

**PENNINGTON BOROUGH
PLANNING BOARD MINUTES
REGULAR MEETING
AUGUST 14, 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, William B. Meytrott, Katherine L. O'Neill, James Reilly, Chairman. Absent: Douglas Schotland

Also Present: Edwin W. Schmierer, Mason, Griffin & Pierson, Planning Board Attorney; Elizabeth McManus, 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. Reverend Daniel Casselberry, Pastor of Pennington United Methodist Church, 60 S. Main Street stated that he was following up on approval for a labyrinth that the church would like to construct. He stated that he brought additional documentation to Mr. Flemming and they were hoping to move forward with it. There was an issue regarding crushed stone and he stated that they are now proposing to use rubber mulch. It was suggested that Mr. Flemming would be coming to the meeting and he should first get a determination from Mr. Flemming. (Mr. Flemming gave his approval.)

MEMORIALIZATION OF RESOLUTION

Umberto Nini, 30 West Delaware Avenue, Block 503, Lot 8, Town Center Buffer Zone. Application No. P18-004. Ms. O'Neill made a motion, seconded by Mr. Angarone to adopt the resolution. Voting yes: Angarone, Blackwell, Gnatt, Heinzl, Meytrott, O'Neill, Reilly, Laitusis. Absent: Schotland.

APPLICATION

Mark Neary, 8 East Welling Avenue, Block 1002, Lot 18, R-80 Zone, Application No. P19-003. Bulk Variances to construct a garage.

Mr. Schmierer announced that Proof of Notice and Proof of Publication were in order and the Board could take jurisdiction. Mr. Mark Neary, 8 East Welling Avenue was sworn in and Mrs. Neary, Allison, was also present. Mr. Neary explained that the application was to seek approval to replace an existing garage that is in disrepair with a new single car garage. They would like to rebuild in the same location with a slight increase in size. Variances are requested for a setback of 2.3 ft. on the easterly side, where 5 ft. is required and for the garage location, approximately 9 ft. from the principal structure, where 10 ft. is required. Mr. Reilly called on Mr. Angarone, Chair of the Application Review Committee to report on their review. Mr. Angarone noted that the applicant requested two waivers on the checklist. One was item 1.D, and the Committee felt that all the information required was included in the application and a waiver was not required. A waiver was requested for 6.A regarding stormwater details and the Committee suggested that the Board hear testimony regarding stormwater details before granting the waiver.

Mr. Neary pointed out on Drawing 1 the existing garage and the garage on the adjoining property on which was just rebuilt approximately five years ago and is approximately 1.7 ft. from

the property line. Drawing 2 shows the proposed garage which has the same size front as the existing garage, but instead of the 8 ft. shed attached to the garage they would extend the garage 8 ft. Mr. Neary stated that the proposed garage is consistent with the adjoining garages in the neighborhood where three have garages less than two feet from the property line. He stated that his proposal will move the garage a little closer to the property line because of the diagonal lines of the property and he would like to keep it in line with the driveway. Mr. Neary pointed out the photographs which show that the garage would be in character with the neighborhood. The survey shows that the adjoining Lot 16 is 0.1 ft. from the property line. Also submitted were photographs showing the site and the existing garage which shows the need of a replacement. He stated that it is a small lot and they would rather not move the garage further in and take up more of the yard space.

Mr. Neary next responded to questions he received. He stated that he measured some of the dimensions on the survey and it appears that they were measured from the walls, but the drip line given on the survey was from the overhang. Mr. Neary stated that he would make his overhang as small as possible. In regards to drainage, Mr. Neary stated that the grade runs down towards E. Welling from the south side. The property also grades from east to west and when they get heavy rains they get water running through the property as everyone else does on E. Welling because of the grade coming down from the properties from the back. The water runs and collects on the left side of the property which is the opposite side of the garage and the new garage would not have any impact on it. Mr. Neary stated he shares the driveway with his neighbor and the runoff goes right down the driveway. He felt that it would be more beneficial to let the runoff from the garage go into the grass instead of having gutters and downspouts running more water down the driveway. He stated that the new garage on the adjoining property next to his garage and the garage in the rear do not have gutters or downspouts. John Flemming, Zoning Officer, was sworn in and stated that the Board approved the garage Mr. Neary referred to and the applicant testified that there are no standing water problems in the area.

Elizabeth McManus, Borough Planner, was sworn in. Ms. McManus stated that she felt that the increase of the size of the garage could be classified as di minimis. She also stated that it was consistent with the immediate neighbors' garages, She did not see it as a substantial detriment to the public good and it does not seem to be out of character with the neighborhood.

Mr. Neary stated that the garage would be covered in vinyl. Mr. Blackwell agreed with Mr. Neary and felt that gutters would make the drainage go closer to the property line and it would be better without them. Mr. Reilly stated that the garage would be 2.3 ft. from the property line measured to the wall of the garage, the overhang would be approximately 6 inches, as required by Code and there would not be any downspouts unless the Board required them. Mr. Flemming suggested that the applicant be given a little flexibility regarding the overhang. Mr. Blackwell asked why the applicant would not square up the building to the property line if he was putting in a new foundation and Mr. Neary responded that he needed to keep the buildings parallel to each other. Mr. Neary stated that he did not feel the garage will increase drainage and it will improve the aesthetics of the neighborhood. Ms. O'Neill asked if the garage was moved 5 ft. from the property line would the shared driveway have to be widened. Mr. Neary stated that it would have to be widened and would increase the lot coverage. Mr. Reilly asked if there was anyone in the public who had questions or comments about the application, there being none the public portion of the hearing was closed.

Mr. Blackwell made a motion, seconded by Mr. Meytrott to grant the waiver regarding stormwater and approve the application with conditions. Voting yes: Angarone, Blackwell, Gnatt, Heinzl, Meytrott, O'Neill, Laitusis, Reilly. Absent: Schotland. The hearing ended at 8:05 p.m.

MINUTES – Ms. O'Neill made a motion, seconded by Mr. Blackwell to approve the minutes of the June 12, 2019 Planning Board meeting and the minutes were unanimously approved by voice vote.

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.

Present: Dino Spadaccini, Applicant's Attorney, Michael Shaw, COO, Goodwill Industries of Southern New Jersey & Philadelphia, Tornac Morrissey, PP, Applicant's Planner.

Mr. Spadaccini stated that they would first like to present their appeal to the Zoning Officer's decision and interpretation regarding the uses in the Business Highway Zone. He referred to the KMA Associates, review memorandum dated August 9, 2019 regarding Section 215-72 A. Permitted primary uses which he felt were clearly of a community service character. He stated that the Ordinance allows some flexibility and he thinks that the applicant's use fits that description. He stated that they will describe the use and if the Board does not agree that it fits in with the definition in the Ordinance, they will ask for a use variance.

Mr. Shaw described the origin of the Goodwill organization which was founded in 1902 by Dr. Edgar Helms a Methodist Minister in Boston. It was founded to get unwanted goods from the wealthier parishioners and teach the poorer parishioners how to mend and sell them to create their own revenue. There are 156 independent Goodwill stores throughout the country and this Goodwill is part of the southern New Jersey and Philadelphia district. Their mission is also to provide job education and training for people with disabilities and disadvantages. This is funded from the revenue received from selling the merchandise. They have 14 donation centers and operate 25 stores in their area. They try to place the donation centers where they are convenient for the donors and try to place them in more affluent towns because they get more quality merchandise.

Mr. Shaw stated that there is always somebody on site during their hours of operation which are from 8:00 a.m. – 7:00 p.m., Monday – Saturday and 10:00 a.m. – 6:00 p.m. on Sunday. There would be an assistant at the front of the building to help bring the merchandise into the facility. There is a computerized kiosk where you can get a receipt for what you have donated and they have a web site where you can print out a lost receipt. The goods are stored in plastic or cardboard containers. They are taken from the facility with 28 ft. straight trucks and they do not use tractor trailers. There would be one pick-up a day and maybe two in unusual circumstances. They do not utilize any outside storage and do not use trash containers and take all their own trash in the donation truck.

The floor plan was marked as Exhibit A-1. Mr. Spadaccini pointed out the receiving area and Mr. Shaw stated that all the containers would be stored behind the receiving wall in the rear of the store. Mr. Reilly asked what would be seen through the window. Mr. Shaw responded that there would be a desk and the donation kiosk to one side which would be in the front. Mr. Flemming, Zoning Officer, asked if the applicant would agree that there is zero retail business that will be conducted at the site and Mr. Shaw agreed. Mr. Flemming also asked if they would agree that there was no personal service element in what is proposed. Mr. Spadaccini pointed out i-k in the permitted uses, such as tailor shops and dry cleaning and stated that this facility is very similar to a dry cleaning facility where the customer comes in drops off clothes, someone else comes in to pick them up and bring them to another facility to be cleaned and then drops them back. In this facility they would not be coming back, but would be a one-way distribution center as opposed to the dry cleaning facility. Mr. Flemming stated that he did not see the personal service element. Mr. Shaw pointed out that they are providing service to the community in many different ways. They reduce dumping fees for the community and they take computers and televisions which are a huge problem in most municipalities. They also employ people with

disabilities and try to hire within the community. Ms. Laitusis asked what time the pick-up trucks would come and Mr. Shaw stated that they would come during regular business hours.

Tornac Morrissey, applicant's Planner, was sworn in and gave his qualifications to the Board. He is a professional engineer and a licensed professional planner in New Jersey and the Board accepted him as an expert witness. Mr. Morrissey stated that the uses permitted under section 215-72 Highway Business Zone were discussed before and are clearly of a public service character. Under the permitted uses "business offices" are included and they do not offer a product or merchandise for sale. There is nothing being sold, but it does offer a service to the public. Mr. Morrissey stated that by having an opportunity to take things to Goodwill instead of throwing them out or putting them on the curb is not only giving someone else a benefit from it, but will also be a tax rebate. Goodwill also offers people that are handicapped or have some form of disability an opportunity to be a productive member of society and that clearly falls under the definition. This use fits the definition of a business office. Mr. Morrissey pointed out that if they wanted to sell the merchandise it would be a permitted use even though it would be a much larger operation. The Ordinance allows for a general interpretation of how things fit and he thinks that this can fit in the definition of the Ordinance because it is public good and public use. Mr. Flemming stated that he agrees that if it had been retail where they were selling the merchandise he would have issued a zoning permit, but because it is different he feels that it does not fit in that category and it is outside the use of the Highway Business Zone. Mr. Morrissey agreed that it is not a retail use, but it does fall under the definition of a business office. It is a service establishment and it is providing service to the residents on multiple levels and it is in the public good. He feels that enough information has been presented to support a positive interpretation that it is a permitted use.

Ms. McManus, Borough Planner, in response to a question from Mr. Reilly, stated that she leaned toward the definition of personal service. She feels that the donation center is somewhat like the personal services that are listed in the zone definition. Most importantly is the reference by Mr. Spadaccini to the dry cleaning pick-up shop and it is also not too dissimilar from some of the other services listed. They are places where people go to obtain a service and in this case the service being sought is to make a donation to a nonprofit organization. She thinks that the use speaks to the character and the scale of the retail and personal services and the definition of business offices. Ms. Heinzl stated as she reads the definition of the zone she sees them as all commercial uses where commerce is being encouraged and it feels different because it is less of a commercial kind of a use. Mr. Angarone stated that he agreed with Ms. Heinzl and in reading the ordinance he did not think that it fully supports the use. Mr. Meytrott stated that he respectfully disagrees and he thinks that the Zoning Officer made the proper decision in referring it to the Board, however, he feels that it is similar in nature to several specific items that were included in the ordinance. Number 5 states "other business uses" and he feels there is no doubt that it is a business use and it is similar in scale. Mr. Reilly opened the meeting to comments from the public, there being no public, the time for open public comments was closed. Ms. O'Neill thought it was an interesting application and was looking to see if a wholesale business establishment would enhance the businesses in the Highway Business Zone and asked Mr. Morrissey what would be considered a wholesale business. Mr. Morrissey responded that the Dollar General store would be considered wholesale. Ms. O'Neill also asked if it would be considered a conditional use such as a public utility and what would be the next step if it was. Mr. Schmierer stated that you would have to check the conditions under conditional uses and would find the condition and tie it back into the purpose of the B-H Zone. Ms. O'Neill mentioned Verizon and Mr. Flemming stated that Verizon would be an office/retail use and explained what would be considered a public utility. Mr. Spadaccini stated that he did not feel that the use would fit in the description of "other business uses", but felt that it is clearly a business use and personal establishment use. He referred to the donation center in Lawrenceville and pointed out that you would not know that it wasn't a retail business. Ms. Heinzl stated that she would not participate in regards to number 5 which would be the Board

of Adjustment. She did not feel that the use fit in, but if the applicant applied for a use exception she would not be able to participate. Mr. Schmierer stated that he discussed this with Mr. Reilly and it is difficult to separate the two applications, but if it is just an interpretation it is his opinion that Ms. Heinzl can participate in the discussion because it is not a use variance application. He agrees that if the interpretation is not in favor of the applicant than she and Ms. Gnatt would have to step down and recuse themselves and the rest of the Board would convene as a zoning board to hear a use variance. They are eligible to vote on the interpretation even if it included number 5, "other business uses," since they are not officially acting as the zoning board. Ms. Gnatt did not feel that it quite fit within the confines of the uses and felt that it had to go through the use variance. There was further discussion whether it fit the business use. Mr. Shaw stated that they would have to adhere to everything that any other business in town would have to adhere to. Mr. Flemming stated that being a nonprofit was not relevant in deciding whether they are considered a business. Ms. Laitusis felt that it was similar in scale, but did not feel that it fit in. Ms. McManus was asked to read the definition of a business office. She stated that the Borough's definition of a business office fits this particular use because it is a business establishment which is not offering a product for sale, but is offering a service to the Borough. It is a little different than what is being proposed, but the definition does seem to fit. Mr. Blackwell felt it definitely did not fall within any of the listed retail businesses and he felt that it would fit in with number 5. Mr. Flemming stated that he felt it should be up to the Board to decide if it fit in and do they think it would help the general area. Ms. Laitusis stated that she did not feel that it fit any of the businesses or services listed. It was a similar scale, but not of a service nature. Mr. Reilly stated he is ambivalent about it and is inclined to think that it is a personal service and is a nonprofit business, but he thinks that the intent of the ordinance was to have businesses where people purchased goods or a service and paid for it. He does not feel that the use conforms with the spirit of the zone. Mr. Reilly asked what efforts have been made to rent the space to a clearly conforming use. Mr. Flemming responded that Vito Bua has rented the space to a number of tenants, none of which have survived very long and it seems that retail is not in strong demand in this area. He stated that vacant stores feed on vacant stores and it is preferable having a store occupied. Efforts have been made by the owner through realtors to rent the space for months. Mr. Flemming stated that the only zone where it would be a conforming use is the MU zone. Mr. Reilly asked if there were any other comments or questions and if not a motion should be made addressing the Zoning Officer's decision.

Mr. Meytrott made a motion to approve the use and grant the appeal to the Zoning Officer's decision, subject to conditions included in the addendum that the applicant submitted, seconded by Ms. O'Neill. Voting no: Angarone, Blackwell, Gnatt, Heinzl, Laitusis, Reilly. Voting yes: Meytrott, O'Neill. Absent: Schotland. Mr. Reilly stated that the Board upheld the Zoning Officer's decision and the applicant would have to move on to their request for a D (use) variance. Mr. Schmierer stated that the two Borough Council members would have to step down. The number of eligible voting members would be six and the applicant would need five affirmative votes. The applicant has the option to not proceed unless there is a total of seven eligible members. The applicant decided that they would proceed tonight with the use variance application.

Ms. Heinzl and Ms. Gnatt recused themselves and stepped down. Mr. Spadaccini stated that they would like to incorporate the testimony that has already been given as part of their presentation to request a D(1) use variance. Tornac Morrissey, PP, applicant's planner was previously sworn in. Mr. Morrissey stated that he felt this was clearly a inherently beneficial use. It is non-profit and their mission is to help individuals with disabilities and funds job training and career services through their collection of resale goods. It is beneficial to the community by giving them a place where used items can be recycled. Mr. Morrissey stated that the site is an existing commercial strip center with adequate parking out front and spaces on the side of the building and in the rear. They will be transferring all their refuse off site as opposed to putting it in dumpsters. The applicant is willing to abide by the conditions in the addendum to the application and they feel that the potential impact to the site will be an improvement and there

would be no negative impacts. The public interest is being served both through the nonprofit community oriented service that is being provided regarding employees and tax benefits. He felt that it met all the positive criteria. The use is consistent with the general intent of the zone by providing a business enterprise that is consistent with the zone plan and the ordinance. There are no other variances required for the application. There is substantial parking and there is no substantial impact to the zone ordinance or the Master Plan and he feels that the use does not cause a detriment to the public good.

Mr. Spadaccini stated that there is no detriment to the application and he feels that they have satisfied the criteria that it is inherently beneficial. Ms. Laitusis asked if they would be working with the high school transition placement or have any programs available. Mr. Shaw stated that they could look into it. Mr. Shaw stated that not all their employees would be disabled. Ms. McManus explained inherently beneficial and stated that this is a little different and is more weighing the positive and negative criteria and referred to the KMA memorandum dated August 9, 2019. Mr. Reilly asked if there were any more questions and Mr. Schmierer stated that if the Board found that Goodwill represents an inherently beneficial use they can make a finding that they agree this is inherently beneficial and focus on the negative criteria and if they would approve the use.

By straw vote the Board agreed unanimously that this was an inherently beneficial use. There was further discussion regarding employment at the Goodwill and It was pointed out that the school should reach out to them if they are interested in setting up a program for students. Mr. Schmierer asked if the applicant thought the distribution center would have a negative impact on the retail stores in the mall. Mr. Morrissey stated he did not believe it would because it would generate people that will use the facility and it would become part of the activity of the center. Mr. Shaw stated that it has been their experience that they enhance a center and other businesses have benefited from them being there. Mr. Shaw stated that they will conform to the Borough's ordinance regarding signs and lighting. Mr. Reilly asked if anyone in the public had comments, there being no public the comment period was closed.

Mr. Meytrott made a motion to approve the use variance with conditions that are included in the addendum, seconded by Mr. Angarone. Voting yes: Angarone, Blackwell, Meytrott, O'Neill, Laitusis, Reilly. Voting no: none. Absent: Schotland. Not voting: Gnatt, Heinzl. The hearing ended at 10:15 p.m.

ZONING OFFICER

Mr. Flemming stated that he has received a second nonconforming property that has requested approval to rebuild the house. He stated that the Board has always approved them and he asked if the Board wanted to amend the ordinance giving him flexibility to approve rebuilds if they did not vary from the regulations by a certain percentage. He stated that houses could be designed and placed in a much better position if they didn't try to design it to avoid going to the Board. It was suggested that this should be discussed by the Application Review Committee.

WORK SESSION

Ms. Heinzl explained that the Environmental Commission had suggested that a question be added to the Site Plan application that would ask if there were any historic environmental contamination or monitoring on a site so that the Board and the Environmental Commission would have a chance to look at it before the hearing. The Borough Council is looking at the ordinance to make amendments regarding the annual inspection and certification of stormwater management issues on a large site and Ms. Heinzl felt that Borough Council would consider including the Environmental Commission's suggestion. Borough Council said they would support it and it will be referred back to the Planning Board for their review. Mr. Angarone stated

that this came up when Agrain was before the Board regarding the wood fired pizza restaurant and the Board and the Commission were unaware that the property had monitoring wells on site. Mr. Reilly was questioning what would be done with the information and Ms. Heinzl stated that it was to obtain more information that the Board and the Commission would have before the hearing instead of leaning about it at the hearing. Mr. Schmierer was asked if he would draft up wording that would be appropriate.

Mr. Reilly felt that he should mention our colleague, Tony Persichilli, who passed away. He was with us as Mayor for many years and has been on the Board since then. Mr. Reilly suggested that the Board take a moment to remember Mayor Tony for all the good works he has done for Pennington. He will be missed.

Ms. O'Neill made a motion, seconded by Ms. Heinzl to adjourn the meeting at 10:45 p.m. and the meeting was adjourned.

Respectfully submitted,

Mary W. Mistretta
Planning Board Secretary