

**PENNINGTON BOROUGH
PLANNING BOARD MINUTES
REGULAR MEETING
MAY 12, 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: Seung Kwak, Cara Laitusis, James Reilly, Jeanne Van Orman, Doug Schotland, Mark Blackwell, Kate O'Neill, Nick Angarone

BOARD PROFESSIONALS PRESENT: Edwin W. Schmierer, Planning Board Attorney, Mason, Griffin & Pierson, John Flemming, Zoning Officer, James Kyle, Planner, 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 being no public comments, the time for public address was closed.

RESOLUTION OF MEMORIALIZATION

Appeal of the Zoning officer's decision-regarding the merger of two lots known as Block 204 lots 15 and 16. The Zoning Officer's decision was reversed and lots 15 and 16 are not merged as a matter of law.

A motion to adopt the resolution was moved by Mr. Angarone and seconded by Ms. Laitusis.

Roll Call:

Angarone-Yes

Blackwell- Not present at time of vote

Laitusis-Yes

Schotland-Yes

Kwak-Yes

Reilly-Yes

O'Neill-Not present at time of vote

Van Orman-Yes

Resolution was adopted.

APPLICATIONS

P21-004-Mr. Lun-205 South Main Street- Variance to construct a garage; carried over from April meeting.

Mr. Lun remains under oath from the April 14th meeting. Mr. Lun presented a revised plan which reduced the footprint of the garage to decrease non-conformance and pushed it 2 feet further toward the rear so it will reduce the visual impact. He is requesting a C-2 variance that advances the purposes of the NJ Land Use Law and the benefits would outweigh the detriments. The proposed garage will be consistent with the look of the current house and neighborhood. Mr. Lun described the finish work and how they decided on specific architectural details to match and enhance the current aesthetic. Mr. Kyle noted that Mr. Lun has responded to many of the comments from the initial meeting. The size of the garage has been reduced to 960 square feet and Mr. Lun has agreed to move the garage to the North about 10 feet, per Mr. Kyle's suggestion. Mr. Kyle also suggested that some plantings be added between the garage and fence. John Flemming has been following the meeting and had no comments on this application. Mr. Perry commented on the square footage which is 960 square feet with 910 useable space. Both numbers appear on the drawing and might be confusing to others who look at the drawing. Mr. Lun confirmed that the structure is being moved 2 feet further back and that the drainage will be to the center of the yard.

Mr. Reilly asked for comments from the public.

Mr. DeFalco, 124 Voorhees Ave Pennington, was sworn in by Mr. Schmierer. Mr. DeFalco commented on the noise that the proposed wood shop might make. Mr. Lun explained that he is restoring his house a room at a time and has been doing the work outside without any complaints from the neighbors. Per Mr. Lun, his activity being moved to a structure would, in fact, reduce the noise.

There being no other comments from the public, the public session was closed.

Mr. Reilly summarized that Mr. Lun has eliminated the shed portion of the structure and reduced the footprint of the structure overall. He asked for comments from the Board Members. Mr. Angarone looked at this from the Bulk variance criteria and feels there will be minimal impact but still has a concern about the size exceeding the ordinance specifications. But, considering the memo from Mr. Kyle regarding the intent of the ordinance in reference to secondary structures, he feels it will not overwhelm the primary structure. Mr. Schotland feels that the changes in structure with the removal of the shed area did not have a huge impact on the effect of the structure on the neighbors. Ms. Laitusis feels that the garage structure, even with revisions, is out of proportion to the other secondary structures in the area. Mr. Kwak and Mr. Blackwell are inclined to approve the project with the changes made. Mr. Angarone asked if this plan was reviewed by historic preservation. Mr. Lun has spoken to Mr. Holtermann and Mr. Holtermann indicated that no historic preservation clearance is needed for accessory structures.

Ms. O'Neill made a motion to approve the application with the movement of 4 feet to the north and 2 feet to the east and the Board Engineer's approval of storm water management provisions. The motion was seconded by Mr. Blackwell.

Roll Call:

Angarone-Yes

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Blackwell- Yes
Laitusis-No
Schotland-Yes
Kwak-Yes
Reilly-Yes
O'Neill-Yes
Van Orman-Abstain

Motion was approved with 6 affirmative, one negative vote and 1 abstention.

P21-006 McMurray Holdings LLC.-Block 104 Lot 12-minor subdivision approval and bulk relief for pre-existing conditions

Mr. Schmierer stated that proof of notice is in order and he swore in Mr. Hall, applicant and applicant attorney and Mr. Falcone, land surveyor and professional planner, to testify on behalf of this application.

Mr. Hall thanked the Board for the opportunity to present. He explained that there are currently 2 single-family homes on a single tax lot. The applicant's plan is to update the front home, subdivide the property, and either build a new home or expand the existing smaller home on the property. There is a current glaring non-conformity in that 2 primary homes exist on one tax lot. The subdivision would create 2 non-conforming lots but would rectify the nonconformity of 2 single family homes on one lot. The applicant believes that, under R-80 zoning rules, the sub-division with non-conformities would be a better remedy than the non-conformity of 2 homes on one tax lot. There are a number of current existing dimensional non-conformities and a number of new variances requested in this application. Mr. Falcone testified why this sub division proposal is a better condition than 2 homes on a single tax lot.

Mr. Falcone is a principal of Princeton Junction Engineering and is licensed as a professional planner and surveyor. With no objections, Mr. Falcone was accepted as an expert for this testimony. Mr. Falcone shared Exhibit A1, a view of existing lot 12 block 104 which is a corner lot with 2 primary residences which was an existing, but approved, non-conformity. The rear lot which has a one story home on it has a driveway that exits onto Lewis Brook Road. The front lot which has a 2 story home on it has a driveway that exits onto East Franklin Avenue. There is a sidewalk in the rear of the 2 story home connecting the 2 homes; it will be removed. The lot is open and slopes from the property line west toward Lewis Brook Road. To help reduce non-conformities, Mr. Hall has inquired about buying 2 smaller properties to the north that are not in Pennington. He has not heard back from the current owner. It is Mr. Falcone's opinion that putting these structures on their own lots is a plus for the Borough and will bring the site more into conformity with the zoning plan. Granting the bulk variances will not pose a substantial impairment to the intent and purpose of the Master Plan and zoning ordinance. These benefits, cited from Land Use Law, are listed in Mr. Kyle's memo with which the witness agrees.

Mr. Falcone reports that he walked the neighborhood and observed a number of detached garages and undersized lots: therefore he believes the proposed sub-division is in character with the neighborhood. Mr. Falcone shared Exhibit A-2, the Pennington tax map, which highlights existing non-conformities in the immediate neighborhood. Mr. Falcone discussed the engineering memo from Mr. Perry. Mr. Perry also requested that a column be added to the zoning table that noted the existing conditions and that

one structure on lot 13 which was not shown be added in. Mr. Falcone agreed to make all of these changes. Mr. Perry also mentioned storm water runoff and Mr. Falcone will show the proposed locations of down spouts and possible impact of adjacent properties. Mr. Falcone noted that they do not anticipate any new utility lines but that the lines to the one story home cut through the two story home's property. These utility lines will be put into an easement. Mr. Perry asked if the lot width of 79.2 feet might be incorrect. Mr. Falcone re-measured and come up with 95 feet thus there is no need for that variance. Mr. Hall said his intention is to build any structure, if possible, to eliminate the need for more variances. Mr. Hall described the plan to renovate the front home and sell it. For the immediate future, if this sub division is granted, the one story property (rear) will remain as is. Mr. Flemming asked if the applicant has checked with public works about the utility easement. Mr. Hall reports that Elizabethtown Gas has said that, once the second property is renovated, the gas line will be moved. Mr. Falcone reports that Mr. Smith from Pennington Public Works reported that there is no water main on Lewis Brook Road, therefore, if the water line were moved to the second home, it would have to go to the intersection of Lewis Brook and Franklin, then to the one story home. Mr. Flemming notes that the Borough owns the water line and that the easement would require permission from the Borough which the applicant does not currently have in place. Mr. Falcone indicated that Mr. Smith verbally described the water line to them and it is not noted on the plan. Mr. Perry noted that if it is 2 separate lots it would be desirable to have separate utility services. From a zoning stand point, Mr. Flemming believes the creation of two separate properties, each with a single family dwelling, would represent better planning but only if the structures had separate utilities; in other words no easement for the water lines. Mr. Kyle noted that the subdivision seeks to remedy the current non conformity of 2 principal dwellings on one lot. Mr. Kyle noted that the smaller lots that would be created by sub-division are within the character of the neighborhood. The Board needs to consider if the testimony supports that the variance is beneficial to the community as a whole. He also explained the basis for setback standards is to support the "adequate light, air and open space principle" and not only the specific set-back numbers.

Mr. Reilly asked for comments from the public.

Nancy and Dan Rubenstein, 25 East Franklin Ave Pennington, NJ, both were sworn in by Mr. Schmierer. Mr. Rubenstein testified that no one approached them except by certified letter which is out of character for the neighborhood. He testified that the proposed changes will change the character of the neighborhood. The primary house will be larger, increasing population density. The proposed garage is huge and would encroach upon the Rubenstein's property and their view line. Movement of the garage to the other side of the home (Lewis Brook side) would eliminate the need for a variance and not infringe on the site line. He testified that his current property was sub-divided from the the property in question. The one story home was built to accommodate an aging parent who died before being able to live in the home. This would essentially mean what was once a large property would be divided into 3 non-conforming lots. Mr. Rubenstein shared architect drawings presented by the applicant where their home was not noted. He also shared Exhibits O-1 and O-2 that noted their property and indicated how close the garage would be to their home and how it would infringe on the sight line. He noted that when they had requested a variance for a wrap-around porch it was denied because it would infringe on the the quality of life of their neighbor. Mr. Hall

asked Mr. Rubenstein if he had noticed the construction at 27 E. Franklin and if he had ever spoken to any of the workers there. Mr. Rubenstein mentioned that no one has ever approached them there. Mr. Hall noted that Mr. Rubenstein had never said hello to him, which was not very neighborly. Mr. Hall noted that it would be used as a single family home.

Mr. Albert Teixeira-Matos, 20 E. Franklin Ave was sworn in to testify. He testified that Pennington is a great town to live in and if everyone started to divide their properties then the nature of the town would disappear. Mr. Teixeira-Matos was thanked for his testimony.

Robert DeFalco, remained under oath and testified that he is shocked about some of the comments made this evening. He asked whether it is the Planning Board's job to continue past mistakes or to use new knowledge to make the town better and preserve the nature of the town.

Mr. Kyle noted that the reason for noting other non-conforming lots is not to justify the creation of more non-conforming lots but that it goes to the question of whether the applicant is proposing a plan that goes with the character of the neighborhood. Mr. Reilly asked if the law supported creating non-conforming lots if the neighborhood has other non-conforming lots. Mr. Kyle said that this is up to the Board to decide. Mr. DeFalco asked if an applicant on Main Street could put a cemetery behind their house because there is already a cemetery on Main Street. Mr. Kyle noted that this is a different issue. Mr. Kyle believes the issue is whether or not creating 2 non-conforming lots will create a negative impact on the neighborhood. From the applicant's perspective the new lots are similar to others in the neighborhood and thus will not cause a negative impact. Ms. O'Neill noted that non-conformities are not necessarily mistakes. Mr. Hall noted that any new construction would adhere to all regulations. Hearing the public testimony, Mr. Hall wants to withdraw the garage portion of the application. Mr. Angarone asked if there were any issue with the amount of impervious coverage and Mr. Perry said that is not changing as of now. Mr. Angarone also asked if splitting the lots entitles them to greater impervious coverage than if it was 2 separate lots. Brian Perry thinks that the percentage of impervious coverage allowed would not increase with a sub-division.

There being no further public comments, the public comment period was closed.

Mr. Reilly asked for comments from the Board. Mr. Schotland acknowledged that this a tough application, but he is leaning toward approving sub division due to the number of non-conforming lots in this part of the Borough. Ms. O'Neill doubts that any new structure built on the lot in place of the one story home could be conforming. She asked about the proposed property line and why it was not perpendicular to Lewis Brook Road. The applicant is agreeable to straightening the sub-division line in relation to Lewis Brook. Ms. O'Neill is inclined to vote no on the sub-division. Mr. Kyle noted that the lines are drawn according to plot and are traditionally perpendicular. Mr. Falcone mentioned that, in drawing the line, he tried to balance the size of each lot. Mr. Angarone and Ms. Laitusis are in favor of the sub division with the conditions as discussed.

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Mr. Schmierer has suggested that the application be held and the applicant come up with a new plan which would describe new variances created by making the dividing line perpendicular and removal of the garage. Ms. Laitusis suggested that the sewer and water lines be added in to the new plan. Ms. Laitusis asked about a neighbor not being notified. Mr. Hall explained that he used the certified list for notification and Mr. Schmierer noted that the list was checked at the ARC meeting and everyone on the list had been notified.

Mr. Blackwell moved to carry this application to the June 9, 2021 meeting without further notification being necessary. Ms. O'Neill seconded the motion and all were in favor via voice vote.

Zoning Officer Report

Jon Flemming noted some issues about lighting in the ordinance. He has requested that changes with regard to lighting be considered.

Minutes

There are no minutes to approve. We will catch up on minutes in the future.

The motion to adjourn was made by Mr. Angarone and seconded by Mr. Blackwell. All were in favor via voice vote

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'A. R. O.', written over a horizontal line.