

PENNINGTON BOROUGH
JOINT PLANNING & ZONING BOARD MINUTES
REGULAR MEETING
June 14, 2023

Mr. Reilly, Board Chair, called the meeting to order at 7:32 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, Hilary Burke, Deborah Gnatt, Andrew Jackson, Amy Kassler-Taub, Katherine O'Neill, James Reilly, Doug Schotland, Jen Tracy
Absent-Cara Laitusis

BOARD PROFESSIONALS PRESENT: Jim Kyle, Planner, KMA Associates, Ed Schmierer, Attorney, Mason, Griffin & Pierson, Brandon Fetzer, Engineer, Van-Note Harvey, Katie Ronollo, Board Secretary, John Flemming, Zoning Officer

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. Dan Pace, 9 Railroad Place, asked about the posting of application materials online. Ms. Ronollo directed him to the section of the website where application materials are posted.

There being no other member of the public wanting to comment, the open period for public comment was closed.

Appoint Member to Application Review Committee

Mr. Reilly noted that Ms. Tracy is interested in being on the Application Review Committee. Since this committee is usually formed in January, Mr. Reilly asked for a motion to appoint Ms. Tracy to the ARC. Mr. Blackwell made the motion to appoint Ms. Tracy to the ARC, with a second by Ms. Gnatt. All members were in favor via voice vote.

NEW BUSINESS

Applications

- **PB 22-008 Harbat, Agrain, LLC, 278 N. Main Street** Request for a Site Plan Waiver

Mr. Schmierer swore in Mr. Kyle, Mr. Fetzer, the Board professionals. Also sworn in were Erwin E. Harbat 70 Woosamonsa Road, Pennington, NJ, the applicant, Lee Leeper, 43 Taylor Terrace, Hopewell Borough and Sergio Neri, 46 Yard Road, Pennington, the witnesses for the applicant.

Mr. Casey, attorney for the applicant, explained that they are seeking a site plan waiver for the occupation of an empty office by Pennington Adult Living Services (PALS). The site is the only property in the Multi-Use 1 (MU-1) zoning district. Mr. Casey argues that the PALS use is a permitted use in this district and that a site plan is not required for PALS occupancy. Mr. Casey noted that Borough Code 163-4 states that: "no site plan review shall be required for: a change in occupancy or use of any non-residential structure where the Borough Zoning Officer has determined that the new use is permitted either by reason of Chapter 215, Zoning, or because of prior Planning Board acting as a Board of Adjustment approval, and will not intensify site traffic circulation, required parking or endanger the general health, safety and public welfare;" Mr.

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Casey further explained that 163-5 discusses waiver of site plan approval, “The Planning Board acting as Board of Adjustment many waive site plan approval requirements upon finding by the Board that the appropriate proposedchange of occupancy or use does not affect existing circulation, drainage, relationship of buildings to each other, landscaping, buffering, lighting or other considerations of site plan review.” Mr. Casey feels that the proposed use is perfectly aligned with the zoning district and a site plan waiver is justified. In addition, a site plan for a pizza restaurant was approved in 2019. The restaurant never opened but many aspects of the site plan have been implemented. The improvements that have been made will benefit the new use of the PALS site. Approving the site plan waiver will allow this community service to be available in Pennington; will allow Mr. Harbat to profit from his property and will support him in paying his taxes which are over \$22,000 a year. 1,670 square feet, a small portion of the property, will be used for the new PALS. In Mr. Casey’s opinion a new site plan for the entire property would be a waste of time and money.

Mr. Harbat discussed his long term community involvement and his dedication to Pennington and Hopewell Township. Mr. Harbat acquired this property in 1977. He originally owned the area around the site in question including the Railroad Station building and the property that in 1986 became the Station at Pennington Condominiums.

Ms. Leeper testified as to the finances and management of the property. Current occupancy at the site includes; offices, storage spaces, retail space and service oriented businesses. PALS is proposing to move into a unit that has been empty for at least 5 years. The overall site makes a small profit. Ms. Leeper discussed improvements that have been made and said that the PALS program would use parking spaces that were created for the pizza place. Exhibit A, interior view of the space that PALS would like to occupy, was shared. Ms. Leeper discussed that there have not been any written citations received from the Borough.

Mr. Neri discussed the PALS operation. He noted that the program is licensed by the NJ Division of Developmental Disabilities. PALS currently rents a space for a small gift shop and workspace at the Agrain site and would like to expand at this location. He reports that there will be approximately 10 direct support professionals (staff) and 20 participants on a daily basis. The hours of operation are estimated to be 8am-6pm Monday-Friday with some Saturday morning hours. Not every participant or Direct Support Professional will remain at the site for the full day some will go to outside jobs. Mr. Neri believes that this space is appropriate for this program due to its proximity to the Borough and the opportunities therein.

Board questions included the ability of the owner to organize and enforce parking in the lot which is currently haphazard, and the ability of the program and site owner to assure the safety of PALS participants.

One Board member suggested setting up and enforcing standards for tenant parking. Most members agree that a plan for parking and pedestrian safety in the area around the building is necessary.

Mr. Kyle discussed his June 9, 2023 memo. His interpretation is that the Board can choose to waive a site plan in nearly any circumstance. Mr. Kyle interprets the Board’s comments in this meeting thus far to mean that there is no issue with the proposed use and a full site plan may not be necessary but that a parking and circulation plan is definitely necessary.

Mr. Flemming asked if Mr. Casey thought that if a use is permitted then no zoning approval is required. Mr. Casey replied that the impact of an approved use would be taken into consideration. Upon questioning Mr. Casey and Mr. Harbat noted that they have not received zoning approval for any of the current uses. Mr. Harbat also noted that Mr. Flemming has discussed the uses on the property that have not received approval but that he has not been officially cited for these uses. Mr. Flemming stressed that with all the un-approved uses that a

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site plan is essential to bring the property into compliance. A site plan would help to ensure the safety of all people on the property.

Mr. Casey disagrees that a full site plan is necessary because the Board is currently dealing with just the current proposed use.

Mr. Kyle noted that the zoning ordinance states that a zoning permit is needed for a change of use. Therefore the zoning officer is the first judge regarding the intensity of a certain use. In this circumstance, the zoning officer is the first opinion on whether or not a site plan is necessary when the use changes. After this determination, the Board is able to consider a site plan waiver.

Mr. Schmierer noted that the Board's charge under the site plan ordinance is to ensure that their decision "will provide for safe and efficient vehicular and pedestrian circulation." He advised that the matter should not be left up to the operator's or occupant's assurances of safety and efficiency. The Board will either need to be satisfied that what was heard will work fine and be safe or not be satisfied. Delegating this safety to the discretion of the applicant is not a good option.

Mr. Schmierer further explained that a site plan approval can be waived conditioned upon some form of a parking, traffic and pedestrian plan administratively reviewed and approved by the engineer and planner.

In response to a question from a board member, Mr. Kyle explained that the 2019 site plan approval is no longer in effect because the pizza place was never built and the time has expired.

Mr. Reilly asked if any member of the public wishes to testify.

Dan Pace, 9 Railroad Place joined the meeting with Jeanne Van Orman, 8 Railroad Place. Ms. Van Orman thanked Mr. Harbat for designing the Station at Pennington where she resides. She discussed dumping from tenants on the property in question onto the Station at Pennington property and the general state of disarray in the Agrain parking lot. She would like to strengthen and amplify Board members opinions regarding the need for organization and cleanup of the parking lot and site in general. Ms. Van Orman testified that the current situation is not only aesthetically unappealing it poses a safety issue. Mr. Pace suggests that the Board consider a modified site plan which addresses the health and safety of the PALS participants and cleanup of the site as a whole.

Ryan Schwab, 38 S. Main Street, Pennington joined the meeting to applaud the use of the site for PALS but agreed that pedestrian safety and circulation is a main issue at the site that needs to be addressed.

There being no other member of the public wanting to comment, the public portion of the meeting was closed.

Mr. Neri stressed that there is 100% supervision of the adults that are in the program. There will be no participants unsupervised or wandering in the parking lot.

Mr. Casey noted that the property owners had not been notified about the dumping. If they had been notified they would have rectified the situation. He believes that this situation will not be rectified via paperwork but through communication with the tenants. Mr. Casey explained that the applicant feels that it may be problematic to assign parking spaces or blacktop full areas. Mr. Casey stated that an informal site plan will not satisfy a person who thinks the site has been out of compliance for 30 years. Mr. Neri has volunteered to speak with the tenants to specify parking solutions to ensure separation of traffic and lanes, etc.

Mr. Flemming noted that the largest issue is the activity of the landscaper in the same area as a day program. Mr. Harbat is not willing to give notice to the landscaper. Mr. Harbat noted that there is 1980 variance for the John Deere dealership which goes with the property. Mr.

Flemming noted that at that time the whole property was for industrial use which is not the case

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now. The assembly type use (PALS) proposed now does not mesh well with the industrial use. Mr. Flemming feels that the industrial use may not be appropriate at this site at this time. Mr. Casey requested Mr. Kyle and Mr. Schmierer to clarify in writing whether it is a board decision or the Zoning Officer's decision that a use would not intensify traffic and circulation.

Mr. Jackson made a motion to waive the site plan with the condition that the landscaper does not use the south side of the property with a letter from the owner attesting to this fact. Mr. Blackwell seconded the motion.

Ms. Kassler-Taub commented that there is an obligation to further organize the site and the safety of the PALS participants. She believes that a more traceable document besides a simple letter is necessary. She would feel more comfortable with the prior mentioned modified site plan administratively approved by the planner and engineer. Ms. Tracy asked for suggestions from the planner and engineer to ensure safety on this site. Mr. Fetzer stated that the applicant should prepare a parking and circulation plan. Mr. Flemming warned that neither the Board nor the Board professionals should be designing anything for the applicant.

Mr. Jackson amended his motion to approval of a site plan waiver with the condition that the applicant prepares a circulation plan that ensures there is no hazard to building occupants subject to inspection by the Board Planner and Engineer. Mr. Blackwell seconded the amended motion.

ROLL CALL:

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

With all in favor, the motion passed.

ZONING OFFICER REPORT

No report tonight.

OLD BUSINESS

Regarding replacement of the Stony Brook Bridge just east of the intersection of East Delaware with King George, Ms. Ronollo noted that comments from the Planning Board about design of the bridge design are not appropriate at this time. Mercer County is working with Public Works, the Police and other entities on the design.

MASTER PLAN REEXAMINATION

Mr. Jackson explained that the Planning Board will need to meet as a board for planning purposes when there are no new agenda items. Addressing issues identified as problems in the Master Plan is a key responsibility of the Planning Board. Currently there are 11 volunteers to help develop plan elements. The first step is to develop the strategic vision and develop elements around the vision. There will be public forums in the fall to get community involvement in developing the vision.

MINUTES

The May 10, 2023 minutes were approved with noted corrections via a motion by Mr. Jackson and a second by Ms. O'Neill. All eligible voters were in favor via voice vote.

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180 Ms. O'Neill made a motion, seconded by Mr. Blackwell, to adjourn the meeting. All voted in
181 favor to adjourn via voice vote at 10:31PM.

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183 Respectfully submitted,

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185 *Katie Ronollo*

186 Board Secretary

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