved. While the final site plan has not been developed, the drive-through is warranted and statutory requirements have been met. There were no further questions on the presentation.

Pennington Borough Planning Board Minutes – December 8, 2021
Regular Meeting

Mr. Kyle was asked to present his considerations on the impact of the drive-through to the site. There is no new bulk relief necessary. The enhanced quality of life via Medici proof allows that the grant of the variance is not in conflict with the use and intent of the master plan. An applicant for D-1 variance must prove that the intent and purpose is not in conflict with the current zone plan. The 1998 master plan had spoken to the impacts of a drive-through due to existing traffic conditions in the area. If the Board members are satisfied that, per the traffic study, the traffic impacts would not be major, the variance can be reconciled with the Master Plan. Mr. Kyle recommends that, if the waiver is granted, it be conditional on approval of the full site plan. Mr. Kyle advised that, if the site was going to be re-occupied by another company, the variance would not apply because it is only for this particular site plan. Mr. Angarone asked for clarification regarding the proof of the negative in the bifurcated application. Mr. Kyle specified that in a bifurcated application, if there is a substantial change in the site plan that does not meet the satisfaction of the Board, the plan can be rejected at a later date. Ms. Laitusis has a question about people queuing in the drive-through lane being distracted and thus being a danger to pedestrians cutting through from the south site where most of the school children would be crossing and asked about the possibility of re-orienting the take-out window to the south side of the building. The experts explained that if the site of drive-through was re-oriented, the take out window would not be on the driver's side of the vehicle.

Mr. Schmierer mentioned that there may be one or two conditions that the Board may want to include that have to be reflected in the site plan in order for approval. Mr. Kyle noted that the DOT has control over the traffic guidelines and it may be difficult for an applicant to agree to conditions if they do not know what the DOT may decide. Mr. Prime made the point that the applicant does not know what the DOT will decide so any conditions put in place contingent on things like a dedicated left turn lane may be hard to accept. Mr. Schmierer wants to make sure that the Board is clear with the applicant on what is a primary issue to make this a suitable site for a Starbucks with a drive-through. Mr. Reilly specified that the discussion on conditions does not need to take place tonight.

Mr. Perry shared his recommendations for consideration specified in his memo. He does not have anything that would preclude the use variance being considered tonight. There were no questions for Mr. Perry.

Mr. Reilly opened the session for public comment.

Dan Pace, 9 Railroad Place, Pennington, NJ, was sworn in by Mr. Schmierer. Mr. Pace mentioned that he believes that the Board will make the best decision for the community. Mr. Pace is of the opinion that the drive-through will increase traffic to the site and therefore increase traffic overall. The zoning prohibition of a restaurant drive-through was imposed specifically to limit traffic in the area and believes that the request for a variance should be rejected.

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

Mr. Reilly requested comments from the Board members.

All members of the Board indicated that they are disinclined to vote in favor of the variance due to the current zoning restrictions on a restaurant with a drive-through and the overall traffic and pedestrian safety issues in the immediate area.

Pennington Borough Planning Board Minutes – December 8, 2021
Regular Meeting

Mr. Prime asked to defer the vote based on feedback from the Board. He has requested to suspend the application in order to have time to generate more acceptable solutions to the traffic situation.

Mr. Schmierer stated that the applicant can agree to continue the hearing at a later unspecified date with the understanding that the applicant will re-notice the public once the future date is decided. The Board would continue the hearing at a future date and the applicant would sign the Land Use Clock extension. Mr. Prime agreed to these conditions.

Mr. Angarone moved to postpone the application and Ms. Laitusis seconded the motion. Mr. Reilly specified that a vote of yes will postpone the hearing to a later date and a vote of no will not suspend the hearing and the Board would vote tonight on the variance.

Roll call:

Angarone-Yes

Blackwell-No

Kwak-Yes

Laitusis-Yes

Lawver Yes

O'Neill-Yes

Reilly-Yes

The motion carried by a vote of 6 to 1 and the hearing is suspended to a future date with re-noticing required.

Mr. Prime thanked the Board for their consideration and expressed his hope to re-present in the near future.

The Board has asked the professionals to leave the meeting to hold a closed session to discuss Professional appointments for 2022.

Executive Session

Prior to this discussion, Mr. Lawver left the session because it is his last meeting as a member of the Board. In attendance at the closed session are: Mark Blackwell, Seung Kwak, Cara Laitusis, Katherine O'Neill, James Reilly, Nick Angarone, Jeanne Van Orman

A vote will be held on the following professionals at the re-organization meeting in January: Board Attorney, Board Engineer, Board Planner and Acting Board Secretary. There is a consensus to continue with the current professionals which are: Mr. Schmierer as Attorney, Mr. Kyle as Planner, Mr. Perry as Engineer and Ms. Heinzl as Acting Board Secretary.

Ms. Laitusis has asked about the official posting of the notices in the Hopewell Valley News because the circulation is so low. The local newspaper is required by law as the place of notification. Ms. Heinzl noted that notification is on the website and posted at the Borough hall. Ms. Laitusis and Mr. Blackwell agreed that the notifications are not widely seen by the community. Ms. Heinzl offered to note these meetings in the newsletter and put a notice on the Borough Hall door if the meeting is via Zoom. Mr. Reilly asked Ms. Heinzl to confer with Mr. Schmierer about where and how notifications should occur. Ms. Laitusis has suggested we post in Mercer Me and The Hopewell Valley News if that is a requirement. Ms. Heinzl will talk to Mr. Schmierer and notify Board members of his advice. A decision will be made on this topic at the January re-organization meeting. All agree with continuing to use the current professionals and to investigate options for public posting of the meeting.

Pennington Borough Planning Board Minutes – December 8, 2021
Regular Meeting

MINUTES – It is anticipated that minutes will be available in the near future.

Mr. Angarone moved that the Board come out of Executive Session and adjourn the meeting;
Ms. Laitusis seconded the motion; all were in favor and the meeting was adjourned.

Respectfully submitted,

