

**PENNINGTON BOROUGH
PLANNING BOARD MINUTES
REGULAR MEETING
FEBRUARY 14, 2018**

Mr. Reilly called the meeting to order at 7:35 p.m. and announced compliance with the provisions of the Open Public Meetings Act.

Board Members Present: Nicholas J. Angarone, Mark Blackwell, Deborah L. Gnatt, Eileen Heinzl, William B. Meytrott, Katherine L. O'Neill, Vice Chairman, James Reilly, Chairman.

Absent: Douglas Schotland, Winn Thompson

Also Present: Edwin W. Schmierer, Board Attorney, Mason, Griffin & Pierson; Michael Bolan, Planner; Brian Perry, Van Note-Harvey Associates; John Flemming, Zoning Officer; Mary W. Mistretta, Secretary

OATH OF OFFICE

The following took the Oath of Office: Nicholas J. Angarone, Class IV, 01/01/2018-12/31/2021; Deborah L. Gnatt, Class III, 01/01/2018-12/31/2018; William B. Meytrott, Class II, 01/01/2018-12/31/2018.

OPEN TIME FOR PUBLIC ADDRESS - none

MEMORIALIZATION OF RESOLUTION

171921 Burd Street, LLC, David W. Neiburg, Sole Member, 17-19 Burd Street, Block 503, Lot 3, Town Center Buffer Zone, Application No. P17-004.

Ms. O'Neill made a motion, seconded by Ms. Heinzl to adopt the resolution with one change. Voting yes: Heinzl, O'Neill, Reilly. Absent: Schotland, Thompson; Not voting: Angarone, Blackwell, Gnatt, Meytrott.

APPLICATIONS

Robert Robson, 110 Crawley Avenue, Block 504, Lot 3, R-80 Zone. Use Variance Application No. P17-003

Ms. Heinzl, Mayor's representative, and Ms. Gnatt a member of Borough Council, recused themselves from hearing the use variance application and stepped down into the audience. Mr. Schmierer stated that he explained to the applicant that there were only five eligible members present tonight to hear the application and that a use variance required five affirmative votes for approval. The applicant agreed that he would like to go ahead with the application. Mr. Schmierer stated that at the end of the meeting if the Board had more questions, the application could be continued to the next meeting and any eligible members that were not present could listen to the tape to vote at the next hearing. Mr. Schmierer announced that Proof of Publication and Proof of Notice were in order and the Board could take jurisdiction.

Robert Robson, applicant, and William J. Doran, architect, were sworn in. Mr. Reilly stated that item 6A Engineering on the checklist is marked N/A, but it is applicable and can be addressed during the meeting. Mr. Doran stated that they are proposing to construct a two-story, 17.4 ft. wide, 21 ft. long addition to the rear of the house. They are also constructing a small mud room and covered front porch. Mr. Doran stated that his drawings were based on an older survey that was incorrect and he had indicated that the setback for the addition would be 13.8 ft. on the southerly side. The newer survey shows the side yard of the existing house as 2.2 ft. and they relocated the addition to meet the 15 ft. setback on the southerly side of the house and would also meet the setbacks for the northern side yard. John Flemming, Zoning Officer, was sworn in.

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Mr. Flemming stated that they would not need a variance for the 13.8 ft. setback that was proposed, based on the formula given for setbacks for the R-80 Zone in 215-50 in the Borough Code. He also explained that there is a provision for front yard setbacks, where the setback would be the average of 50% or more of the lots within a distance of 500 ft. on the same side of the street. He feels that the lots in that area are all pretty much the same size and the 25 ft. setback would be good. Mr. Doran next addressed the need of a d (4) use variance for exceeding the permitted floor area ratio (FAR). In the R-80 Zone a floor area ratio of .265 is permitted and they are proposing a floor area ratio of .300, approximately 300 sq. ft. over what is permitted. He stated that the addition is being placed to the rear of the house and the house would still be in character with the streetscape and surrounding houses and he does not feel that it will be a detriment to either the zoning requirements or to the neighborhood.

Michael Bolan, Borough Planner, was sworn in. Mr. Bolan stated that his calculations showed the floor area as 10% over what is permitted which is less than what the applicant calculated. He then addressed his memorandum of February 7, 2018 and noted that the applicant must demonstrate that there is an extraordinary or exceptional situation that would warrant the granting of relief of the variance. It is a d (4) use variance and is different than a d (1) variance. The courts in NJ have held that the tests for the d (4) variance are a little less stringent than for a use that is not permitted. The standard is whether the site will accommodate the problems associated with the proposed floor area that is larger than what is permitted by ordinance. The applicant must demonstrate that the negative criteria are satisfied and that there are conditions that can be imposed that would insure that the overage would not cause substantial detriment to the public good or substantial impairment of the zone plan. He also noted that the property has frontage on both Crawley Avenue and Burd Street and what is shown as a rear yard is actually another front yard. The bulk of the addition is to the rear and there is a substantial setback to the front lot line on Burd Street. Mr. Bolan stated that it is a narrow lot, but is similar to the other lots on that side of the street and the design of the addition does not change the appearance of the dwelling from the street.

Mr. Reilly asked the applicant to address the reasons why he feels that the size of the proposed addition is needed. Mr. Robson stated that they could have made the addition a little smaller, but they would still need the variance. If they reduced it to meet the FAR requirement the family room and the bedroom would be really small and would not meet their needs. Mr. Robson added that it was built in 1906 and one of the problems that he had when he moved in was the lack of closet and storage space which they are trying to provide with the addition. He was single when he bought the house, but now that he is married he needs more space.

Brian Perry, Van Note-Harvey Associates, Planning Board Engineer, was sworn in and addressed his memorandum of December 27, 2017. He stated that the applicant has provided additional information regarding drainage showing roof leaders and downspouts. Mr. Perry stated that a grading plan and elevations should be submitted for review. Mr. Doran stated that they are planning to have the leaders from the addition flow out onto the grass area and they would provide a grading plan. Mr. Robson stated that they have not had any drainage problems on their property or on the neighbor's.

Mr. Reilly asked if there was anyone in the audience who had comments or questions, there being none the public portion of the meeting was closed. Mr. Meytrott asked if everything that appeared on the sketch showing the downspouts would be built and Mr. Doran replied that they would. The Board felt that the applicant addressed his need of more room and the site supports the addition and they felt that it would be a positive addition to the community. They agreed that a grading plan reviewed and approved by the Borough Engineer should be a condition of approval. Mr. Blackwell made a motion to approve the application with the condition regarding drainage and that the drainage is approved to the satisfaction of the Borough Engineer. The

motion was seconded by Mr. Angarone. Voting yes: Angarone, Blackwell, Meytrott, Reilly, O'Neill. Not Voting: Gnatt, Heinzel. Absent: Schotland, Thompson.

CONCEPTUAL APPLICATION

**Agrain, LLC, Erwin E. Harbat, 278 North Main Street, Block 103, Lot 8, MU-1 District.
Application No. P18-001.**

Henry Chou, Attorney, Law firm of Hill Wallack, stated that he was here on behalf of Agrain, LLC owner of the site. Wayne J. Ingram, E & LP, engineer, was introduced. Mr. Chou stated that the site was approximately two acres and very long and narrow with an unusual shape. There is an existing five unit building on the premises consisting of four offices and a unit with empty space that the applicant would like to convert into a restaurant. It would be a change of use and the application would be for a site plan. There are not a lot of improvements being requested, but there are plans for a patio and parking lot.

Wayne J. Ingram, Engineer, E & LP, referred to the Conceptual Site Plan, dated 1/31/18 and stated that they are not changing much about the way the site operates. There are a few buildings on the property, the northern half of the property will not be touched and the existing uses will remain. The proposal revolves around the building on the southern half of the property. The space they are proposing for a pizza restaurant is at the northern end of the building and is approximately 1,600 sq. ft. They are proposing an approximate 1,000 sq. ft. patio to the rear of the building. They will be cleaning up the area and improving the parking area in the rear of the site. Presently it is gravel some of which will be removed to reduce the impervious coverage and the rest will be paved to delineate parking spaces. There is one access at the northern end of the building and another one to the south which would provide circulation through the whole property. The southern entrance is only 12-13 ft. wide and they are proposing to turn that into a one-way access. The building is close to the road right-of-way and they are trying to minimize any site issues coming out from the site. The various out buildings on the site were pointed out and they are not planning any changes for them. They are all preexisting conditions and the uses are conforming.

Mr. Reilly asked the Board if they had any questions. Mr. Meytrott asked if they were planning to place pavers on the entire parking surface as noted on the plan. Mr. Ingram stated that the notation should have read "paved" on the plan and not "pavers," although the patio will have pavers. They will maintain the existing drainage patterns and reduce the impervious surface by revegetating some of the gravel areas. Mr. Meytrott also asked if the parking would remain in the front and Mr. Ingram stated that it would remain. Mr. Bolan asked when the parking got approval since it was unusual to have parking in the right-of-way. Mr. Blackwell stated that cars have been parking there since it was a John Deere dealer. Ms. O'Neill asked about the gravel areas that were going to be revegetated and Mr. Ingram stated that the shaded areas shown on the plan would be the areas that would be revegetated. The ordinance states that they should have one stall per employee for all the uses, but they have tried to design the site to accommodate seating in the restaurant on top of the amount allotted for employees. Mr. Flemming, Zoning Officer, added that they would have to follow the zoning for restaurants that is included in the Town Center Zone. Mr. Reilly asked if there was an issue with parking spaces extending into the right-of-way. Mr. Flemming stated that the parking has been there forever and is grandfathered. The County has not had a problem with it and the application will go to them for review. Mr. Blackwell asked if they were planning on curbing the parking places and Mr. Ingram explained that they were not as they would like to maintain the existing water flow. Mr. Meytrott mentioned that since the County repaved the road there is much more water by the curve and asked if there was some way to be sure that the water is not increased there. Mr.

Ingram stated that they were proposing to increase the slope from the north end so the water would flow back to the inlet. The existing ditch at the other end should catch most of the water.

Michaelle Piancozzo, architect, showed the location of the wood fire oven with the chimney which will be located at the corner where a fire wall is already located. He stated that the ovens do not require hoods as they are directly connected to the chimney which will vent all the smoke directly outside. Mr. Reilly had concerns regarding residents in the area and if the wood smoke would be a health hazard. Mr. Piancozzo stated that the oven they were proposing burns at a much higher temperature and has a lot less smoke than the typical wood burning stoves. Mr. Reilly suggested that information regarding this would be very important to include with the application. Mr. Flemming stated that the Board of Health would probably have to make recommendations and point out any health problems. Mr. Flemming suggested that the applicant should be prepared to address whether or not there would be music for the outdoor patio. The applicant was also reminded to check the ordinance regarding outdoor lighting. There will be no roof on the patio and it will only have seasonal use. Mr. Angarone asked how many cars were presently in the rear and Mr. Harbat stated that there were 4 or 5 cars presently parking there.

Mr. Bolan stated that the required parking listed was 43 spaces and 44 were proposed, but he only counted 34 spaces. Mr. Ingram explained that the number included the spaces on the north half of the site. Mr. Bolan stated that the spaces for the restaurant should be clarified and that it was rather unusual not to deal with the site as a whole for the application. Mr. Reilly agreed with Mr. Bolan and wondered if it was appropriate to only deal with the one business. Mr. Ingram stated that they were not making any improvements on the rest of the site, but they could show the entire site when they come in with their application. Mr. Flemming suggested that they also calculate the square footage for the entire site. Mr. Bolan noted that the frame building that was used for storage behind the patio could be used for more parking spaces if they were needed. Mr. Perry asked if they would be expanding the gravel area and Mr. Ingram stated that they would in a couple of areas, but they would balance out to a net reduction in impervious. Mr. Perry requested that they include the changes to the coverage and any grading on the site plan. Mr. Harbat stated that he has become a real fan of oven baked pizza and they will be the only Neapolitan pizza vendor in the Borough.

Mr. Reilly asked if there was anyone in the audience who had comments or questions. Daniel Pace, 9 Railroad Place, stated that he appreciated the questions and comments that the Board and their professionals made. He agreed with Mr. Reilly about his concerns regarding the wood smoke as there were a lot of complaints when a similar pizza place opened in Hopewell Borough. Mr. Bolan pointed out that the neighbors there were about 30 ft. away. Mr. Harbat stated that they would be 250 ft. away from Railroad Place and the railroad and Penn Brook Swim Club were his nearby neighbors. Mr. Harbat pointed out to Mr. Pace that the restaurant would be located closer to the northern end of the building. Mr. Pace stated that he also had concerns about the drainage and lighting. Mr. Pace also had questions concerning lighting, signage and buffering. The signs will not be multicolored and will have a logo. Mr. Harbat stated that they will replace the Agrain logo on the silo.

Kathleen Connolly, 2 West Franklin Avenue, had concerns regarding lighting, traffic, noise, smoke and high volume customers. She stated that the businesses that are currently located on that site are low volume customers and this will bring evening traffic in what she feels is a highly residential neighborhood. Ms. Connolly stated that she remembers the Nomad pizza smoke issue and that there were neighbors more than 30 ft. away that complained. She stated that currently there is a lot of smoke in the neighborhood and she is concerned for health reasons. Mr. Reilly asked if she was talking about fireplaces and she responded some of it is probably fireplaces, but a lot of it is from the Blackwell's facility and she is concerned about the quality of

that smoke and the smoke coming from the proposed wood burning pizza oven. Ms. Connolly asked for clarity regarding the need of a use variance and Mr. Bolan responded that it was a permitted use. She also asked that they look into the diagonal parking to see if it is legitimate. There were no further comments from the public. Mr. Schmierer stated that the applicant now knows that a use variance is not required for the application and has feedback from the Board and the professionals to use for their formal application. Mr. Chou thanked the Board and professionals for their feedback and they will take their comments into consideration. The application would be for site plan and bulk variance approval.

ZONING OFFICER'S REPORT

Mr. Flemming stated that he has a request from a resident to keep chickens in their backyard. He stated that this has come up before and there is no ordinance specifically addressing this, but he does not see anything that would require him to approve it. Mr. Reilly felt that if there was nothing in the ordinance permitting them, the Zoning Officer has a basis for denying the approval. Mr. Flemming stated that he would deny the approval.

Mr. Lorenzetti, Shoppes of Pennington, would like to rent one of his units to Skin Deep Permanent Studio. It does semi-permanent make up which are like tattoos, but are not permanent and only last for six months to a year. Mr. Flemming felt that he should check with the Board regarding this use since tattoo parlors are a prohibited use. After discussion, the Board agreed that the definition of a tattoo is that it is "indelible" and this procedure is not and this use would be allowed.

Mr. Blackwell asked if anyone brought up the water problem at the new house at 212 S. Main Street. Mr. Blackwell stated that he approved it with the condition that water would not run into the street and there is a lot of water running into the street. Mr. Schmierer stated that Mr. Blackwell's suggestion would have come under the stormwater management in Ms. Roberts report. Mr. Schmierer stated that if they have followed the engineer's suggestions and they are not working, they will have to do something else to control the water. Mr. Perry stated that they would be checking the site again.

The meeting was adjourned at 9:15 p.m.

Respectfully submitted,

Mary W. Mistretta
Planning Board Secretary