



**BOROUGH OF FOLSOM
PLANNING/ZONING
BOARD OF ADJUSTMENTS
MINUTES
APRIL 19, 2023**

CALL MEETING TO ORDER: 6:15 PM

SALUTE TO THE FLAG:

CERTIFICATION: Adequate notice of this meeting has been given in accordance with the Open Public Meeting Act pursuant to Public Law 1975, Chapter 231. Said notice has been advertised in the Hammonton Gazette and is posted on the bulletin board showing the time and place for the meeting.

ROLL CALL:

Members Present: Joe Pino, Jim Hoffman, Michael Veneziani, Michael Sutts, Leslie Roberson, Catherine DeYoung

Members Absent: Mayor Schenker, Glen Smith, Dave Cappuccio, Kristin Gummo-Lubrano

Others Present:

Solicitor:	Carol N. Goloff, Esquire
Board Engineer:	Jen Heller PP, AICP for Polistina & Assoc., PE, PP
Board Secretary:	Susan Carroll

APPROVAL OF MINUTES:

A motion was made by Mr. Sutts and seconded by Mr. Veneziani to Approve the Minutes of March 15, 2023. There was a roll call vote with ayes all and one abstention

Joe Pino	Yes
Jim Hoffman	Yes
Mike Veneziani	Yes
Michael Sutts	Yes
Leslie Roberson	Abstain
Catherine DeYoung	Yes

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APPLICATION: 01-ZB-2023: L & Y Enterprises LLC, 1116 Black Horse Pike, Folsom N. J.
Block 3102 – Lot 12 for a Use Variance

Michael Malinsky at Fox Rothchild, LLP on behalf of the Applicant L & Y Enterprises, LLC. He apologized for the delay. There were a few things that needed to be taken care of logistically just now which caused the meeting to be a little bit delayed. He extended the apology to all of the Board Members.

He noted there were only five Board Members present. The Applicant was there for a Use Variance. The Principal of the cannabis retail business flew in from Colorado. The Applicant decided not to proceed forward with the Use Variance this evening. He decided to not have the Warehouse Use and to make the current occupant on the property who occupied the warehouse, to vacate the warehouse. Currently, there will only be one Use on this site. It will be the Cannabis Retail which was a permitted Use. It will go from L & M Doors which was retail, to retail which was already deemed particularly suitable by the Borough for this location. At a future date, if the Applicant wants to utilize the warehouse in the rear, he will be filing an Application most likely for a Change of Use and Use Variance to change the use of the operational on lot 13 next door and also seek Site Plan Approval and Use Variance which will incorporate the property at that time.

The Applicant will have the occupant vacate the warehouse Use on this site, Block 3102 – Lot 12. There will only be one Use at the site. There were no improvements. It will utilize the existing 2 story commercial building on the site. There will be renovations to the existing building with no additions. The applicant will be able to move forward and pull permits and commence operation of the business. The Applicant decided to abandon the Use Variance Application

Ms. Heller commented the Applicant will be able to finish the construction and rent out the retail space. She also mentioned the Applicant was still required to get the Municipal License. Mr. Malinsky responded that was correct and will comply with the Ordinance 5-2022 requiring the Municipal License. After the meeting the Applicant will immediately reach out to the occupant of the warehouse in the rear and have him vacate. Once it is completely vacated, a letter will be sent to the Zoning Officer indicating that. He will come out and inspect and issue a Zoning Permit and then can continue with Constructions Permits and allow the Retail Business to commence operations.

Mr. Sutts questioned if the Applicant will come back to the Board prior to opening the Cannabis Retail. Mr. Malinsky responded that he probably will, but for Lot 13 next door. Mr. Sutts explained he, Mr. Pino, Mr. Norman, and Mr. Porretta were on a Board (Committee) that denied bringing retail cannabis into Folsom. They would only be able to grow in a warehouse setting and ship it out. There would be no retail. Solicitor Goloff commented the Applicant was coming before this Board to get Approval to have two separate Uses on one lot. Whether he will be able to get permits or licenses, was not appropriately before this Board. Mr. Malinsky quoted Section 200-74 of the Borough's Code which allowed classified retail cannabis at this location.

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Solicitor Goloff wanted to make sure the record was very clear. This Board had very limited jurisdiction. The Board can hear an application. Tonight it was to hear a Use Variance to permit two different operations on one site. The Applicant withdrew the Application. Mr. Malinsky noted they were only going to have the one Use on the site. Mr. Sutts understood, but believed he sat on the Board (Committee) that specifically did not allow retail cannabis store frontage. Discussion ensued. It was decided to address the issue, but this was not the forum for it.

There were no other question from the Board.

The application was withdrawn.

Mr. Malinsky thanked the Board and again apologized for starting late, but realizing there were five members he needed to discuss certain things.

Chairman Pino commented because the Application was withdrawn, there was nothing further for the Board to discuss regarding the Applicant or their intended Use.

JIF Training was announced. However, it was decided to take questions from the public first.

Public portion of the meeting was opened. Chairman advised questions could be taken as long as they were not regarding an Application that didn't exist.

Darren Vitalo, 1030 Black Horse Pk. He had questions regarding the business. Mr. Pino advised it should be dealt with at the next Borough meeting. Should the Applicant come back Mr. Vitalo was welcomed to bring any concerns at the time. He was advised if the Applicant came back it would be posted that there would be another meeting and would get that notice.

Robert Sliwecki, 1108 Black Horse Pike. He lived a few doors away from the place. He asked if they had an application to grow it (cannabis) there that was already Approved.

Mr. Pino explained it was more on the legal end, but an Ordinance was passed in Folsom Adopting law that was passed in the State of New Jersey regarding cannabis. The cannabis laws were Adopted because of the voters turn out and how they voted. Each community had some sort of say as to how they were going to Adopt it. Examples such as how many warehouses would be allowed or if retail sales would be allowed. Council made those decisions. The Board hears Applications. The Applications that are on the outside purview of what is straight out okay to do. If there is some variation they want to our rules, they come forward to the Board and explain why it would be a hardship for them and what the benefits are the negatives as well. The Applicant withdrew their Application, so there was nothing to talk about. Mr. Pino advised Mr. Sliwecki if he had questions regarding legality and how this came about it was a Folsom Council issue which is the Council meeting. The Board only heard Applications.

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Mr. Sliwecki asked if they can go anywhere and just put up a building because it seemed to him like Black Horse Pike was being hit with a lot of stuff. He explained there was a few residents that do live there and care. Mr. Pino explained referring to the Black Horse Pike was most a commercial zone. It was in the area where businesses would be established is on that main route. It's major access to everything. Mr. Sliwecki explained he didn't care about that. He cared about the drugs part and the traffic it's going to cause and maybe who knows what from that. Mr. Pino explained it couldn't be discussed because there was not an Application before the Board. Mr. Sliwecki thought as of now they can't do nothing. Mr. Pino respected Mr. Sliwecki's opinion, but there was no Application. He advised Mr. Sliwecki that he had the option if the application is re-applied he would be able to come and speak his mind.

Mr. Sliwecki asked if there will be a Council meeting. Mr. Pino explained, Council Adopted the rules that the Planning Board had to use as guidelines to apply to applicant's who come forward with wanting to put these businesses in. If they are withdrawn within boundaries that they can be heard, then we can have them at this meeting and they can discuss it. Until they apply, the Board could not go any further with it. Applicants within 200 feet of the subject property will be noticed. He also advised to follow the newspapers for noticing if not within 200 feet of the property.

Mr. Sliwecki suggested it was how stuff sneaks in. Folsom sending a letter to every resident. What's going on in the town.

Solicitor clarified, the Borough makes rules and we apply them to specific request wanting to do business. The best place to start if you have questions about what is permitted was either the Construction Official or the Borough Clerk. They would be able to answer questions that we can't. Mr. Sliwecki thanked the Board.

Pamela Hayes, 1118A Black Horse Pike. She was the adjacent neighbor to the property (Block 3102 – Lot 12). She asked who to contact if the pool company does not vacate because she noticed sometimes they are not in compliance. She was directed to John LaPollo (Zoning Officer/Code Enforcement) and also could call the Clerk's office and the Clerk will forward the message to the Zoning Officer.

There were no other comments from the public. The public portion was closed.

OTHER BUSINESS: JIF (Joint Insurance Fund) training for Board Members. Land Use Liability Training Booklets for Land Use Board Members were passed out. Solicitor Goloff performed the training. She read through the JIF Land Use Liability Training Booklet for Land Use Board Member and gave explanations for the subject matter.

OTHER BUSINESS: Cannabis discussion. Ms. Heller clarified how the Cannabis worked and how Folsom did it. Every town was different and Folsom was handling it a little bit differently than most of her other towns. She explained how the process worked and how it got from the committee, to the Governing Body, to where it is today. Other towns were handling it through a

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Re-development process. The process to get a Recreational License was an application had to be made to the Cannabis Regulatory Commission in the State of New Jersey. The Commission issued either a Full License or a Conditional License. Most were getting Conditional Licenses which meant they had 120 days to find a location suited for and approved for that type of License. There were 6 Classes of Licenses. Every town went in a different direction with what they were allowing. Folsom allowed all 6 Licenses with some restrictions on where the Retail Licenses can be used. Borough Ordinance specifically stated they're not prohibited in the Village Residential, Rural Development, Block 3401 – Lots 50, 51, 52, & 53 on the other side by Penny Pot, and Block 3407 – Lot 12 in the RD-C (Rural Development-Commercial). This was what the Governing Body decided. The Committee that was formed was an Advisory Committee. The Governing Body takes the Committee's recommendations, but the Governing Body still made the rules. There was a long discussion on what to allow. She asked Councilman Hoffman to weigh in.

Mr. Sutts asked why the people on the Committee were not brought or asked to that (Council) meeting. Solicitor Goloff advised everything that is ever going to be discussed at any meetings is on the Agenda. Those who may have called may have thought they couldn't call everybody on every committee every time something that was reviewed in a committee was on the Agenda.

Mr. Sutts made the point that there were four people on a committee about cannabis being brought into Folsom, but then they had a meeting about it and didn't tell the four people. Solicitor noted they told everybody by having it on the Agenda. Ms. Heller explained we (the Borough) had to make a Decision by August 2021. It was why the committee was formed. Ordinances had to go through two Readings. It actually went to Council not once, but twice. Mr. Sutts commented so that he wasn't notified twice.

Mr. Hoffman noted that Mr. Sutts sat in on the meeting with Mike Porretta (Councilman Porretta) and asked if Mike Porretta gave him a call, but he did not. Mr. Hoffman suggested going to every one of the meetings (Council). Mr. Sutts couldn't be there because he had things to do, but if he was asked to be on a committee for something and then they are going to hold a Council meeting – not one, but two, about something I was on a committee for, he felt like he should be notified and shouldn't have to look in a newspaper.

Mr. Hoffman stated this (cannabis) was brought up to voters of Folsom and 75% of the Folsom voters wanted marijuana in this town. Mr. Sutts acknowledged Mr. Hoffman and asked to what extent. We said no retail in the committee. Store front is retail. Ms. Heller recalled you said no retail in certain Districts. You did not want it in the Village Residential. Mr. Sutts recalled you said they would be able to grow it in a warehouse, and emphasized, because we had to have it. We had to have something and ship it out, but there would be no one driving their car there and buying it.

It was Mr. Pino's understanding that we were an advisory committee. Mike Sutts believed that they (Council) didn't like our advice so they didn't invite us (cannabis committee). Mr. Pino understood in the commercial zone we were suggesting no retail, but the other uses would be

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permissible and Mr. Sutts agreed that was his understanding when they left. Mr. Pino explained being advisory doesn't necessarily mean they have to adopt what we were saying. That was like the beginning and the end of it. We gave our opinion and they went in the direction they choose.

Ms. Heller explained everybody knew the point of the committee was to come up with some guidelines for where we wanted cannabis to be permitted and then it was going to go to the governing body at the next meeting. After discussions they put an ordinance together. It was not the next meeting it probably was two meetings from then. We had the discussion about where we wanted it. The governing body wanted retail. They did take the committee recommendations. They were going to prohibit retail on certain blocks and lots, in certain neighborhoods. They specifically put that in the ordinance, but were still allowing retail in the Forest Commercial Receiving.

Hoffman noted if Mr. Sutts had such a concern he should have been at the meeting. He pointed out that he had a concern about the lights the other night at the meeting. He came here for these lights. Apparently, it wasn't that big of a concern if you didn't go to the meeting.

Mr. Sutts explained he didn't know about it (the meeting for cannabis ordinance) and asked Mr. Hoffman if the lights were on the Agenda. Hoffman inaudible. Mr. Sutts noted, so I came because I had a concern.

Mr. Hoffman suggested to have called Board Secretary to find out what is on the Agenda. Mr. Sutts understood that and acknowledge he could have read the newspaper and seen what was on there. He believed someone on the Council wanted it passed and knew he didn't, so he wasn't advised like most things on Council. Mr. Hoffman thought he was going too far, but Mr. Sutts stated he wasn't going too far because he was on an Advisory Board and questioned how are you not notified that it is being heard. There were two Councilmen on the Advisory Board, Al Norman and Mike Porretta. Mr. Hoffman noted those two should have notified you. Board member DeYoung noted common courtesy, someone should have notified you.

Mr. Sutts questioned why we are here. Board Member Roberson clarified we (Board Members) Zone things and were only saying where we think it should be. Mr. Sutts restated if there wasn't an Advisory Board I was asked to sit on about it, I wouldn't be concerned about it.

Solicitor Goloff explained Board members became involved because they were asked to help the town in the capacity of being on an Advisory Board. He (Mr. Sutts) cared enough about it to be involved and was surprised that actions different than what he thought the guidance was. The way government worked, no one even probably thought to tell him the meeting was happening because he was done his job and now the next body was doing their job. It happens in every municipality about every topic over and over. Without knowing them (Council), it was not a slight. It wasn't even a thought to tell people on an Advisory Board the next Board that had to address the issue, was addressing the issue. It wasn't even a thought.

Ms. Heller continued the process. The Governing Body set forth the Regulations in Chapter 200-74 and then Applicants who get a Conditional License from the State of New Jersey submit all the paperwork and tens of thousands of dollars. The State reviews it and issues a Conditional License. The Applicant has 120 days to get a Resolution of Support from that towns Governing Body. Every town was doing the process different. Some towns required an application where they pay a fee and it gets reviewed by every single department in the Municipality. Other towns are only requiring a letter, a copy of the Conditional License and it will be considered. Folsom issued a Resolution of Support for one applicant this far. One Applicant came forward and it was Resolution 2022-49. In the Resolution the Borough of Folsom recognizes the lot picked was zoned for the proposed license. It was not an Approval by any means. Any Applicant in Folsom has to go through whether if they need a Site Plan Approval. If they are building a new building, they have to get a Site Plan Approval. If they are just going into an existing building they have to get Construction Permits and things like that. They have to get a Municipal License from the Borough. We are not Approving whether or not they can do cannabis. We are Approving whether or not they can use the site for a warehouse distribution and things like that. The Governing Body controlled the cannabis here in Folsom. Other towns do it through Re-development. It gives the Governing Body a whole lot more control and takes a lot more time and money. If your town is fortunate enough to get it, there were benefits to it. There were some negatives, but there is positives, but was a Governing Body function.

There was a question about growth facilities. Ms. Heller explained the biggest complaint for growth facilities was they had an odor. She worked in other towns where they were arguing over the odor. Solicitor Goloff pointed out that Buena did not take any action and it was allowed anywhere. Folsom prohibited certain Licenses in certain Zoning Districts to protect the residents. The State License was needed and a lot of the Applicants haven't gotten a full license in New Jersey yet.

Mr. Pino asked Mr. Sutts if he understood even though he didn't agree with it. Mr. Sutts understood, but felt if asked to sit on a Board there should be some consideration. Mr. Pino thought that was all they (Governing Body) were looking for was our (Planning Board) input and they decided what they decided. We all had to follow along. Mr. Sutts added it is what it is. They voted on it and it is what it is.

Mr. Pino asked if the Board needed to question security whenever there were cannabis applications. He asked if there was some sort of check list for security the Board needed to consider and whether security was assumed by the Board or if someone already addressed the issue. He asked if the Board needed to question if the Applicant had adequate security as part of the Application and if there were any other items the Board needed to question as part of the application process.

Ms. Heller addressed Mr. Pino's concern. Folsom was one of the towns that didn't have any other Ordinance controls. Mr. Pino clarified that without the Ordinance in place locally, we don't have to worry about it. Ms. Heller confirmed and added the State of New Jersey issues inspections and the violations. They inspect these places whether it is a growth or retail facility.

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They inspect them and issue violations left and right. An example was given. If a retail facility sells too many grams to a single applicant the State issues violations and they will be fined for that. Violations are issued if they sell to anyone under age. The people who are doing retail sales are invested. They have a high tech security system there. The license for the State was tens of thousands of dollars.

Mr. Hoffman noted Camden had four facilities and they have security like you can't imagine. The security was unbelievable and they lock everything up in huge safes. Ms. Heller added the State of New Jersey renewed Licenses annually. They just denied Pure Leaf's renewal this week. Solicitor Goloff visited the Botanist in Egg Harbor Township because of all of the land use work she did and was impressed with how the operation was managed.

A cannabis retail was opening up where the strip club was at the end of Penny Pot in Hamilton Township. It won't open for a while because the Applicant had to go through the Re-development process which adds a year to an application.

Ms. Heller added there was no risk for the Borough. The risk was all on the operator of the facility because the state is down here for any violations. They have people in these places all the time. They are in there inspecting and making sure things are done right because the State is not going to renew a license if there is something going sideways. The State and the people who operate the facilities are heavily invested financially.

Solicitor was concerned because there wasn't a test to measure how much marijuana is in somebody's system and if that was why they were driving under the influence. When she sat as a Municipal Court Judge, for a number of years, it was the difficult thing because the only way someone could be charged with driving under the influence, if it was not alcohol, is to have Drug recognition Expert – a DRE. They are expensive and the rural areas did not always have one. If there was one, they don't work three shifts a day. She learned about the topic by sitting on Boards and Committees and the people going into the stores to purchase the marijuana are not the problem people. The clientele in the Botanist were buying it like they were going into a liquor store to buy and going home and using it.

Board member DeYoung added that it was very good for cancer patients. Ms. Heller added there were a lot of benefits, but it was expensive for average people. The Solicitor completely understood that people who this is new to get concerned about what it will do to a neighborhood and how it would be regulated.

Mr. Pino noted that in some townships he saw a line wrap around the building. Mr. Sutts made the point that if it (the line) keeps growing and nothing was there then the line is down the road. Board Member De Young was by there today and saw an elderly man come out of there. There was no line. Board Member Roberson noted it's not anymore. In the beginning, when they first past the law it was, but not anymore. Mr. Sutts & Mr. Pino explained it was at the Sam's Club on the corner of Cross Keys and Black Horse. Ms. Heller informed the Board at this time last

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year you could drive by any of them and there were lines outside. Now it leveled out since other places have opened.

Mr. Sutts asked if it was regulated, if each pill could be different, and if there was no FDA for it. Ms. Heller responded no, but they regulate how much you can buy. Mr. Sutts asked if a gummy could be 10 milligrams instead of 5. Ms. Heller explained they were strict with the labeling with the measurements. Solicitor confirmed the labeling and measuring was unbelievable. Ms. Heller also explained if they don't have the proper labeling, that is what they get violations for. It starts in the cultivation because each plant has a serial number and they track it. They track waste and disposal. The retail was probably less evasive than the growing was. The growth facilities had odors. Mr. Hoffman couldn't see a growth facility coming here. Mr. Sutts noted there was right next to Garvey's. Mr. Hoffman added not many people know it's back there.

Ms. Heller recalled an outdoor grow application in Galloway that was denied because they weren't allowing outdoor grow. Mr. Sutts recalled being in Maine and each person could have a certain amount of plants. His concern was hearing kids bringing it to school and giving their friend a gummy bear. Now they have to have Narcan because they have to be able to RESP these kids. You have to tell you kid not to take a gummy bear from somebody. Mr. Hoffman thought if you are going to buy gummy bears from a cannabis place he was pretty sure you're going to want to lock them up, but Mr. Sutts noted you hear it from Vineland and Buena. Mr. Pino noted Narcan only works for (inaudible). Ms. Heller noted the stuff that is regulated wasn't the problem. It was the stuff on the streets that was the problem.

Mr. Pino asked if there was a restriction put in saying how many retail establishment can sell in Folsom. Ms. Heller did not believe they put a limit on it, but he could recommend they only allow so many retail licenses. Mr. Pino was not inclined to do it because they already recommended none and if they had to do it just be one. Ms. Heller advised the Governing Body can say if they only want to allow two retail license or two cultivations license. It was a Governing Body function and the recommendation could be made to Council. Mr. Hoffman, Council appointee, referred to the Black Horse Pike and noted there were not a whole lot of stores to put this stuff in. He noted there was Liberty Square. Other suggestions included Stock Up, but Mr. Hoffman wouldn't Stock Up and didn't see a problem with it (cannabis) being here (Folsom), or being in Hammonton, or being in Buena. People from here will go there and buy it and bring it back here because 75% of the voters in this town voted to have it. Mr. Pino found it surprising. There was a financial benefit to the town. The Borough will collect 2% on the retail sales.

There was no other business for the Board.

NEXT SCHEDULED MEETING: May 17, 2023 at 6:00 pm

A Motion was made by Mr. Veneziani to adjourn the meeting. All were in favor.

Meeting Adjourned 7:19 PM

Respectfully Submitted,
Susan Carroll, Board Secretary