

**PENNINGTON BOROUGH**  
**JOINT PLANNING & ZONING BOARD MINUTES**  
**REGULAR MEETING**  
March 8, 2023

Mr. Reilly, Board Chair, called the meeting to order at 7:31 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:** Hilary Burke, Deborah Gnatt, Andrew Jackson, James Reilly, Amy Kassler-Taub, Jen Tracy, Doug Schotland  
Absent-Cara Laitusis, Katherine O'Neill, Mark Blackwell

**BOARD PROFESSIONALS PRESENT:** Jim Kyle, Planner, KMA Associates, Ed Schmierer, Attorney, Mason, Griffin & Pierson, Brian Perry, Engineer, VanNote Harvey, Katie Ronollo, Board Secretary

**OPEN TIME FOR PUBLIC ADDRESS**

Mr. Reilly asked if there was any member of the public who had joined the meeting and had comments on items not on the agenda. There being no member of the public wanting to comment, the open period for public comment was closed.

**ZONING OFFICER REPORT**

John Flemming reports that the only issue at this time is the appeal of the fence at 1 North Main Street.

**NEW BUSINESS**

Mr. Reilly asked the Board to consider the request to carry application PB 23-004 prior to hearing the other items on the agenda.

**PB 23-004, Emily's Café, 9 North Main Street**, Block 301 Lot 5.01, appeal of the Zoning Officer's decision to approve a fence at 1 North Main Street.  
Approval of the request to carry the application to the April 12, 2023 meeting was moved by Mr. Jackson and seconded by Ms. Burke.  
All were in favor via voice vote.

**PB 23-002, Neary, 51 Eglantine**, Block 302 Lot 2, minor subdivision with pre-existing non-conformities which will not be exacerbated by the subdivision and a d(1) use variance. The total of requested variances as outlined by Mr. Kyle in his March 6, 2023 memo are:

Proposed Lot 2.01

- Minimum lot area, 12,000 square feet required and 9,763 square feet proposed
- Minimum lot width, 80' required and 59.79' proposed

Proposed Lot 2.02

- D(1) use variance to permit a driveway as a principal use
- Minimum lot area, 12,000 square feet required and 3,847 square feet proposed
- Minimum lot width, 80' required and 30.04' proposed

Pennington Borough Joint Planning & Zoning Board Minutes – March 8, 2023  
Regular Meeting

- Maximum lot coverage, 40% permitted and 56.6% proposed

Mr. Schmierer swore in Mr. Kyle and Mr. Perry, the professionals for the Board. Mr. Schmierer confirmed that the Board has jurisdiction. Mr. Ridolfi, lawyer for the applicant, introduced Mr. Neary, the applicant and Mr. Falcone, Professional Planner with Princeton Engineering, the planner for the applicant. Mr. Neary and Mr. Falcone were sworn in by Mr. Schmierer.

Mr. Ridolfi explained that this application deals with one lot in Pennington (302/2) and 2 lots to the rear in Hopewell Township (46.04/18 and 46.04/8.01). There is no construction proposed in this application. Mr. Neary testified that he is the owner the three properties and lives on 46.04/8.01, 115 Lewis Brook Road, Hopewell Township. He is seeking a minor subdivision to obtain frontage for lot 46.04/18 by subdividing lot 302/2. The subdivided parcel, proposed lot 302/2.01, will provide a driveway and frontage for 46.04/18. This will require a use variance due to a driveway not being an allowable principal use in the R80 zone.

Mr. Falcone was accepted as an expert witness and shared his screen to illustrate the proposed changes in the property lines. Exhibit A-1 shows the entire property, Exhibit A-2 shows how the front lots are divided by the Pennington-Hopewell boundary lines. Exhibit A-3 highlights the portion of the land that is in Pennington Borough. Mr. Falcone explained the variances necessitated by the proposed subdivision. Proposed lot 302/2.02 in Pennington will be deed restricted so no construction can take place on the lot. There will also be an agreement for mutual maintenance of the driveway. He noted a special reason as the property is functioning as access currently and the subdivision would make this use permanent. Mr. Falcone said that the public will see no difference in the use of this property. Refusing to allow the variance would put hardship on the owners of 46.04/18 because there would not be formal access to the lot and MULU supports properties with frontage.

Questions included whether this access would open the larger lot to development and what kind of controls would be in place to assure maintenance, snow removal and other repairs of the driveway. Regarding development, Mr. Falcone explained that it would be nearly impossible due to the zoning restrictions in Hopewell Township currently requiring 6 acres for development. There is also a 150 foot stream buffer. Mr. Neary explained that there is an agreement that there will be no further development on the large property (46.04/8.01). Mr. Ridolfi noted that he is familiar with maintenance agreements and would be able to assure upkeep of the driveway via an agreement.

Mr. Perry asked why separate parcels had to be created instead of using an access easement to ensure access. Mr. Falcone explained that the creation of separate lots would make access cleaner than a simple easement. Mr. Perry recommends that the applicant complies with all provisions of the title registration act.

Mr. Reilly opened the meeting for public comment.

Kathleen Nash, 49 Eglantine Ave in Pennington, was sworn in by Mr. Schmierer. Ms. Nash asked about future owners being able to build something different or expand the home on 302/2.

Mr. Kyle explained that since this is a non-conforming lot that is on a protected brook, any construction would likely require coming before the Board and may be impossible due to the limitations of the lot. She explained that 302/2 is a two-family and asked if this use would continue if the property were sold. Ms. Nash asked if the driveway would be expanded.

Expanding the pavement area would not be possible without an additional variance because that portion of the property is close to or exceeding lot coverage regulations. It was clarified that the portion of 302/2 that is proposed to be subdivided would remain Pennington Borough property and not become Hopewell Township property.

Pennington Borough Joint Planning & Zoning Board Minutes – March 8, 2023  
Regular Meeting

Lyn Gustafson, 105 Lewis Brook Road, Hopewell Township NJ, was sworn in by Mr. Schmierer. Ms. Gustafson asked about the number of total lots proposed. Mr. Falcone specified that there are two lots proposed in Hopewell Township and two lots proposed in Pennington Borough for a total of 4 lots. This application pertains only to the subdivision of lot 302/2 in Pennington.

There being no other members of the public wanting to comment, the public comment period was closed.

Mr. Schmierer clarified that the Mayor's representative and the Council Representative are not eligible to vote due to a d(1) variance being considered. Therefore, there are 5 eligible voters. A supermajority of 5 affirmative votes would be necessary for the variances to be granted.

Ms. Kassler-Taub asked why there needs to be a separate lot instead of a simple easement to allow access to 46.04/18. Mr. Ridolfi noted that the concern is lack of frontage for the back lot and an easement would not provide frontage.

Mr. Ridolfi requested that the application to be carried over to the April 12, 2023 meeting when more eligible Board members may be present. Board members who are not present will be given the opportunity to listen to the meeting record so they will be eligible to vote on this matter at the April 12, 2023 meeting.

Mr. Jackson moved that the application be carried to April 12, 2023 with a second by Mr. Schotland. Via voice vote, all eligible Board members were in favor of carrying the application to the September 12, 2023 meeting without additional notice being necessary.

**PB 23-003, Ellis, 326 Burd Street**, Block 705 Lot 19, bulk variance for a full bathroom in an accessory structure.

Mr. Reilly and Ms. Kassler-Taub have recused themselves due to being within the 200 foot notification area. Mr. Jackson, Vice Chair, has taken over the role of chair for this application.

Mr. Schmierer confirmed that all notices were in order and the Board has jurisdiction. Mr. Schmierer swore in John and Karen Ellis, the applicants. Ms. Fischetti, the project designer, was also present. Ms. Ellis testified that they are requesting to build a full bathroom in a new garage. They are seeking relief from Pennington Code 215-12 which limits bathrooms in accessory structures to a half bath. Their home has only a half bath on the first floor and no room for expansion. Inclusion of a full bath on the ground level will support aging in place and a more practical use of the property as a whole. The garage space will be used exclusively by the homeowners as a home office. Mr. Kyle noted that the sole issue is the addition of a full bath; no other relief is being sought. Mr. Perry noted that the elevation would be the same as existing and the driveway will not be enlarged. Mr. Perry confirmed with Ms. Fischetti that gutters will be directed away from adjacent properties. Ms. Fischetti assured Mr. Perry that the overhang from the roof will be 10 inches to meet the setback requirements. The sewer line will be attached to the current house. Although a pump is shown in the plans, the builder believes that there is enough slope to avoid installation of a pump.

Mr. Jackson asked for public comment. There being no members of the public wanting to comment, the public comment period was closed.

Questions from the Board included the sources of water heating and exactly what restrictions will be added to the deed. Ms. Fischetti said that the water will be heated with an electric heater and Mr. Kyle suggested that the requirements would be that the site is not to be used as a living facility and will not have a cooking facilities added.

A motion to approve the application with noted conditions, was made by Mr. Schotland and seconded by Ms. Burke.

Pennington Borough Joint Planning & Zoning Board Minutes – March 8, 2023  
Regular Meeting

ROLL CALL:

Blackwell Absent	Burke Yes	Gnatt Yes
Jackson Yes	Laitusis Absent	O'Neill Absent
Reilly Recused	Schotland Yes	Alt. #1 Kassler-Taub Recused
Alt. #2 Tracy Yes		

With 5 in favor, the motion passed.

**POSTING OF BOARD MATERIALS ONLINE**

The goal is to post applications that have been deemed complete by the Application Review Committee on the website for public and Board member review. Application materials will still be available for public view at the Borough Hall and hard copies can be sent to Board members if that is preferred.

**RESOLUTION OF MEMORIALIZATION**

None

**MASTER PLAN REEXAMINATION**

Mr. Jackson has shared the draft reexamination document with Council members Catherine Chandler and Chico Marciante and has incorporated their comments as well as Planning Board member comments. The consensus is that the draft will be shared with Council for comments/additions prior to the public comment period. Mr. Schmierer complemented the work of the Master Plan Reexamination Plan committee. He advised that no vote take place tonight but agrees that the draft can move forward to Council for comment. Report will be shared with Council members for possible inclusion on the April 3, 2023 Council agenda. The Planning Board will review any comments from Council and will review the final draft at the April 12, 2023 meeting.

Mr. Kyle confirmed that there does not need to be a public meeting for comment prior to the scheduling of a public hearing to adopt the reexamination. He has shared with the Borough Clerk that a suggested budget to complete the Goals and Objectives and the Land Use Element of a full Master Plan would be \$15,000.

**MINUTES**

The February 8, 2023 minutes were approved with noted corrections via a motion by Ms. Gnatt and a second by Ms. Burke. All were in favor with one abstention via voice vote.

**ZOOM MEETING FORMAT**

There has not been any discussion about moving to in-person meetings. As it stands now, the Governing Body still meets virtually therefore this Board is in line with Borough practices.

Ms. Gnatt made a motion, seconded by Mr. Jackson, to adjourn the meeting. All voted in favor to adjourn via voice vote at 9:38pm.

Respectfully submitted,

*Katie Ronollo*  
Board Secretary