

**BOROUGH OF FOLSOM
PLANNING/ZONING
BOARD OF ADJUSTMENTS
MINUTES**

May 16, 2012

The meeting was called to order at 7:09 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 News and Atlantic City Press and is posted on the bulletin board showing the time and place for the meeting.

Members Present: Tom Ballistreri, Rich Levey Joel Spiegel, Jerome Hoffman, Harold Parker, Joe Pino

Absent: Charles Pitale, Glenn Smith, Gary Kemmerer, John Hehre and John LaPollo

Others Present: Solicitor: Jorge F. Coombs, Esq.
Board Engineer: Vincent Polistina
Board Secretary: Sherri Thompson

Because Chairman Pitale was not present Vice-Chairman Spiegel ruled the meeting.

Minutes

A motion was made by Mr. Mr. Pino and seconded by Mr. Ballistreri to approve the minutes of April 18, 2012. There was a roll call vote with ayes all and abstention by Mr. Levey and Mr. Spiegel

Mr. Coombs stated due to the fact that there was only 3 member present that were at the April meeting that the Resolutions for Mrs. Hughes, Mr. Magee and the IBEW could not be approved and would be held over till the June meeting.

Mr. Coombs also stated that it was brought to his attention by Mr. Nehmad, the attorney for IBEW that he received correspondence from the Pinelands voicing their concerns with regards to their applications compliance with Section 200-48 of Folsom's ordinance concerning Scenic Corridors. The setback requirement for a Scenic Corridor is 200' and the approval was given for 75'. This was not discussed at the April meeting. Mr. Coombs stated that this would need to be addressed prior to June's meeting. Mr. Polistina asked if testimony could be given at the June meeting and with the board's approval for a waiver of the 200' setback and have the resolution ready to reflect the waiver should the board approve it.

Motion was made to request IBEW to return to the June meeting to discuss the waiver by Mr. Pino and seconded by Mr. Ballistreri. There was a roll call vote with ayes all and abstentions by Mr. Levey and Mr. Parker.

Old Business:

Continuation of the application of Andrew Magee 1231 Mays Landing Road, Folsom, NJ 08037 seeking approval for pole barn. Application #05-ZB-12.

Mr. Coombs swore in Mr. Magee. He discussed the email from Mr. Polistina regarding his options for the Pole Barn. He stated he would like to make it a 24' x 24' 2- car garage, keeping in the current setback with the building that is currently there. Discussion ensued with respect to moving the garage to the opposite side of the property and where the stormwater runoff would be contained.

Motion to table the application till the June meeting with no additional notice required was made by Mr. Pino and seconded by Mr. Spiegel. There was a roll call vote with ayes all and abstention by Mr. Levey and Mr. Parker.

APPLICATIONS:

Angela Fichetola 1347 Mays Landing Road, Folsom, NJ 08037 seeking a C-Variance for Block 801 Lot 6 in the VR zoning district. Application #06-ZB-12.

Mr. Coombs swore in Angela Fichetola. Ms. Fichetola stated she would like to put a 2 room addition onto her home, an exercise room and an office/bedroom with a bathroom. Discussion ensued with respect to the septic. It was recommended that she contact the AC Health Department about the septic.

ENGINEER'S REPORT:

The Applicant, Angela Fichetola, has submitted an application requesting variance relief for the construction of a building addition on the existing single family dwelling located at 1347 Mays Landing Road. The subject property is also known as Block 801, Lot 6 and is located within the VR Village Residential zoning district. The Applicant is seeking relief from the required side yard for the principal structure for the proposed building addition.

COMPLETENESS REVIEW:

This application has been reviewed using the Borough's checklist for hardship ("C") variances. The following items were found to be deficient:

Item 6 - Key map showing location of tract to be considered in relation to surrounding area within 200 feet.

Item 11 - Spaces for signatures of Chairman and Secretary of the Municipal Agency.

Item 14 - Zoning district in which parcel is located, indicating all setbacks, lot coverage, height, floor area ratio and density, both as to required and proposed. Indicate the above written and graphically.

Item 17 - Provide a polaroid or other similar photograph of the premises in question taken from the opposite side of the street.

Item 18 – Contours to determine the natural drainage of the land.

Item 21 - Location of trees 6 inches or more in diameter, as measured four feet above ground level, outside of wooded area, designating species of each.

Item 24 - Location of existing structures and their setbacks from existing and proposed property lines.

Item 27 - Location of existing wells and septic systems.

Item 41 - Any sections for which a waiver is specifically being requested and a narrative paragraph explaining why the applicant is entitled to such waiver.

The Applicant should provide testimony and request the required waivers and variances.

We recommend that the application be deemed **conditionally complete** and that the application proceed to the Board for review. If the Board does not grant the requested waivers, the Applicant shall provide the requested items prior to final approval of the application.

VARIANCES:

1. Section 200-18 – Side Yard Setback – The minimum required side yard setback in the VR zone is 20 feet. The existing dwelling is setback 30.84 feet from the side property line. After the proposed building addition is completed, the setback will be reduced to approximately 12.84 feet. A variance is required.

REVIEW COMMENTS:

1. The plan does not show the location of the proposed building addition. The plan should be revised to include the proposed building addition and the proposed side yard setback for which the variance is requested.
2. A zoning table for the lot should be provided on the plan.
3. This applicant is subject to the approval of any other agency having jurisdiction on this project. The Applicant should discuss the status of any other approvals.

Motion to table the application with no additional noticing required was made by Mr. Pino and seconded by Mr. Levey. There was a roll call vote with ayes all.

David Cappuccio 1414 Backline Road, Folsom, NJ 08037 seeking a C-Variance for Block 201 Lot 8 in the VR zoning district. Application #08-ZB-12.

Mr. Coombs swore in Dave Cappuccio and Barbara Cappuccio. Mr. Cappuccio stated they are looking to install an inground pool to replace the above ground pool and require

a variance for front and rear setbacks. Discussion ensued with respect to the size of the pool and the setbacks. Mr. Cappuccio stated the pool would be bigger than the previous one and that the pool would be moved 9' further from the side yard.

ENGINEER'S REPORT:

The Applicant, David Cappuccio, has submitted an application requesting variance relief for the construction of an in-ground swimming pool located at 1414 Backline Road. The subject property is also known as Block 801, Lot 6 and is located within the VR Village Residential zoning district. The Applicant is seeking relief from the required rear and side yards for the proposed swimming pool.

COMPLETENESS REVIEW: This application has been reviewed using the Borough's checklist for hardship ("C") variances. The following items were found to be deficient:
Item 6 - Key map showing location of tract to be considered in relation to surrounding area within 200 feet.

Item 11 - Spaces for signatures of Chairman and Secretary of the Municipal Agency.

Item 14 - Zoning district in which parcel is located, indicating all setbacks, lot coverage, height, floor area ratio and density, both as to required and proposed. Indicate the above written and graphically.

Item 17 - Provide a polaroid or other similar photograph of the premises in question taken from the opposite side of the street.

*Item 18 - Contours to determine the natural drainage of the land. **The Applicant has requested a waiver.***

*Item 19 - Natural and artificial watercourses, streams, shorelines and water boundaries and encroachment lines. **The Applicant has requested a waiver.***

*Item 20 - Wooded areas indicating predominate species and size. **The Applicant has requested a waiver.***

*Item 21 - Location of trees 6 inches or more in diameter, as measured four feet above ground level, outside of wooded area, designating species of each. **The Applicant has requested a waiver.***

*Item 22 - Areas in which construction is precluded due to presence of stream corridors and/or steep slopes. **The Applicant has requested a waiver.***

Item 24 - Location of existing structures and their setbacks from existing and proposed property lines.

*Item 25 - Location of existing easements or rights of way including power lines. **The Applicant has requested a waiver.***

*Item 26 - Location of existing railroads, bridges, culverts, drain-pipes, water and sewer mains and other man-made installations affecting the tract. **The Applicant has requested a waiver.***

*Item 27 - Location of existing wells and septic systems. **This information should be provided.***

*Item 31 - Location, names and widths of all existing and proposed streets on the property and within 200 feet of the tract. **The Applicant has requested a waiver.***

We recommend that the application be deemed **conditionally complete** and that the application proceed to the Board for review. If the Board does not grant the requested waivers, the Applicant shall provide the requested items prior to final approval of the application.

ZONING REQUIREMENTS: The property is located in the VR (Village Residential) district. Permitted uses in this district are outlined in Section 200-18 of the Borough's ordinance.

VARIANCES:

1. Section 200-37.A. - Swimming Pools - No private residential swimming pool shall be constructed or installed on any lot unless the lot contains a residence building. Pools shall be located in the rear yard areas only and shall meet the setback distances for accessory buildings as specified in Article V for each particular zoning district except that in no case may a swimming pool be located closer than 10 feet to any lot line. The Applicant is proposing to install an in-ground swimming pool within the required 50 foot rear yard and 20 foot side yard setbacks. The proposed swimming pool will be set back 10 feet from the rear and side property lines. A variance is required.

REVIEW COMMENTS:

1. This applicant is subject to the approval of any other agency having jurisdiction on this project. The Applicant should discuss the status of any other approvals.

Mr. Coombs asked if Mr. Cappuccio would consider moving the pool one (1) foot to 20' from the side to make the side setback conforming. He stated that would not be a problem.

Motion for completeness on Engineer's report and waivers was made by Mr. Pino and seconded by Mr. Levey. There was a roll call vote with ayes all and a no by Mr. Ballistreri.

Motion was made to approve rear setback from 50' to 10' was made by Mr. Pino and seconded by Mr. Levey. There was a roll call vote with ayes all and a no by Mr. Ballistreri.

Mr. Polistina stated they needed to submit a revised sketch showing the 20' side setback to the Zoning Officer.

Mrs. Cappuccio asked if they could have the approval to move forward with the construction of the pool before the approval next month. Mr. Coombs stated memorializing does not affect the vote that was taken but they should contact the construction official for approval. Mr. Polistina stated there is a risk, that the resolution would not be memorialized until the June meeting and there is a 45 day appeal period at which is required by law.

Dorothy Costello 200 Springdale Lane, Williamstown, NJ 08094 seeking a C-Variance for Block 2604 Lot 683 in the RD zoning district. Application #07-ZB-12.

Because the applicant did not notice in the paper 10 days prior to the meeting the application was tabled till the June meeting, not requiring re-noticing.

Motion was made to approve tabling the application until the June meeting by Mr. Levey and seconded by Mr. Pino. There was a roll call vote with ayes all.

Continuation of the application of Herbert Ellsworth, 2636 Black Horse Pike, Williamstown, NJ 08094, regarding the resource extraction operation at Block: 1101 Lots 3-5, Block: 2104 Lots 3&5 and Block: 2201 Lot 4. The application is for the renewal of a resource extraction permit. Application number 02-ZB-09.

Mr. Tom D'Arcy, attorney for Ferris Associates. Mr. Ellsworth has passed away since the time the board has last heard the application. The application was last heard in 2009. There was a recommendation that the application be tabled until such time as the applicant complied with the requirements of the Board Engineer's with respect to the issues that were raised by the Engineer. Mr. Ellsworth's health declined shortly afterward and did try to work with the engineer. Ferris and Associates, the owner of the property, stepped in to address the issues that were raised at the 2009 hearing. They are now before the board to represent to the board and show they have substantially complied with Chapter 200-55 of Folsom's Code.

Mr. Spiegel questioned the legality of the name change. Mr. D'Arcy stated Ferris Associates was listed as the owner of the previous application but would submit a formal substitution letter listing them as the applicant.

ENGINEER'S REPORT:

Mr. Polistina stated he observed the site with planner from Marathon and John LaPollo to view the restoration process. Mr. Polistina gave an overview of the application and the progress and issues with the restoration. He stated in 2009 the Board required two (2) bonds, one to cover the over-excavation that was done and one for the reclamation of the site once they do the mining. He stated some of the restoration has been completed and the Pinelands signed off on what has been completed. He also stated there is more work that is required.

The Applicant, Recreational Sand (c/o Linda Bloomfield), has submitted an application to allow for the continued use of the existing resource extraction operation located at the intersection of Fourth Road & Thirteenth Road.

The most recent permit for this operation expired on October 11, 2002. It appears that resource extraction activities have occurred since the expiration of the last permit. This constitutes a violation of both the Borough of Folsom Land Use Ordinance and the Pinelands Comprehensive Management Plan (CMP).

COMPLETENESS REVIEW: This application has been reviewed using the Borough's checklist for resource extraction contained in Section 200- 55 of the Borough's Land Use Ordinance. The following items were found to be deficient:

- A1. The Applicant's name and address and his interest in the property.
- A3. The legal description, including block and lot designation and street address, if any, of the subject property.
- A4. A description of all existing use of the property.
- A5. A brief written statement generally describing the proposed development.
- A6. A USGS quadrangle map and a copy of the municipal tax map sheet on which the boundaries of the subject property and the Pinelands management area designation and zoning designation are shown.
- A8. The location, size and intended use of all buildings.
- A9. The location of points of ingress and egress.
- A12. A soils map.
- A14. A signed acknowledgement from both the owner and the applicant that they are responsible for any resource extraction activities which are contrary to any provision of this chapter or of the approved resource extraction plan done by any agent, employee, contractor, subcontractor or any other person authorized to be on the parcel by either the owner or the applicant.
- A15. A financial surety, guaranteeing performance of the requirements of Subsections B and C in the form of a letter of credit, certified check, surety bond or other recognized form of financial surety acceptable to the Pinelands Commission. **The Applicant must post the required bond.**

Mr. Polistina has stated that Items # A1, A3, A4, A5, A6, A8, A9 and A12 have all been addressed. A14 and A15 has not been addressed. The applicant stated they would provide A14.

We recommend that the application be deemed **conditionally complete** and that the application proceed to the Board for review. The Applicant shall provide all of the required items prior to final approval.

ZONING REQUIREMENTS: The property is located in the F-20 (Forest) zoning district. The existing resource extraction operation is permitted as a conditional use in this zone. New resource extraction uses are not permitted. The minimum lot area for an extraction operation is 20 acres. The project site is approximately 55 acres.

REVIEW COMMENTS:

1. A Certificate of Filing from the Pinelands Commission was submitted with the application. The Applicant is bound to satisfy all of the requirements of this Certificate of Filing, in addition to any requirements conditioned by any possible approval from this Board.
2. Section 200-55B.4 requires that all topsoil necessary for the restoration be stored on site, but not within 200 feet of the property line. The Reclamation Plan shows several stockpiles that are to be removed from the buffer area. The plan should be revised to indicate where the proposed topsoil will be stockpiled and should include all appropriate measures to adequately protect the stockpiles. The plan should also be revised to more clearly differentiate between topsoil and mined sand stockpile areas.
3. Section 200-55B.1 requires that Applicant demonstrate that the proposed extraction operation will not result in a substantial adverse impact upon those significant resources depicted on the Special Areas Map.
4. There are several areas indicated on the plans that were improperly cleared within the required property line buffers. In accordance with the Certificate of Filing issued by the Pinelands, these areas must be fully restored. The Board should also condition on approval on these areas being adequately restored prior to any additional mining taking place.
5. The Applicant should provide evidence of an existing performance guarantee covering the restoration required by the last permit and any activities that have occurred since the last permit. If such a guarantee does not exist or is no longer valid, the Board should condition any permit approval on a valid guarantee being in place.
6. The Pinelands CMP contain provisions that state the cessation or discontinuation of a use for more than two (2) years constitutes prima facie evidence that the use has been abandoned. Since new resource extraction uses are not permitted within the F-20 zone, the Applicant shall provide evidence that the mining operation has been in continuous use, or not stopped for more than two years, since the last permit expired.
7. All trash, equipment and debris that are not being actively utilized in the extraction operation should be removed from the site.

8. The stabilized construction entrance should be revised to include an asphalt apron of sufficient length to aid in the removal of dirt and mud from the tires of trucks entering the Borough's roadways.
9. The Board may want to consider a recommendation to the Borough Council restricting access to the site, requiring all trucks to use Fourth Road, not Thirteenth Street to access the site.
10. The project will require approval from the Cape Atlantic Soil Conservation District.
11. This application is subject to approval from any other agencies having jurisdiction over the project.

Mr. Coombs swore in Linda Bloomfield, Managing Partner of Ferris Associates and Mr. Lance Langraf, principal planner for Marathon Engineering in Atlantic City, NJ. Mr. D'Arcy questioned Mr. Langraf as to what was done to bring the project into compliance with code requirements. He stated the surveyor staked the area that is able to be mined. He referred to exhibit A-1, sheet 4 of 7 of the mine set. He stated that all planting had been done per Pinelands requirements however, due to the ATV's and motorcycles that illegally ride in the mining area and tore up some of the reclamation areas and that additional planting would be done in the fall to replace what was torn up. He stated they submitted a letter of credit to Polistina's office along with the amounts. Approval was given but the bank will not sign off on the letter of credit until such time as they receive approval from the Board. Mr. D'Arcy questioned Mr. Langraf with respect to the Certificate of Filing dated June 17, 2009 they raised 2 issued to be addressed specifically in the resolution in order to approve continuation of the resource extraction in an F-20 zone. One item to be addressed is how the resource extraction is a permitted use in an F-20 zoning district. Resource extraction is not a permitted use in an F-20 zoning district however there is an exception, if there is a valid developmental approval between 1981 and 1994 an existing resource extraction facility can continue to operate. He stated in a Certificate of Filing a previous approval was given by the Pinelands Commission under the CMP under application 1986 or 1996.001. He asked if this satisfied the requirement to continue to operate as a resource extraction in spite of being in a forest district. The second issue is the abandonment issue. The last extraction approval expired October 11, 2002. Mr. Elsworth did not return to the Pinelands or the Planning/Zoning Board to receive proper approval of the permit although he continued to operate the mine. Pinelands would like affirmative language and findings stating the mine had not been abandoned. At the August 2009 meeting Mr. D'Arcy presented a packet of various documentation showing that the mine had continued to operate from 2003 – 2009 and indicated the mine was not abandoned. This information was presented to the Board in August 2009 and testimony was given at that time by Mr. Ellsworth. Mr. D'Arcy presented records exhibit A-2 and A-3 being reports from Cape Atlantic Soil Conservation on inspections performed recertifying the site dated 09/21/01, 10/07/02, 03/25/04, 09/16/05, 12/06/06, 06/06/08 and 07/22/11. Mr. Langraf also stated employee records were submitted to Mine Safety and Health Administration from 1995 – 2009. Mr. Langrad stated there has been sufficient documentation showing that the site has never been abandoned. Mr. D'Arcy requested that upon the board finding that the site was not abandoned that Mr. Coombs ensure there is specific references to the exhibits in the resolution.

Mr. Coombs questioned Ms. Bloomfield if Ferris Associates has maintained any other commercial or mining facilities from 2002 – 2009 other than this one and if so did if Mr. Ellsworth operated those properties. Mr. D’Arcy stated Mr. Ellsworth operated an additional property.

Mr. D’Arcy discussed the rules of law on abandonment for the Board. He stated there needed to be an affirmative intent to abandon. Because this site has not been used for any other type of business so could not be considered abandoned. He also stated that not renewing the permit did not constitute abandonment. The Pinelands states that a site must be abandoned for more than two (2) years to be considered abandoned.

Discussion ensued with respect to the mine still having room to continue mining if there were areas that were mined out of the approved areas and the concerns that the site continued to be excavated even though they were told to cease and desist. Mr. D’Arcy stated the Ellsworth family would no longer be involved with the site, that Ferris Associates would take over the operation and that they were displeased with the events that took place in the past. He also stated the new operators are aware that renewal would be required within two (2) years and is committed to uphold the requirements of the Pinelands and the Board.

Mr. Coombs questioned the multiple names listed on the documents. It was confirmed that Mr. Ellsworth was responsible for each of the businesses.

Discussion ensued with respect to keeping the atv’s and motorcycles out of the excavation site and the concerns that someone would get injured or killed. Mr. Langraf stated there would be weekly inspection of the site to ensure that the areas that are be used to enter the site would be blocked, No Trespassing signs would be installed and possibly working with the neighboring properties to contact Ferris Associates or calling the State Police.

Discussion ensued as to the type of materials that would be mined, access roads within the site and if there were any other uses being considered. There is a push from the State for a permitted ATV park. Mr. Landgraf stated it was not something that they were pursuing at this time, that they were trying to resolve the current issues at this time. If it is something that would be encouraged or discouraged they would like to know at this time.

Discussion ensued to the length of time that the site would be able to continue to be excavated.

Mr. Spiegel requested the Board members have the opportunity to review the documentation showing the mine had be excavated continually and never abandoned.

Mr. Parker questioned who would be responsible for repairing 4th Road due to damage from the large trucks. Mr. Langraf stated there would be a paved section prior to exiting the site which will ensure minimal dirt brought onto the street and there would be a sweeping contract to ensure the street stays clean.

Mr. Ballistreri asked what the hours of operation would be. Mr. Langraf stated they would be 8:00 AM – 6:00 PM Monday - Friday and Saturday mornings 8:00 AM – 12:00 PM.

MEETING OPEN TO THE PUBLIC:

Carol Giraldo and John Kelly 1451 Back Line Road. They questioned the details of the mining and the additional clearing of the trees, the noise levels of the equipment. They also voiced their concerns about the ATV's and motorcycles.

Mr. Coombs swore in Ben Pagano 2201 14th Street, Folsom. He stated his concerns regarding the gate being left open and unlocked on multiple occasions, the water laying at the site and the separation of the water and suggested that perhaps a water analysis be performed, the pile of asphalt, concrete and green mud that had been dumped on the site and about the buffer zones and their locations.

Mr. Coombs stated that because there was multiple references made to page 6 of 7 of the Resource Extraction plan to record it as exhibit A-5.

Motion was made to table the application by Mr. Parker and seconded by seconded by Mr. Pino. There was a roll call vote with ayes all and an abstention by Mr. Levey.

Joe Stuhltrager 1110 Black Horse Pike Folsom, NJ 08037 to discuss issues with his application at the Pinelands.

At 9:07 Mr. Pino recused himself do to a conflict with the applicant.

Mr. Coombs swore in Mr. Stuhltrager 1302 Memory Lane. He is requesting the Board to rescind the approvals that were given Mr. Adamaucci in 2007 per a request from the Pinelands. Mr. Coombs stated spoke to Mr. Siebert from the Pinelands and he prepared a resolution to rescind the prior approval and Mr. Siebert would be looking closely at the breakdown of the uses of the property, looking for more detail of the interior, also looking at the removal of and replacement of the asphalt. They will be looking at the water quality issues. He stated it would not affect the resolution. Mr. Stuhltrager stated his engineer has already submitted the requested information to the Pinelands.

Motion was made to rescind the 2007 resolution to the Adamucci property was made by Mr. Ballistreri and seconded by Mr. Levey. There was a roll call vote with ayes all.

Motion was made to amend the prior resolution #08-2011 that was approved for Mr. Stuhltrager by Mr. Ballistreri and seconded by Mr. Levey. There was a roll call vote with ayes all.

Mr. Pino rejoined the meeting at 9:13 PM.

The Chairman announced the next scheduled meeting will be June 20, 2012 at 7:00pm.

Meeting adjourned at 9:14 pm with ayes all.

Respectfully submitted,

Sherri Thompson
Board Secretary

DRAFT