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**PENNINGTON BOROUGH  
PLANNING BOARD MINUTES  
REGULAR MEETING  
November 13, 2024, 7:30 PM**

Mr. Reilly 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:** Mark Blackwell, Gian Paolo Caminiti, Jim Davy, Andy Jackson, Amy Kassler-Taub, Kate O'Neill, Jim Reilly, Nadine Stern, Jen Tracy, Nazli Rex, Casey Upson

**BOARD PROFESSIONALS PRESENT:** Ed Schmierer, Attorney, Mason, Griffin & Pierson, Jim Kyle, Planner, KMA Associates, Kaitlyn Macellaro, 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 period was closed.

**NEW BUSINESS**

- o Recommended Ordinance Amendments

Mr. Kyle announced that he sent out a memo on November 8, 2024. He explained that he met with the Ordinance subcommittee twice and these were the recommendations that they proposed for the ordinances. He suggested that some of the elements wait until the MPC prepares the land use plan. He explained that the first part was an update to the definitions, section 215-8 in the Borough code. He noted in the reexamination report that some of the definitions have not been updated in quite some time.

Upon reading the definition of basement as: "A space, whether finished or not, having one-half or more of its floor-to-ceiling height above the average level of the adjoining ground and with a floor-to-ceiling height of not less than 7 feet" Mr. Kyle asked Ms. Kassler-Taub about the wording in the definition for basement. She offered a definition of a basement as "at least one half of its floor-to-ceiling height above grade" or "one half or more of its floor-to-ceiling height below grade" or could also be defined as "having more than one half of its floor to ceiling height below grade." She described that the key element to defining a basement is "at least half of the floor height above grade", but half or more can be below grade. She stated that a cellar is typically defined as "half or more below grade" and a basement as above. Mr. Kyle said that he is going to add the words "at least" before "...one-half or more of its floor-to-ceiling height..." Ms. Kassler-Taub asked what the limit would be if it was one half or more of the floor-to-ceiling height above grade and if it exceeds more than one-half above grade, that implies that you have less underground and if that is considered a basement. Ms. Stern asked how the definition doesn't imply the floor of a house. Ms. Kassler-Taub explained that if you exceed more than one-half above grade, which implies that you have less underground. Mr. Kyle compared the definition of basement and story and provided clarification and correction to the definition of basement here as long as being further defined by the definition of 'story.'

51 Mr. Kyle explained that the definition of half story requires seven feet of ceiling height to be  
52 considered habitable under the building code. He stated that this adds a definition to half-  
53 story to make a distinction in the architectural plans.  
54

55 Mr. Kyle noted that there has been some discussion about the definition of floor area and  
56 the Board has seen a number of floor area ratio (FAR) applications lately. He stated that he  
57 does not think the floor area of accessory buildings should be included in the FAR. Mr. Davy  
58 asked if FAR is defined in the current ordinance and stated that it would be important for us  
59 to know if the definitions are changing. Mr. Kyle read the definition of floor area ratio that is  
60 in the ordinance currently. Mr. Kyle explained that a detached garage or a shed would  
61 qualify for calculation of floor area ratio. Mr. Reilly asked if an attached garage is included in  
62 the floor area ratio. Mr. Kyle stated that it is part of the principal structure, so it would be  
63 included.  
64

65 Mr. Kyle stated that we have a lengthy definition of structure in our ordinance, so he used  
66 the MLUL definition to make it clearer.  
67

68 Mr. Kyle explained that he changed the definition of building height so someone can't  
69 manipulate the grading to overcome building height limitation issues. He informed the board  
70 that building height is measured to the highest point right now, but he changed it to be a little  
71 more specific with different types of roofs and beams. Mr. Reilly asked if a building can be  
72 41 or 42 feet. Mr. Kyle stated that it could be according to the new definition even though the  
73 maximum height is 35 feet. Ms. Kassler-Taub said that the other thing to consider is the  
74 number of stories. Mr. Caminiti asked if we would have to retrain our team to be able to  
75 implement these definitions. Mr. Kyle asked Mr. Caminiti if the Borough goes out and  
76 physically measures the building height. Mr. Caminiti stated that it would be a good idea to  
77 determine that the "as built" structure comports with what was reviewed and approved. Mr.  
78 Reilly noted that a building with a gable roof could be several feet higher than a building with  
79 a mansard roof if you went to the full permitted height. Mr. Kyle stated that it is dependent  
80 on how deep the structure is and the roof pitch. Mr. Kyle brought up a street view picture of  
81 the house on the corner of Burd Street and Academy Avenue where Mr. Reilly said the  
82 building turned out to be taller than the stated limit years ago. He brought up street views of  
83 a couple of houses on North Main Street to show an example of how shallow the pitch is on  
84 the roof.  
85

86 Mr. Kyle explained that "partial destruction" is not defined in the ordinance. The Ordinance  
87 Review Committee discussed this question and Mr. Kyle suggested that partial destruction  
88 be defined is less than fifty percent of the total floor area. He explained that the committee  
89 discussed the potential for demonstrating that fifty percent of the market value of the  
90 building has been lost through the partial destruction. He explained how fifty percent of the  
91 floor area is something that is easier to quantify. Ms. O'Neill agrees.  
92

93 Mr. Kyle stated that "prevailing setback" is a term that is not in the definition section, but is  
94 referenced throughout the ordinance. He explained how this provides flexibility to some of  
95 the historic properties and maintains consistency with our setbacks in certain areas of the  
96 Borough.  
97

98 Mr. Kyle explained that the EV ordinance is pretty simple and they adapted the Department  
99 of Community Affairs model ordinance. He suggested that every municipality should include  
100 this in their zoning code because many people still don't know that the ordinance was  
101 required by an amendment to the MLUL.  
102

103 Mr. Kyle explained that we already had regulations for air conditioner compressors and he  
104 suggested that we add generators to that section. He suggested to only require a variance if

105 the applicant proposed to place a compressor or air conditioner is closer to the property line  
106 than the existing principal building. He added that we had a discussion with an earlier  
107 applicant regarding the requirement that any air-conditioning compressor or generator must  
108 be visually screened from the street by evergreen vegetation or solid fence conforming to  
109 ordinance requirements. Ms. O'Neill stated that many houses in the Borough that have  
110 proposed a stand-by generator had to come to the Board for a variance and she wants to  
111 create a less burdensome process, recognizing the need for people to have generators. Mr.  
112 Kyle explained that the recommendation is that we amend the application fee and escrow  
113 fees for variance applications that are only related to air conditioning compressors and  
114 generators. Mr. Jackson brought up the fact that if the price of natural gas gets low enough  
115 then it might be cheaper for people to buy a generator and just run it all the time in order to  
116 generate electricity. He recommended using the word backup generators instead. Mr. Davy  
117 stated that a backup generator is usually temporary. Mr. Kyle said that he can add it  
118 consistently throughout the section.

119  
120 Mr. Kyle explained that the language governing nonconforming uses and structures in two  
121 sections of the ordinance is unclear and requires clarification. He suggested that in section  
122 215-52 we limit how far the non-conforming condition can be extended. He asked if the  
123 Board thinks that twenty-five percent or less is an appropriate limit to increase in the length  
124 of the building or portion of a nonconforming building. He explained that if a building was fifty  
125 feet long, that would allow someone to add twelve and a half feet. Mr. Jackson stated that  
126 there is no explanation of where the limit is and it can go right up to the property line. He  
127 recommended that we say twenty-five percent or no closer than within five feet from the  
128 property line. Mr. Kyle explained that this concept would not allow someone to go closer to  
129 the property line and would just allow someone to extend the already nonconforming  
130 building plane on that same setback. He explained that the way this was written previously,  
131 there was no limitation. The Board agreed that twenty-five percent was a reasonable  
132 amount. Mr. Reilly asked whether a new owner could apply for a subsequent variance to  
133 expand the building by another twenty-five percent. Ms. Upson noted that another addition  
134 would add impervious coverage to the lot. Mr. Kyle noted that this could start to become the  
135 limiting factor for multiple expansions. Mr. Reilly questioned why any expansion of a  
136 nonconforming use without a variance should be permitted. Mr. Kyle stated that another  
137 option would be to just completely remove this section. Ms. O'Neill suggested that they go  
138 around town and look at some houses, especially on South Main Street before making a  
139 decision. Ms. Upson asked if this would encourage residents to jut out their home and go  
140 back as far as they can if we get rid of it. Mr. Kyle said that it gives the Board an opportunity  
141 to review it on a case by case basis and figure out if there is an impact or is there a way to  
142 mitigate it and consider a variance. The Board agreed by a majority vote to accept Mr. Kyle's  
143 recommendation for twenty-five percent limitation.

144  
145 Mr. Kyle explained that the Ordinance Committee concluded that we do not need the  
146 definitions of reconstruction, partial reconstruction and total reconstruction because these  
147 terms are not used in the zoning ordinance.

148  
149 Mr. Kyle stated that the present ordinance allows up to three accessory structures and he  
150 suggested that we cut that back to two. Mr. Kyle noted that Mr. Flemming thought it was a  
151 good idea to clarify that patios are accessory structures and need to meet those setbacks  
152 because of potential impacts on neighbors. Ms. Stern questioned why we are cutting it back  
153 from three to two accessory structures. Mr. Kyle stated that most municipalities only allow  
154 one or two accessory structures. He noted that there have been situations in the Borough  
155 where some people have two or three sheds. Mr. Blackwell mentioned that some houses in  
156 Pennington don't have a garage and have two sheds instead. He asked if the sheds would  
157 have to be the same color and material as the principal building. Mr. Kyle stated that it is not  
158 the sheds, but the garages and pool houses. Mr. Jackson said that we should stick with

159 three accessory structures if we are going to include patios. Ms. Kassler-Taub asked if she  
160 could pull a grill and furniture to her property line without a patio. Mr. Kyle said nothing is  
161 stopping her from doing that. The Board agreed to keep it at three accessory structures and  
162 not change it to two.

163  
164 Mr. Kyle stated that the Board has seen a number of variances for garage height and  
165 suggested that we change the height from twenty to twenty-five. He stated that we don't  
166 want to limit those who work from home from adding an office above their garage. He said  
167 that we don't intend to encourage office space where clients would be coming, but rather to  
168 adhere more closely to home occupation standards. He stated that the space could not be  
169 used for a dwelling unit. Ms. O'Neill said that the five foot increase in garage height does  
170 encompass most of the applications we have had. Mr. Kyle stated that twenty-five seems  
171 reasonable particularly when we allow thirty-five for principal building height. Mr. Jackson  
172 stated that there are some complaints that there are too many restrictions on those who  
173 want to open up a business in their home. He noted that all garages attached to the principal  
174 structure shall be set back at least five feet from the front façade. Mr. Kyle said that we can  
175 take out the requirements on cladding and primary color part for the sheds. Mr. Blackwell  
176 stated that the building materials for the shed to match the house is a lot of money. Mr.  
177 Reilly asked what part of this section we are taking out. Mr. Kyle stated that he would take  
178 out the compatibility requirements and leave the maximum height for all sheds and gazebos.  
179 He said that he is going to move the sentence about pool houses to section D.

180  
181 Mr. Kyle reported that H should be removed because it refers to section 215-16A and it was  
182 repealed in 2017. He stated that the section was called slopes and it was taken out of the  
183 ordinance completely.

184  
185 Mr. Kyle suggested that we modify note three on the zoning schedule and include new notes  
186 six, seven and eight with note six appearing in the Front Yard column, note seven in the Any  
187 Yard column and note eight appearing in the Total Both Side Yards column.

188  
189 Mr. Kyle stated that he went through the site plan ordinance as well as the zoning ordinance  
190 and we do not have standards for lighting. He suggested that the Environmental  
191 Commission might want to work on a more comprehensive lighting ordinance. Mr. Jackson  
192 said he can bring it up at the next meeting since he is a joint member of the Environmental  
193 Commission. Mr. Kyle said that this issue might be something to put in the Land Use Plan  
194 and an ordinance could be prepared and considered by Mayor and Council separately in the  
195 future. He noted that there are specific requirements in many ordinances that say you can  
196 only have a certain light level at the property line in nonresidential properties and zoning. He  
197 stated that we have had some issues with residential lighting and light trespass. He  
198 described that there is some discussion about lighting in the nuisance ordinance, but there  
199 isn't any type of standards to judge it. Mayor Davy declared that an ordinance was just  
200 passed by Council about spotlights shining into neighbors' properties. Mr. Kyle asked where  
201 it would be in the online Code book. Ms. Stern stated that she thinks it only gets updated  
202 once a year, not on an ongoing basis. She noted that she found ordinance #2023-5, which  
203 amends the Borough nuisance ordinance to prohibit intrusive outdoor lighting. She said she  
204 just typed lighting in the Borough code book and that came up. She mentioned to Mr.  
205 Caminiti that this is an example of how she wants chat on the Zoom meetings so she can  
206 share the link to this ordinance with the group. Mr. Jackson asked if the ordinance also  
207 included street lights, more particularly LED and color street lights. Mayor Davy clarified that  
208 this was part of a discussion relative to the Main Street streetscape project.

209  
210 Meredith Moore, 153 East Delaware Ave, brought up the fact that the light ordinance that  
211 was passed by Council was transparent and she was pleased to know that it would be  
212 revisited in the future. She stated that a way to look at section six about the accessory

213 structures is by lot size. She asked if we had decided to remove a patio as accessory  
214 structures. Mr. Kyle clarified that we decided to keep it at three accessory structures which  
215 included patios as one of them. Ms. Moore explained that she thinks that a patio should not  
216 be an accessory structure because of the different lot sizes in the Borough. Ms. Kassler-  
217 Taub suggested that we define "patio." Ms. Moore asked if a patio counts if it is nowhere  
218 near the lot line. Ms. Moore stated that she wished that she had deemphasized the look of  
219 her garage to not look like her principal structure. Mr. Jackson suggested that residents can  
220 apply for a variance if they wanted to do something outside of what is listed in the ordinance.  
221 Mr. Kyle stated that the intent was to not have a lot of outliers in terms of detached garages  
222 that were starkly different than the architectural style of the house given the historic  
223 character of many of the homes in Pennington. He explained that color is less of an issue  
224 and something that can be discussed. He stated that you can have contrasting colors as  
225 long as they are sympathetic to each other. Ms. Moore said that she wouldn't want to go  
226 through the cost, expense and delay of getting a variance and there is no way she is going  
227 to have a slate roof or garage that matches the house. Mr. Kyle explained that there was  
228 nothing said about roofing materials and Mr. Blackwell spoke about the expense he went  
229 through to put a metal roof on his shed. Mr. Kyle stated that we are proposing changes to  
230 the ordinance, so if the Board has the opinion that we want to stay away from that language,  
231 we can get rid of it altogether. Mr. Kyle said that the color should not be included and the  
232 cladding material does become important if you are referring to a historic home. Ms.  
233 Kassler-Taub noted that, outside of the historic district, you can do a bunch of  
234 complimentary cladding styles without their being exactly the same as cladding on the  
235 principal residence. Mr. Reilly asked what cladding material is and Mr. Kyle confirmed it was  
236 siding. Ms. O'Neill stated that you can paint your house whatever color you want, even in  
237 the historic district. The Board agreed to take the primary color and the cladding material out  
238 of section D. Ms. Moore stated that height matters regardless of how narrow or wide  
239 something may be. She suggested that we change the building height to the ratio of total  
240 square footage of the house to lot size.

241  
242 Mr. Kyle reported that we do have some Pennington Borough residents with chickens. He  
243 explained that the main thing they want to restrict is roosters. He noted that keeping  
244 chickens raises the issue of sanitation and the proposed addition to the ordinance adds  
245 requirements addressing appropriate enclosed space and appropriate disposal of waste. He  
246 explained that this is already an issue that is occurring in the Borough and the intent is to put  
247 some regulations in place. Mr. Jackson asked if this is a new regulation and Mr. Kyle  
248 confirmed that it is. Mr. Kyle said that the ordinance states that the keeping of chicken and  
249 other poultry is prohibited on multiunit and non-residential properties. He noted that the  
250 limitation would be that your residential property has to meet the minimum lot size  
251 requirement if you are going to keep chickens or other poultry. He said that there should be  
252 a requirement for enclosures and should be located in rear yards only. Ms. O'Neill asked  
253 how he came up with the maximum of six chickens on any one property. Mr. Kyle stated that  
254 six chickens seems reasonable considering the size of most lots in the Borough. Ms. O'Neill  
255 noted that she knows of some residents that have had up to nine chickens. Mr. Blackwell  
256 confessed that he had a rooster and he doesn't have a problem with increasing the amount  
257 of chickens to nine. The Board agreed to take out the word "other poultry" and just keep it at  
258 chickens and increase the number to nine chickens. Mr. Kyle stated that enclosures have to  
259 be a minimum of ten feet from a side or rear property line.

260  
261 Mr. Kyle stated that clothing donation bins are a land use plan issue. He said that we should  
262 talk about driveways and setbacks before we have any standards. He brought up site plan  
263 exceptions and how this just came up recently. He stated that we have certain situations  
264 where we don't want homeowners to have to come to the Board for site plan approval. His  
265 proposed ordinance change provides clarification and addresses the issue of continuation of  
266 a legally existing nonconforming use. He stated that the real issue is that it will not increase

267 traffic to and from the site, inhibit site circulation or increase the number of required parking  
268 spaces. Ms. Kassler-Taub brought up the PALS application and how it was an application  
269 for a site plan waiver and they ended up discussing the safety of the site. She asked if there  
270 was any way we can anticipate something like this if it is a continuous use. Mr. Kyle stated  
271 that there is a section in the ordinance that allows the Board to consider a waiver of site plan  
272 approval. Mr. Jackson asked why it is referenced as a primary permitted use and Mr. Kyle  
273 clarified that he wanted to maintain consistency with the wording we have in the ordinance  
274 now.

275  
276 Mr. Kyle explained how he provided the Board with the three pages of the re-exam as an  
277 attachment to this memo regarding COVID-19. Mr. Kyle confirmed that they can work on this  
278 when they work on the land use plan.

279  
280 Mr. Kyle stated that he will send out a modified memo to the Board that goes over all of the  
281 changes that were discussed tonight. He said we can talk about it at the next meeting and  
282 then send it to the Mayor and Council after it gets approved. Ms. O'Neill asked if there is  
283 going to be a public hearing on this. Mayor Davy replied that the Board makes a  
284 recommendation to Council, Council develops an ordinance and then has to come back to  
285 the Planning Board to approve it before it gets adopted.

286  
287 Mr. Blackwell made a motion, seconded by Ms. Tracy to allow Jim Kyle to modify the  
288 suggestions in the ordinance as per the discussion tonight and bring it back to the Board for  
289 the next meeting for further discussion.

- 290  
291 ○ Recommended by Council to Undertake a Preliminary Investigation to Determine  
292 Whether Block 205 Lot 22 be Considered as an Area of Redevelopment

293  
294 Mr. Kyle explained that this is a resolution from the Mayor and Council requesting that  
295 the Board conduct a preliminary investigation. He described that this property is 12 North  
296 Main Street, which has a storefront and an apartment that faces North Main Street. An  
297 office building that is attached to that structure faces the municipal parking lot. He stated  
298 that there has been some discussion and a potential proposal to convert this current  
299 office space into apartments, including some affordable housing units. Mr. Blackwell  
300 made a motion, seconded by Mr. Jackson to approve the recommendation by Council to  
301 investigate this property as an area in need of redevelopment. All were in favor via voice  
302 vote.

- 303  
304 ○ Recommended by Council to Ensure Consistency with Ordinance 2024-13- Stormwater  
305 Amendments  
306 ○ Recommended by Council to Ensure Consistency with Ordinance 2024-14 Revisions to  
307 Historic Preservation Ordinance

308  
309 Mr. Kyle explained that whenever Council adopts an ordinance that is related to a land  
310 use matter, it needs to be referred to the Planning Board for a determination if there are  
311 any provisions of the ordinance that are inconsistent with the Master Plan. He described  
312 that ordinance 2024-13 is an amendment to our stormwater management ordinance. He  
313 stated that as the DEP modifies statewide standards', they have required municipalities  
314 to bring the ordinances into conformance with those standards. He announced that we  
315 don't have a stormwater management element in our Master Plan, so this ordinance is  
316 designed to meet State standards. He reported that ordinance 2024-14, the Historic  
317 Preservation ordinance, is not changing policy and simply added definitions and  
318 clarifications to the ordinance. Mr. Jackson made a motion, seconded by Ms. Kassler-  
319 Taub to address the Council's referral on stormwater management and the Historic

320 Preservation ordinance by finding that they are not inconsistent with the Master Plan. All  
321 were in favor via voice vote.

322

323 **RESOLUTIONS FOR MEMORIALIZATION**

324

- 325 ○ Recommending that Block 201, Lots 6 and 7, Pennington Borough Tax Map, be  
326 Declared an Area of Redevelopment

327

328 Mr. Caminiti made a motion, seconded by Mr. Blackwell to address the resolution. All  
329 were in favor via voice vote.

330

- 331 ○ Application PB 24-002, Straube Center LLC, 106 West Franklin Avenue, Block 202 Lot  
332 2, Preliminary and Final Site Plan Approval and Bulk C(1) Variances

333

334 Mr. Blackwell made a motion, seconded by Ms. O'Neill to approve the resolution. All  
335 were in favor via voice vote.

336

- 337 ○ Amending 2024 Professional Services Contract for the Planning Board Planner

338

339 Mr. Jackson asked if this is the money they set aside for the Master Plan for the land use  
340 plan and the housing element. Mr. Kyle confirmed that this is not the money they set  
341 aside for the Master Plan. Mr. Blackwell made a motion, seconded by Mr. Caminiti to  
342 approve the resolution. All were in favor via voice vote.

343

344 **MASTER PLAN COMMITTEE UPDATE**

- 345 ○ Conditionally Approve the GBESE element (wasn't properly voted on at the August 14,  
346 2024 meeting)

347

348 Mr. Reilly reported that there was not a formal vote taken for the GBESE element at the  
349 August 14, 2024 meeting. He apologized for the oversight and asked if there were any  
350 additional questions or comments. Mr. Jackson made a motion, seconded by Mr.  
351 Caminiti to approve and conditionally adopt the GBESE element. All were in favor via  
352 voice vote.

353

354 **MINUTES FOR APPROVAL**

355 The October 9, 2024 minutes were approved with a few minor edits via a motion by Ms. O'Neill  
356 and a second by Mr. Jackson. All were in favor with two abstentions by Ms. Stern and Ms.  
357 Tracy, who were absent from the meeting via voice vote.

358

359 Mr. Blackwell asked what the burden was on the new round of affordable housing. Mr. Kyle  
360 stated it is either 54 or 58 units. Mr. Caminiti confirmed it is 58 units.

361

362 Mr. Jackson announced that the MPC has four new elements that they have drafts on: the  
363 mobility element, the economic development plan, the Historic Preservation plan and the  
364 Community Facilities Plan.

365

366 Mr. Blackwell made a motion, seconded by Ms. Stern to adjourn the meeting. All voted in favor  
367 to adjourn via voice vote at 10:14 p.m.

368

369 Respectfully submitted,  
370 *Kaitlyn Macellaro*  
371 Planning Board Secretary