

**PENNINGTON BOROUGH  
PLANNING BOARD MINUTES  
REGULAR MEETING  
OCTOBER 13, 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, Mark Blackwell, Cara Laitusis, Katherine O'Neill, James Reilly, Jeanne Van Orman, Doug Schotland, Deborah Gnatt

**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. Nell Haughton, a member of public who is interested in the Master Plan process and the Watershed presentation this evening, is specifically interested if the plan will address the current flooding and may have questions later. There being no other public comments, the time for public address was closed.

**ZONING OFFICER REPORT**

John Flemming, Zoning Officer, discussed the modifications to the radio tower at the fire company. Mr. Flemming believes that he can approve these modifications because the modification is simply an update of equipment and would not prompt a need to go before the Board. Mr. Schmierer agreed with Mr. Flemming. John also discussed the currently empty coffee shop across from Tollgate. The owner, Mr. Morrison, has inquired about modifying the site to serve food. John has advised him that it would need a grease trap interceptor and he would need to consult with Rick Smith. Mr. Flemming has asked if this minor change in use would require Board approval. Mr. Flemming specified that the site was approved for a specific purpose without a grease trap but asked if the modification follows all other ordinance specifications, would Board approval be necessary for this modification. Mr. Schmierer said that they would need to look at the prior approval for the site in order to determine if approval was necessary. Ed Schmierer, Jim Kyle and John Flemming will do an administrative review and advise the owner of the findings.

**APPLICATIONS**

**Application 21-0014-Pennington School Ball Stop**

Mr. Schmierer has certified that all notifications are in order and the Board can assume jurisdiction.

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Eric Goldberg, attorney for applicant, Stark and Stark, introduced the presenters; Sean Walsh, Professional Engineer, Van Cleef Engineering, and Graeme McWhirter, Pennington School, who were all sworn in by Mr. Schmierer.

Mr. Goldberg explained that there is a current ball stop that is 16 feet in height and the applicant would like to extend the height to 41 feet. This application is not for the Burd Street site but for another location. This ball stop will not be visible to the general public. There is a question about whether or not this structure is a fence or another type of structure and even if a variance is needed. In the event a variance is needed, it could be looked at as a C1 hardship or a C2 Flex. There are currently existing light poles that are about double the height and the presence of higher ball stops will increase safety. Mr. Walsh was accepted as an expert witness based on his stated credentials. An aerial view of the site was shared and the site of the proposed modification was shown. The ball stops will prevent balls from entering the parking lot and keep balls, and players, out of a nearby stream. A taller ball stop will allow for cars to be safer and ball players to remain on the field where they are safest. Exhibit A2, the line of sight drawing was shared and showed that the higher ball stops will not be visible from Burd Street. Exhibit A-3, an example of what the ball stops will look like, was shared. Mr. Walsh testified that there would be no negative visual or aesthetic effect on the public and the positive effect is that balls would no longer go to the lot or the pond. Mr. Goldberg did not have any other witnesses to present.

Mr. Reilly noted that a 2018 ball stop plan from Pennington School included a soil erosion and sediment control plan. Mr. Perry has recommended the contractor take all soil erosion and sediment control steps necessary and the Board agrees.

Mark Blackwell commented that during a recent football game the ball was kicked into the parking lot a number of times and the traffic in the lot made retrieval of the ball unsafe for the students. Mr. Blackwell thinks this modification is useful and necessary for student safety.

Mr. Kyle was sworn in and testified that the September 3, 2021 memo he prepared noted that the issue was fairly narrow. Mr. Kyle has provided the information necessary for the Board to make the decision. He agrees that visual impact would be minimal. Brian Perry was sworn in and testified that the contractor should, and he believes will, take all soil erosion and sediment control steps necessary. Mr. Goldberg specified that there is no impervious coverage change resulting from the increased height of the ball stops.

Mr. Reilly asked for questions from Board members. There were no questions.

Mr. Reilly asked for questions from the public and there were no questions, thus the public part of the hearing was closed.

Mr. Reilly asked for Mr. Schmierer to weigh in on whether or not the increased height of the ball stops represents a minor site plan. Mr. Schmierer believes it is a minor site plan and the poles and netting are some type of fence and they require a bulk height variance.

Mr. Reilly invited Board members to comment. Ms. Gnatt voiced that the prior application involving the Burd Street site raised concerns about the visual impact for residents of Burd Street. The current application has no such problems and increases safety so Ms. Gnatt is inclined to vote yes. Mr. Blackwell would vote yes. Mr. Kwak has no issues with the application. Ms. O'Neill, Mr. Schotland, and Ms. Laitusis are in favor.

Ms. Van Orman is fine with the application and Mr. Reilly believes that it represents an appropriate improvement.

Motion to approve the application, with the contractor taking all soil erosion and sediment control steps necessary, was made by Mr. Blackwell and was seconded by Ms. Gnatt.

Roll Call:

Blackwell- Yes

Gnatt-Yes

Kwak-Yes

Latusus-Yes

O'Neill-Yes

Reilly-Yes

Schotland-Yes

Van Orman-Yes

The application was approved.

#### **Capital Review for outdoor classroom at Tollgate School**

Mr. Schmierer and Mr. Perry met with the school representatives and the applicant has changed the plan to make it on grade with pervious flooring surfaces. Mr. Schmierer and Mr. Perry reviewed the modified plan and concluded that the modified plan is appropriate for a capital review.

Katie Bailey, PTO representative, was sworn in by Mr. Schmierer. Ms. Bailey explained that the outdoor classroom will be a patio-like structure with a removable shade-structure. There will be few permanent structures so the area can be used flexibly by teachers into the future.

Ms. Latusis asked if the neighbors have been consulted. Ms. Bailey reported that she has not contacted the neighbors but will do so if necessary. Mr. Blackwell asked about the safety of the connections for the shade structure. Ms. Bailey reported that they have worked with an expert in these types of shade structures to ensure its safety. Mr. Reilly asked if a residential patio at grade with temporary tent would need a permit or variance. Mr. Schmierer reported that the project described by Ms. Bailey would not need a permit or variance and this current Capital Review was a courtesy. Ms. Gnatt asked about the exact location of the classroom. Ms. Bailey explained that the site is tucked away behind the "kindergarten trailers." There were no other questions from the Board.

Mr. Reilly inquired if anyone from the public had comments. Mr. Steve Torto was sworn in and commented on the slope of the property. There being no other comments from the public, the public comment section was closed.

Mr. Reilly invited Board members to comment. Ms. O'Neill asked how students and staff access the area. A video demonstrating access was shared. Ms. O'Neill asked for clarification about which door from the main school would be used for access. Ms. Bailey clarified that there is an exit door close to the trailers and that she cannot say exactly what door would be used the most. Ms. Bailey explained that this site will be used one classroom at a time and similar to how outdoor spaces are currently being used. Mr. Blackwell asked for clarification if the flooring would be a deck or pavers. Ms. Bailey said it will be pervious pavers at grade. Mr. Blackwell also asked how far it will be

from the paver to the neighbor's property. Mr. Kyle checked and it will be at least 26 feet from the closest house. Mr. Perry asked about the dimensions of the patio. Ms. Bailey replied that it is 340 square feet. He also asked if the intent was for the space to be accessible. Ms. Bailey believes that it will be accessible because it is set at grade. The engineer will need to ensure that the area is accessible. Ms. Bailey noted that accessibility was discussed in the planning of the space. Mr. Perry mentioned that the pavers may not be fully pervious but the spaces in between make it pervious. Based on the approach here, Mr. Kyle believes that the Board should recommend pervious pavers. Ms. Laitusis has an issue with it not being a public and noticed meeting. Mr. Schmierer noted that a capital review does not require public notice. Ms. Gnatt shares Ms. Laitusis concern about the lack of public notice. Mr. Kwak has no issue with plan. Ms. Van Orman believes it is a great plan and that it should be approved tonight.

Ms. Gnatt moved to approve the capital project as amended. Ms. O'Neill seconded the motion.

Mr. Schmierer recommends 2 conditions to the application; 1. Pervious pavers be used, 2. The space be accessible.

Roll Call

Blackwell-No

Gnatt-Yes

Kwak-Yes

Laitusis-Abstain

O'Neill-Yes

Reilly-Yes

Schotland-Abstain

Van Orman- Yes

The Capital Review is approved with specific conditions with 2 abstentions. Mr. Schotland abstained because he assisted with development of the project.

### **Concept Review**

Conceptual Review for potential application, 5 Route 31, Frontier Development /Starbucks

Mr. Schmierer clarified that there is not an application on hand yet but that tonight's presentation is simply a concept review. Up for discussion are site specific discussions not comments on use variances, etc.

Duncan Prime, Attorney for applicant, Prime and Tuvel, presented on behalf of Frontier Development. Mr. Prime stated that the applicant would like to re-purpose the former TD Bank to a Starbucks with a drive-through. Starbucks would not consider this site without a variance for the drive-through. Mr. Prime explained that the site would require very few other variances if the drive-through were approved. The space is large enough and a restaurant is an acceptable use and a drive-through is acceptable in this zone; just not a restaurant with a drive-through. Other attendees to support this concept review were: Lizanne Kile from Starbucks, Craig Carden, Engineer, from Stonefield to speak on civil site design, and John Corak, Engineer, Stonefield to give a brief overview on traffic. A map of the site with proposed changes was displayed. Mr. Carden explained that the plan is to remove the current bank drive-through canopy and relocate the drive-through to the north side of the building with 1 lane and a canopy. Other

improvements include improved pedestrian connections on 31 and ADA compliance. Mr. Reilly asked about where ordering would take place. Mr. Carden indicated the ordering location on the map and described the order area as at the 7<sup>th</sup> stack (car) for purpose of making the drinks. Mr. Blackwell asked if a grease trap was necessary. Mr. Prime explained that no food is prepared on site. Mr. Corak described the current traffic conditions being two-way entrance and egress onto Route 31 and one way egress only from the south. The engineers have had a preliminary meeting with NJDOT to discuss the site and traffic conditions specifically requesting a left turn only lane into the location. Mr. Reilly asked if traffic leaving could go left. Although no restrictions are in place, Mr. Corak would not be surprised if the DOT restricted the Route 31 exit to right turn only. Mr. Corak mentioned that this drive-through would have the ability to “stack” 11 cars. Mr. Prime stressed that, despite the current prohibition on restaurants with a drive-through, he believes the site can accommodate this drive-through. Mr. Kyle asked about peak use times. Mr. Corak said that peak use will most likely occur with morning commute times.

Mr. Kyle prepared a review memo and noted that the drive-through would require a D-1 variance. He discussed current existing non-conformity with the site. The only new non-conformity would be the 3 foot increase in non-conformity created by the new canopy on the north side. Mr. Kyle asked about any other enhancements to the structure such as painting, etc. Mr. Prime noted that there will be an outdoor patio but no other major changes are being considered as of now. Mr. Kyle noted that traffic could be an issue, especially in the morning. Mr. Kyle asked if they planned to reuse the TD Bank freestanding sign and Mr. Prime replied in the affirmative. Regarding other signage, Mr. Prime noted that it would be the standard Starbucks package and they would need to check the ordinance for specifics. Mr. Kyle noted that code now specifies that as long as 10% of the entry façade was maintained signage was ok and that there are no regulations for the menu board and other drive-through related signage because restaurant drive-throughs are currently prohibited. Mr. Kyle noted that parking is adequate as required by the ordinance. Mr. Kyle discussed the presence of a lot of school age pedestrians. Mr. Kyle is interested in how pedestrian safety would be dealt with. Mr. Kyle suggested that the site include a sidewalk for pedestrian flow and the addition of a bike-rack. He noted that the garbage area may need a variance and that recycling is required to be roofed but that fully closed containers would most likely be acceptable. Mr. Kyle noted the recent flooding in the area and the non-functioning storm water basin at the site. Mr. Prime said they would have an engineer look at the basin and ensure it is functioning. Mr. Reilly asked for questions from the Board.

Ms. O'Neill discussed the one-way egress and how it might exacerbate the problems in the Uncle Ed's parking lot and the traffic getting onto W. Delaware from that driveway. Mr. Kyle believes that at the 7-10am peak times no stores are open in the Uncle Ed's parking lot area. Ms. O'Neill was hoping that the proposed cross hatch section Rt. 31 would be a barrier but it is not intended to be a barrier. She asked if there have been discussions about putting up a barrier to eliminate illegal left turns. Mr. Kyle asked Mr. Corak to explain how the light helps to control traffic. Mr. Corak described that the light creates gaps for cars to exit and enter the establishment. Ms. O'Neill mentioned a fatal pedestrian accident at the intersection 2 weeks prior to this meeting. The left turns on Route 31 as a whole are a big concern for pedestrians. She noted that there is no sidewalk on the west side but there is on the east side which is in front of the proposed site. Ms. O'Neill noted pedestrians having to cross 2 exits of the Exxon to get to the

establishment should the southern egress be closed. Mr. Blackwell asked about the access to the parking lot to the shopping center north which is at times blocked and at other times open. He asked if anyone has spoken to the landlord there about north access. Mr. Prime is not aware of any discussion about this. Mr. Blackwell noted 7:10-7:40 is the prime time for school children crossing Route 31. Ms. Laitusis is familiar with the school traffic in the area and notes the presence of inexperienced teenage drivers at those times. She notes that a natural path of traffic flow would be through the south egress and suggested that it might be a better idea to close this egress off to keep the traffic off of Delaware Ave. Mr. Kyle noted that early in the process the idea of closing this egress had been discussed but no decisions have been made. Ms. Van Orman discussed pedestrian safety and how current lots have been designed without pedestrians in mind. She is asking that the applicant look closely at pedestrian traffic while doing the traffic study and project pedestrian traffic with and without the Starbucks drive-through. Mr. Prime noted that pedestrian traffic will be studied closely at this site. Mr. Prime made it clear that the site will not go forward without a drive-through. Mr. Perry asked if they had consulted with the Fire Department. Mr. Prime said that they have not yet reached out to the Fire Department. Mr. Perry noted that the Fire Department has specific guidelines for canopy, etc. and it might be good to include them early in the process.

Mr. Reilly asked if any members of the public would like to comment. There being no further comments from the public or the Board, the open session was closed.

Mr. Reilly thanked the team for their presentation.

#### **WATERSHED INSTITUTE PRESENTATION**

Sophie Glover, Assistant Director of Policy, The Watershed Institute and Steve Torto, Director of Science and Stewardship, The Watershed Institute, presented on the Impervious Cover Assessment & Reduction Plan for Pennington Borough. The details of their presentation are in the attached document.

After the presentation, Ms. Laitusis asked a question regarding the master plan regarding the addition of a green cemetery. Mr. Torto has not done any research on green cemeteries but will do some research to see if this might be a water friendly option. Mr. Torto stressed that the addition of trees and water gardens can really make a difference. Ms. O'Neill asked if the Watershed looked at larger swales in the Borough. Mr. Torto reported that they had not looked at swales in particular but were looking at each property as its own discreet project. Ms. Van Orman wondered which approach would be most effective and feasible for implementation. Pennington has 1 or 2 areas of land that may be redeveloped. It might be possible for the Borough to use what leverage they have to assist with this issue; specifically by enacting requirements for positive storm water management. Mr. Reilly mentioned the issue of taking next steps. He suggested that we leave this topic on the next agenda to generate more discussion.

#### **OLD BUSINESS**

No Old Business

#### **NEW BUSINESS**

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There are no new applications for November, thus there will not be a meeting in November unless the Board wants to invite the Watershed Institute back to discuss this issue further. Ms. O'Neill suggested that members of the Master Plan committee attend some of the Watershed's educational sessions to learn more about this issue. Ms. Van Orman suggested that the Board give a recommendation to the Master Plan Committee as to which mitigation direction to pursue. Mr. Kyle noted that the Master Plan would be used as a guide in ordinance development. Regarding the landfill, the Board is still waiting the environmental report to see if the landfill is appropriate for development. There will be a meeting in November if Nick Angarone is available to discuss what actions are appropriate and feasible when considering the Impervious Cover Assessment & Reduction Plan for Pennington Borough.

No other new business.

**Minutes**

Minutes from September 8, 2021 were approved by a motion from Ms. O'Neill and seconded by Ms. Gnatt. Minutes were approved unanimously via voice vote.

Ms. Gnatt made a motion to adjourn the meeting and Ms. Laitusis seconded. All present agreed to adjourn the meeting.

Respectfully submitted,



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