

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

May 20, 2015

The meeting was called to order at: 7:19 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 Atlantic City Press and is posted on the bulletin board showing the time and place for the meeting.

**Members Present:** Charles Pitale, Ron Esposito, Joel Speigel, John LaPollo, Lou DeStefano, Dave Cappuccio, Ven Pagano, Michael Veneziano

Also present Ed Malec

**Absent:** Joe Pino, Glen Smith

**Others Present:** Solicitor: Jorge F. Coombs, Esq.  
Vince Polistina, PE, PP, Engineer  
Secretary: Susan Carroll

**APPROVAL OF MINUTES:**

A motion was made by Mr. Esposito and seconded by Mr. Pagano to approve the minutes of April 15, 2015. There was a roll call vote with ayes all and an abstention by Mr. LaPollo and Mr. DeStefano.

**RESOLUTIONS:**

Michael Ingemi 1409 Black Horse Pk., seeking a Minor Site Plan approval to continue the Use of the gasoline filling station in its present form and convert the garage on 50 into a convenience store at Block 3401 – Lots 50, 51, & 53. Application 01-ZB-15

A motion to adopt the Resolution with an Amendment was made by Mr. Cappuccio and seconded by Mr. Pagano. There was a roll call vote with ayes all and abstention by Mr. LaPollo.

**APPLICATION:** Ferris Associates

The Application for Ferris Associates was postponed until next month's meeting. Mr. Polistina gave an update: Since meeting with Ferris Associates in March, there was a meeting on site with

some members of the Board to look at the site and the restoration. After looking at the site and some of the issues left undone, a list was provided to them with a number of additional comments which needed to be addressed prior to them appearing before the Board again. Restoration was requested with the 2012 approval. Some restoration was done, but there were areas they indicated were restored, but were not.

They were asked to stake all the limits of the mining in the field and number them to correspond to points on the plans for a clear depiction of where the mining would be. There were some questions with the out bounds of the property. The monuments. The survey was dated back a number of years. The survey needed to be updated for an accurate picture of all the property lines. It could impact the 200 foot buffer for the mining.

There were materials out there which should not be out there. There were about 17 issues. The applicant requested a meeting to review the issues. Mr. Polistina explained he and Mr. LaPollo went through the entire list at the initial meeting with the applicant. The applicant had been subsequently working on the list and getting some of the information. Mr. Polistina and Mr. LaPollo went to the site yesterday and some of the restoration had been done in some areas, but not all. They had piles of top soil in certain areas. The restoration was not entirely complete. They purchased some seedlings, but they haven't been planted yet. The out bound survey had not been resolved. The applicant needed to provide a plan showing the correct out bounds and the 200 foot buffer for the mining limits. They haven't been able to get the survey done in time. Since these issues were not addressed prior to coming back before the Board it was indicated the only thing to do because we didn't have all the information was to recommend them to table the application. The applicant requested the application be tabled yesterday to be able to satisfy some of the conditions prior to appearing before the Board. They will be back at some point, but they were not in a position to do so yet.

Mr. Esposito noted some of the applicants responses did not satisfy the question and asked if there will be any additional to address or if still some interpretation. Mr. Polistina advised there will be, and there will be some that may come down to a decision by the board. The asphalt material on site will be removed. They have acknowledged it, but we asked for the standing water which was there to be tested. The water is less, but there is still some there. The board wanted to make sure there is no contamination. Those type of things may need to be a condition of the board. We told them it is what we would like, but some of them (issues) may come down to a Board vote or put on as a Condition of the Approval.

**APPLICATION: Wayne & Karen Sweeten**

Application# 02-ZB-15 – Applicants Wayne & Karen Sweeten, 2239 Coles Mill Road, Franklinville, N. J. 08322 are requesting a Change of Use for Block 2716 – Lots 812, 813, 814, 815, & 826 located at 215 Black Horse Pike in Folsom and owned by JJP Properties, LLC. The present Use is: Business engaged in renting & selling of construction equipment. The proposed use will be for: Auto repair which includes automotive fabrication and installation and retail sale of auto parts.

Mr. Michael Malinsky Esq. from the law firm of Fitzgerald, McGroarty & Malinsky on behalf of

the applicants Karen and Wayne Sweeten for a Change of Use and Waiver of Site Plan to utilize the 3,000 sq. ft. bldg. currently on the site for auto repair, fabrication, installation of auto parts, and retail sale of auto parts. There is no proposed development for the site. The applicant is proposing to convert the site back into a less intense use of the 1988 approval the Board granted. On October 4, 1984 the Board granted site plan approval for the construction of the 3,000 sq. ft. building for the repair of automobiles and the retail sale of auto parts. The Approval consisted of 240 sq. ft. of office retail space; 1600 sq. ft. of service area consisting of (4) 20 x 20 service bays areas; and 1,150 sq. ft. of storage space within the 3000 sq. ft. building. The applicant is proposing 450 sq. ft. of office retail space; 800 sq. ft. of service area - which is half of the service area; will utilize 2 of the 3 service bays; and 1,750 sq. ft. of storage space in the 3000 sq. ft. building. The 4<sup>th</sup> service bay will be utilized as part of the storage space.

Mr. Malinsky introduced two witness Mr. Sweeten and Kevin Dixon from Dixon Associates Engineering, LLC. Mr. Coombs swore in Mr. Wayne Sweeten and Kevin Dixon of Dixon Associates, Engineer and Planner for the project.

Mr. Malinsky called Mr. Dixon as his first witness. A Use Variance is not needed for this application. This is a permitted Conditional Use complying with the Conditions delineated in Folsom Borough Ordinance. The project site is located in the Rural Development District described in Section 200-17 of the Code. The Paragraph under the Conditional Use is Paragraph B, Sub-Paragraph 7 identifies not only Conditions, but also identifies this Use as a Conditional Use in the District. Paragraph B specifically identifies the Conditional Uses described are #1 through #8 are subject to the standard and regulations set forth in the Chapter. It is a Condition precedent to each of the Items #1 through #8. Paragraph 7 indicates a roadside retail sales and service establishments bars, taverns, nightclubs, garden centers, banks, auto car washes, sales and service centers, hotels, motels, theaters, offices, and like Uses to serve Pinelands residents and travelers. We fit under the auto service center and specifically identified as a Condition within the sub-paragraph is to serve Pineland residents and travelers. We also fall under the category of service establishment since services are being offered to travelers and residents. We are road side. This is on the Black Horse Pike (Route 322) and has direct access on to the State highway. One of the Conditions of this Use is it comply with the standard set forth in the code. Section 200-39 Special Regulations for Certain Uses, Article 6 of the Code indicate Auto Service Stations and parking lots have specific criteria they must meet. One of the criteria relates specifically to a repair garage. The language in Paragraph D is specifically related to repair garages and relates to restrictions on how those facilities may be used. Whether vehicles may be stored outside, how many, how long, and whether or not certain thresholds may be passed or crossed. This proposed Change of Use backs the original Approved Use and complies with all of those Paragraphs, but specifically as it relates to repair garages. It also complies with Sub-paragraph D. It was Mr. Dixon's opinion as a planner the Use is permitted as a Conditional Use and meets the Conditions further specified in the Ordinance. It was also Mr. Dixon's opinion the Planning Board had jurisdiction to hear the Application.

The Applicant is seeking a waiver of site plan approval. Some of the site plan details normally associated with a site plan submission has not been made as matter of this submission, but rather using existing documents we have depicted the basic conditions on the site. There is an unpaved parking area of 19 parking spaces along the front of the site and along the Pike. There are 15

space 10 x 20. They were built in accordance with the original approved plan. It actually delineates them as 10 ft. x 20 ft. spaces. The area exist on the site today. There is a stone curb along the front edge of the parking area. There are concrete wheel stops. There are not 15 wheel stops, but there are concrete wheel stops. The applicant will agree to install additional concrete wheel stops to delineate each space as was suggested by the engineer and delineate each space individually on the plan. As part of the 4 spaces proposed we would propose to pave with a concrete pad the handicap space shown on the approved plan as a paved surface handicap space. There is a handicap space delineated on the site now, but all the parking is in an unpaved state. The handicap space would be paved. The other three spaces in the area have wheel stops and will remain unpaved. It is gravel aggregate lot with vegetation creeping up through there. The building as identified has 3 bays, 3 service doors on the front of the building, a walkable entrance to the westerly side of the building. The building face is on the south side of the pike. There is a chain link fence parallel to the building face. It runs off the back of the building parallel to the street line from the back of the building across to the end of the site to the west and parallel to the street line off the front of the building to the east. It encloses a rear yard area which on the existing Conditions Plan shows up as an area which would otherwise be used for vehicular access as an unpaved drive area. It is either currently being used as such, nor is it proposed to be used as such. The area remains fenced in will be relatively untouched with the exception of occasional use, but no traffic, parking, or loading in the area. In the rear of the site there is a chain link fence. The fence has white slats in it as a visual barrier from the street to the rear of the property. The Change of Use Plan refers to the fence.

Lot 826 remains untouched as a wooded lot. It is neither developed nor intended to be developed. The lot servers the purpose of providing acreage for the nitrate dilution calculation for the septic system. There is a retention basin designed and built in conjunction with the existing original development plan. There is no water in it presently today. It is vegetated and is dry. There is a three side fenced in area with green slats right next to the retention basin. The chain link fence comprises a trash enclosure. It would need a gate, but it is a trash enclosure which conforms to the requirements for it to be on the northerly side of the building and away from the service area and the drive. The trash enclosure is just off the aggregate parking area to the easterly side of the site in the front of the building.

The Applicant is seeking Approval from the Board to get a Change of Use to allow him to bring in automobiles to service the automobiles. He does custom automobile, retrofitting, service and repairs to automobiles. He will also service clientele who would drop their car off and leave it there however long it takes to perform the type of work he would need to do in terms of the custom work he would be doing on the automobile. The Applicant is also seeking Approval from the Board to revert it back to the original retail sales for the occasional sale of parts to the clientele he is dealing with. It will not be advertised as an auto parts store, but they would be set up to be able to provide parts to their customer who go in and out. It is a very low intensity Use. It is not anticipated there would be one customer turn over per day. It is anticipated one or more cars may sit there, but they would sit there for an extended period of time while they are being worked on. Customers will not be seen circulating in and out of there on a daily basis. There is no restriction on when they will come and go except for the working hours propose 5 days a week 10:00 am to as late as 7:00 pm, but no later than 7:00 pm.

It is an automotive repair fabrication of parts they may get in and need to fit to the automobile. They will be doing custom works where they may need to fit a piece onto an automobile. They may need to bend it or shape it to make it fit. For all that operation they will need an office as well. Office space is proposed.

It was Mr. Dixon's opinion the site is appropriate for automotive repair shop and retail of auto parts and stated it was also the opinion of the Board who granted the Approval for the site to be operated in the fashion back in 1984.

He believed a Waiver of Section 170-2(A), Site Plan Requirements would be warranted because no improvements are proposed as a result of this request. He felt there was enough information and evidence before the Board to grant the Waiver of Site Plan for the Change of Use Application because the Site was approved, and was built, and was operational. There is a current Approved Use on the Site. The current Approved Use took the place of a previously Approved Use built and used in the current configuration as it is now. This Change of Use Application reverts back to the original Use. The site was already approved, it was built, and was in use for this very Use. The Change of Use plan submitted to the Board is similar to the revised 1984 plan which was presented to the Board in 1984 and in 2001. It was Approved by the Board as well as the Pinelands and the County Department of Health for septic system which has been installed and is operational. The building is fully operational as is and no Changes are proposed other than the ones describe with respect to cleaning the site up and putting in a handicap parking space.

He thought a Waiver of Section 200-29.C.(1), Off-Street Parking – Surfacing was a reasonable measure because this is a previously approved Use and will be a Use of lower intensity than the construction equipment rental and sales Use there now. The rental and sale of construction equipment with the use of forklifts, pick-up trucks circulating on the site, heavy equipment which required machinery to pick it up to move it around the site. It was permitted to be operated in the present state. Therefore, he believed it would be a reasonable request to ask the Board. The current driveway and off street parking spaces contain stone and it is the existing stone which will remain. There is a hard surface. It is not pot holed or raveling. It is stable and relatively level with respect to any irregularities in the surface. It is a hard surface lot. It is not paved. It has vegetation coming up. The applicant has agreed to clean it up and restore it to a clean aggregate parking lot.

He believed a Waiver of Section 200-29.C. (2), Off-Street Parking – Surfacing which requires the curbing between the off street parking spaces and landscape areas is reasonable because it is not the type of site in an urbanized area where curbing would be beneficial. It would be used to channelize drainage water into an inlet somewhere and to provide separation from traffic and pedestrians. There isn't that level of intensity and didn't want to collect and channelize or create point discharge of surface run off. The waiver allows surface runoff hitting the aggregate to be absorbed into the ground or directly adjacent to the aggregate surface into the ground surrounding the lot rather than being channelized with a curb. There is not a pedestrian vehicular conflict area where you would be looking for that type separation either. He believed the request (for waiver) based on those reasons would be reasonable by the Board. There are concrete wheel stops in front of the parking spaces. There are 4 spaces directly adjacent to the building. Each of

those spaces has a concrete wheel stop. The other 15 spaces face away from the building and the parking would take place facing the opposite direction. That has a curb, basically stone, turned on edge and lining the area. The area itself as a means as a wheel stop is lining the entire area and it also has several individual concrete wheel stops identifying the limits of where the wheels would pull up.

Mr. Dixon addressed Mr. Polistina Review Comments:

Item 2: Addressed the parking spaces. Each of the parking spaces will only be 200 sq. ft. It is the same site built to the same dimension as the approved plan. They were delineated on the plan as 10 x 20 and would be happy to delineate them on the plan for the record.

Item 3: Addressed the existing stone drive and parking area in poor condition and should be re-graded and low areas repaired. The applicant has agreed to re-grade the site, stabilize it, compact it, and make sure it is brought up to the original design condition of the aggregate parking.

Item 4: Addressed the existing handicap parking space as concrete. It is not concrete, is not paved, and does not comply with ADA standards. The concrete handicap parking space is shown on the original approved plans, but it was never. It represents one of a handful of Conditions which are on the existing Conditions Plan, but it doesn't match the field Conditions. It was shown on all the Approved Plans, but it was never built. The concrete pad would need to be built as a handicap parking space in compliance with ADA.

Item 9: Existing trees must be shown on the site plan. There is a tree line out there, but asked for clarification from the Engineer if showing individual trees or to show the tree line. There is substantial tree line in the rear which screens the adjoining residential area in the back of the building. It is an area which will not be used, but will either locate trees individual of a certain caliber or show the tree line at a certain density. The applicant is fine indicating it on the plan.

Item 12: Must show where the trash enclosure will be located on the site and how solid waste will be handled by the Applicant. There is currently a structure there depicting where the trash enclosure is located. It can be added to the plan to put it on the record it is on the site and it is there.

Mr. Pitale questioned the last approved Use. Mr. Dixon explained the current approved / last approved Use on the site is Construction Equipment, Rental, and Sales. Mr. Malinsky added, Equipment Sales, Rental, and Service and the tenant who was here was Sander Power Equipment and provided testimony at the time. They had forklifts, they were storing prior to the Approval. Part of the Approval got storage of materials in the back. The Applicant is not storing anything in the back and is not utilizing the back of the property at all. Mr. Dixon stated it was used for storage for some of the inventory under the currently/previously Approved Use. It is likely there was work being done on the equipment in the location, but we have no testimony to that effect.

The new Applicant will not be storing cars within the fenced in area in the rear. In accordance with the Borough's code, any vehicles will remain inside the building at all times. Any vehicles being worked on will always remain inside the building. In accordance with the Borough's Code

no vehicles will remain outside which should be worked on for more than 48 hours. Those are conditions set forth in the Borough's Special Regulations regarding certain uses as part of this and will be abiding by it.

The Applicant will not be renting the property. The Applicant will be the owners of the property. The Applicant owns his business in Blackwood and is looking to move his business from Blackwood to Folsom. He has a contract of sale contingent upon getting all of the necessary approvals from the Board.

Mr. Sweeten testified his hours of operation will be 10:00 to 7:00. He plans on having less than 10 customers weekly. Currently the business is run by himself and his wife and the potential maximum of employees will be no more than 4. He is a custom car shop. He builds custom show cars and race cars. His clientele are hobbyist. His builds are drug out over a month sometimes. It will depend on if the customer has a show car, race car, or truck. He does a variety of different custom work to vehicles and it depends on the client. He agreed in accordance with the Pinelands to only utilize 2 of the bays. He will be open 5 days a week, Monday thru Friday which is a Condition of Pinelands.

The second Condition of Pinelands is the 2001 Decision Resolution is rescinded and this Resolution will take effect.

He is currently renting in Blackwood. The Folsom location is closer to his house. He is trying to move forward and own. He is tired of renting. He felt it is time to make a move, the location is good, and it is where he wants to be. He had no problem with regarding and repairing the stone driveway. He plans on landscaping the property. Using the site plan submitted to the Board he explained where he plans on landscaping. He knew the property needs to be cleaned up to make it look nice and is not planning to utilize the rear of the property for the storage of any vehicles or any work whatsoever. He does not plan to keep vehicles in the front of the building they will all be stored inside. Anything he works cannot be left outside and will not be left outside. It is not the usual repair shop. Everything is kept inside secure.

The fabrication work includes safety roll cages, exhaust work, and some tin work. He will not be making things on site. As an example, he would get an exhaust kit and the extent of the fabrication would be a series of bends he would fit and weld for the exhaust. He would get an exhaust kit and fit the pre-bent tubing to the vehicle by cutting with band saws or chop saws and tape welded. He will not have a paint booth and does not do body work or paint work. Most of the trash will be from boxes of incoming parts. Less than a trash can full a week. He will get parts usually daily by UPS or Fed Ex. He will be using common chemicals for cleaning material such as acetone to wipe weld area, but nothing in excess. There will be no diesel powered equipment on the site. He will not be storing any gasoline or oils on the site. There will be some waste oils and when asked about antifreeze and things of that nature he explained if he had to take it out, he does have removal, and has storage containment, and will drop it off at the auto parts store where they take it in. There will never be any more than 5 gallons, but nothing in big volume.

There will be a show room area for the sale of auto parts to his customers, but it will also be open to the public if anyone would like to purchase them.

He would like to have a sign if he could. There is a sign on the original plan and would make sure it will comply with the Code. If it doesn't, will come back before the Board and has no problem with any signage proposed being submitted to the Board's Engineer\Planner for their review.

He currently does not do internet sales, but in the future may get into it. There would be UPS pick up or USPS mail pick up.

He very rarely builds race cars. There is an occasional motor to assemble and put in. In that situation will be running a motor. Most of the work is chassis work. They are cars which do not have engines and are just chassis. Most of the work is suspension work or roll gate and things of that nature.

He has been in business in Blackwood going on 4 years now. He is currently leasing in Blackwood and is under contract to purchase this property and be the owner of the property.

There will be not much volume of noise with this business. There is no sheet metal work where he would be banging and shaping. Tin work is an old form of hot rod cars. He does more exotic, higher end imports and things of that nature. All the work is done inside. It is all kit work. There is no manufacturing. He may need to modify a kit to make it fit where he needs it to fit or make it look a different way, but there is no manufacturing at all. There are two lifts. The third bay will be used for storage for a build getting ready to be done. It will have to stay inside. It will stay in that area. There are no intentions to use the back of the building for anything ever. The septic and well are back there and can't really do anything back there anyway. The only thing planned for the back is to clean it up. It needs to be cut.

Mr. Malinsky reviewed the Aqua Terra Site Plan with Mr. Dixon for the location of the septic design approved by the Atlantic County Health Department. It indicated the septic tank distribution box located in the right rear just behind the building to the west and the disposal beds on the westerly edge of the property. The well is on the opposite side on the easterly side of the building near the front.

The existing Court Order will be discussed and addressed with the owner.

Charlie Jones of Hammonton introduced Peter Porretta as the Manager of JJP Properties, LLC as the appropriate person to speak on behalf of the company.

Mr. Coombs swore in Pete Porretta the Manager of JJP Properties for his mother Josephine Porretta who is the sole owner of JJP Properties.

Mr. LaPollo asked if the Court Order will continue to be enforced. Mr. Jones answered yes the Court Order remains in effect. If there are specific questions, they go through it. It has been over 15 years and there has been a lot of going back and forth on it.

Mr. LaPollo asked if when the property is sold if the Order will stay in effect and still be maintained. Mr. Jones thought it was a legal question, but did not think the sale makes it go away. Mr. Malinsky did not know of any ongoing Conditions which need to be abided by. He had the Court Order and suggested going through each of the Conditions. It was his understanding that the Conditions of the Court Order had already been abided by.

Mr. Jones gave a brief history of the Consent Order. It was dated 1999 spatially without being dated but know from a subsequent document the actual dated Order was February 14<sup>th</sup>, 2001. It is from a Consent Order or Amended dated June 19<sup>th</sup>, 2001. It is the Document which incorporates as Exhibit A the contents of the Resolution of February 14, 2001.

Sub-Paragraph (a) is a chain link fence with white vinyl slates shall be erected between Lots 825 and 826 (on 2716). This was not done because Lot 826 is vacant land. It is the part of the property used as a dissolution field. It is not being utilized. There was vinyl fencing placed behind the subject improvement parallel to the Black Horse Pike buffering the adjacent neighboring properties. The fence was taken straight across and it was agreed to leave the vacant unbuildable, and undevelopable lot. In Sub-Paragraph (f) it was explained, "No use may be made of Lot 826 without the appropriate approval of the Borough of Folsom Planning and Zoning Board". No use was ever made of the property. It is a vacant lot, fully wooded and there are a few trails cut into it. The neighbors are using it. It was never intended to be developed. It can't be develop unless it comes back to the Board. It would be impractical to put a fence because there are trees all along the property line.

Sub-Paragraph (b) speaks in terms of installing a berm and planting a single row of 6 ft. white pine 8 ft. apart. There were existing old growth trees along the back which provided a canopy. There was a shallow berm placed. A high berm would have killed the existing old growth trees. The trees were supplemented with new trees and added a second row of trees. In 2011 additional trees were planted in requested locations at the direction of the Borough. Three rows of trees were planted. The adjacent land owners were involved and were very particular about having their back yard buffered. The Borough was involved in the decision to keep the canopy (of trees) when the shallow berm was installed.

Mr. LaPollo questioned if the Order will be removed and if it will be maintained to protect the property owners there with the new ownership and if the buffer will still block the view from the neighboring property from seeing whatever is there. Mr. Malinsky answered the owner will increase the landscape to make it nicer and will not remove anything. It will all remain. It will absolutely (block the view from the neighboring property).

Exhibit A-1 was handed out. It was an ariel picture of the area showing the canopy (of trees) and the buffer between the JJP Property and the two land owners. It was taken from Google Earth and dated September 6, 2013.

Mr. Pitale questioned Mr. Jones about the fence between Lots 826 and 825. The Consent Order requires the fence to be between Lots 825 & 814.

Pinelands is requiring Lots 812, 813, 814, 815, and 826 to be consolidated into one Lot. The rear portion was formerly known as 826. Mr. Coombs asked if the consolidation will be by Formal Deed Restriction. Mr. Malinsky stated there is no problem with the Deed Restriction. It will be Deed Restricted for nitrate dilution purposes. The Deed Restriction as with normal Deed Restriction for nitrate dilution purposes if at any time in the future they seek to develop or change it will make sure to get the Approval from Pinelands and the Board. There was no problem Deed Restricting for nitrate dilution references.

Sub-Paragraph (c) the third condition given had to do with the trash enclosure. It was part of testimony previously given.

Sub-Paragraph (d) Defendant's use of the property shall be limited to only such uses as permitted under Folsom Borough Zoning Ordinance. The Applicant came before the Board for this purpose.

Sub-Paragraph (e) Lighting servicing the building shall be directed away from Plaintiff's property. The rear exit only.

Sub-Paragraph (f) No use may be made of Lot 826 without the appropriate approval of the Borough. This had been agreed to and adhered to it.

Sub-Paragraph (e) The service area is to be restricted for emergencies and deliveries and not for storage of any vehicles or materials.

Mr. Polistina reviewed a few things related to the issues. There were a things going on during the period of time. The Court Order came back before the Board and there was a Resolution adopted in 2001. Some of the requirements came from the Resolution and some came from the Court Order. The trash enclosure wasn't there as of yesterday 12:00 noon, but it was installed since. Exhibit A-2 was submitted. It was a picture showing the trash enclosure.

Mr. Polistina continued. There was a requirement on one of the documents for the trees and landscape to be maintained for a period of 2 years and the Resolution made reference to trimming and pruning annually. Mr. Malinsky and Mr. Jones responded it has been done by the owner every year. They would clear and clean the property. His client will maintain it, but when the trees are this close there will always be branches which will cross over to the neighbor's property. There would need to be an access agreement to go onto the property to trim the trees or they have the right to trim the trees any portion on their property. It will be trimmed once a year as indicated in the party's Court Order and have no problem trimming the trees.

Mr. Malinsky addressed Exhibit A. Some of the Exhibit A condition s dealt with fuel oil stored on site. The applicant is not storing fuel oil dealt with. The storage of small equipment capable of being lifted by two men is not storing anything in the rear. He is not using fork lift. Mr. Porretta addressed the service area. The original drawing there was a rear drive around the back of the building. The septic was built and the well was put in. There was a conflict between the septic field and the rear yard.

Sub-Paragraph (e) was re-addressed. The service area is to be restricted for emergencies and deliveries and not for storage of any vehicles and materials. The testimony provided the rear area is not going to be used at all obviates the comment. There will be no storage at all. The stone drive was never put in. It is not utilized. As indicated previously the Applicant will be using the front of the building and the building itself and nothing will be stored in front of the building. Everything will be stored inside and will comply with the Ordinance within 48 hours of the vehicle being on site will make sure no vehicles outside within 48 hours of arrival. There may be one or two outside where someone drops it off at night or over the weekend. The Applicant will abide by the Borough's Regulation with regard to this type of Use which restricts any vehicle from being outside that is being worked on in 48 hours.

**Engineers Report:**

The Application is for a Change of Use and a Waiver of Site Plan. There is an existing building on the property. The property was subject of a history of Approvals before this Board. In 1984 related to repair of automobiles and retail sales of auto parts. Litigation ensued in the late 1990's and beginning of the 2000's. The Applicant reappeared before the Board for a Change of Use. It changed the Use to a construction equipment rental and sales business. The Applicant is seeking to go back to the previous permitted Use of auto repair and retail sales and asked for a Waiver of Site Plan. There are no completeness issues for the Board to consider or no Checklist Items because they have asked for a Waiver of the Site Plan.

The property is in the Rural Development Zoning District. There are a broad number of number of Uses permitted in the RD Rural Development Zoning District. One of the Uses involves sales and service for Pinelands travelers and visitors. For Zoning purposes there are existing Non-Conformities. The Applicant indicated they are not proposing any improvements, but there are 2 Existing Non-Conformities for the site:

- 1.) Lot area: 5.5 acres required – 1.3 acres exist at the site.
- 2.) Front Yard Setback: 75 ft. to the Black Horse Pike is required – The building sits at 64 ft. to the Black Horse Pk.

There were no changes proposed and do not need any Variances.  
The applicant is asking for Waivers for;

Site Plan Waiver  
Waivers for Paving and curbing around parking lot.

The Engineer for the Applicant indicated the site conditions will be cleaned up as opposed to the Plan.

The gate looking at the building to the left shown on the plan is missing. The gate indicated on the Plan is not there. The Applicants Attorney stated the gate will be replaced by the current owner.

The onsite plan indicated loading in the rear, but it is gone. The Applicants Attorney confirmed the loading in the rear is gone and added the only deliveries at the site will be UPS or FED EX. There is only an emergency exit door and nothing for deliveries.

One of the Requirements is no diesel Equipment is proposed. Mr. Malinsky confirm diesel equipment will not be utilized.

The meeting was opened to the public for their comment.

Jim Schroder of Schroder Law Group, Hammonton, N. J. representing Robert and Sheryl Leggadrini. Mr. Schroder asked the Applicant for clarification of the length of time he was at his current location as 4 years. He asked him to confirm the hours of operation. They are 10:00 to 7:00. The closest residence to the Applicants current location in Blackwood is approximately 150 ft. There have been no Zoning or noise complaints in the last four years he has been there. There will be no installation of dino engines or paint booths. There will be custom work. There will be no oil changes. The Applicant will be working on fewer cars. The average service/sale is roughly \$10,000.00. Oil and antifreeze automotive fluids will be used if needed. Waste oil and waste antifreeze will be stored inside the building in a container specifically for it and taken to the auto parts store.

Mr. Schroder questioned the Applicants Engineer, Mr. Dixon if there will be repairs for heavy equipment. There will be no repairs for heavy equipment. Mr. Schroder review the Deed Restriction. There was not a Deed Restriction, but as a result of the negations in the Consent Order there was an agreement no Use may be made on Lot 826 without the appropriate Approval from the Borough of Folsom. There has to be a Deed Consolidation. Pinelands is requiring it as a Condition of the Certificate of Filing. The Applicant has indicated and agreed upon Deed Restricting for nitrate dilution purposes and septic purposes Lot 826 in the Deed Consolidation.

Mr. Coombs swore in Barbara Allen Woollydillen, P. P. A. I. C. P, Licensed Professional Planner, 5856 Route 9, Tuckerton, N. J.; Sheryl Leggadrini, 214 Mohawk Dr., Folsom; and Robert Leggadrini, 214 Mohawk Dr., Folsom.

Ms. Woollydillen gave her qualifications as a Professional Planner in N. J. She is currently with RWD Consultants located in Camden, N.J. and has a home office. She attended Drexel University to complete an undergraduate degree, Rutgers – Camden where she received her undergraduate with Urban Planning Option, she also attended the University of Pennsylvania where she received M. C. P, Master of City Planning, and is fully licensed as a Planner and has a N. J. P. P. and A. M. C. P. and is current with 32 hours of required maintenance hours. She has appeared before other Boards for similar matters. She is currently the Zoning Officer for the Borough of Mantoloking, N. J. She has worked as a Planning Consultant appointed as the liaison for Galloway Township, Hamilton Township, Atlantic County N. J. She was the former Community Development Director which included Zoning Officer, Planning Board Planner, Zoning Board Planner, Re-Development Planner, and Fair Share Housing Officer for the Township of Bordentown.

Ms. Woolykillen gave a report. The Application has a lengthy history and is asking for a Site Plan Waiver. Site Plan Waivers can be awarded when it is merited or an appropriate action. She reviewed previous history of Approvals, the Decisions, and Resolutions and questioned the original Approval from 1984. There was a problem finding the actual Notice prior to the hearing and questioned whether anybody was noticed to go to the hearing. The Decisions and Resolutions were reviewed. The Applicant waited to come in, never perfected their Approvals, and were out of time. They came back a decade and a half after the original Approval. Under the Permits Extension Act they were out of time to come in front of the Board. There have been Approvals on top of the original Approval, but could not find if the original Site Plan Approval was ever perfected by the Applicant and whether there is a valid Site Plan Approval in place. If the Board is considering a Waiver of it (Site Plan), there should actually be something in place.

There may be a Use Variance involved. This is not listed specifically as one of the Permitted Uses in Folsom's Zoning District. The Zoning Ordinance for the RD – Rural Development Zone does not list it specifically as a Permitted Use. It is listed as a Conditionally Permitted Use, but there are no Conditions associated with it which is highly irregular. Typically when there is a Conditionally Permitted Use, there is some type of Condition like a buffer, a setback, a certain lot size; but there isn't anything listed with this lot as a Conditionally Permitted Use. It would need a Use Variance and require a different type of Notice and going to the Zoning Board of Adjustment.

The Burden of Proof. The Site is in compliance with what is built there, but there is a handicap parking spot which is supposed to be concrete. It is not done yet, but it will be done as a Condition of Approval.

They installed (yesterday) a trash area (enclosure) where it was supposed to be. There is a lengthy history of enforcement issues. The Consent Orders, Decisions, and Resolutions had a lot to do with the landscaping and berms. The landscaping is not what was originally envisioned or approved. There is no berm behind the property located adjacent to the residential area. They are out of conformance with any type of Site Plan Approval if one exists.

They need Use Variance Approval. There is a certain Burden of Proof which is required. They haven't met it and nothing has been presented. If Use Variance is required the Applicant is obligated to present special reasons or purposes of Zoning to the Board. There are 17 listed in the Municipal Land Use Law. This applies to 8 of those purposes of Zoning listed and the preservation of neighborhood character. The Purposes of Zoning are found in N. J. S. A. 40:55 D-2. The history of Folsom's Master Plans and Master Plan Re-Examination Reports do not recommend any significant changes to this area. It talks about how special and unique Folsom is. The Master Plan and Master Plan Re-Examination looked at what is an appropriate Use in an appropriate location in this area. There are no major changes to the RD Zoning District in this area since 1978. It determines Rural Development is what Folsom wants to be in this area. The Village Industrial Zoning District would be more appropriate area for this, but it is not here at this location. The Application is taking a step backward. As a community should see fit not to make any changes this would now be a Permitted Use by right without any of those Condition. This is not an appropriate Use in an appropriate location.

The negative impacts of the development are the level of activity and intensity will be increasing on this Site far above what would be expected. A by right Permitted Use on this site would be a park, playground, public building, general retail, roadside retail, etc. There will be an increase in traffic generated above what is currently there. The Applicant has not demonstrated the ability to meet the noise standard regulations in place and required by Folsom's Ordinance. If there are Approved plans, the Applicant failed at every level to live up to those plans. It is for these reasons we are in front of the Board. To continue on this path with this type of project is not appropriate at this site at this time.

Mr. Malinsky, had no questions. He, Mr. Dixon, and Mr. Porretta expressed most the issues put forth by Mr. Schroder and Ms. Allen-Woolykillen, but will address the few other issues which were mentioned in his closing argument.

Ms. Leggadri handed out pictures to the Board Members. They were marked Exhibit 0-1. Ms. Leggadri stated they brought the house in 1978 and didn't know anything about the first building development occurring until approximately 1998-99 when Mr. Porretta Sr. was in the wooded lot. She walked out there and asked who he was because it was in her back yard. He told her he was the owner of the property and planned on developing it. The first building was built in 1999 – 2000. According to the Resolution they were approved for auto repair / auto body, but the Porretta family was going to use it for their own business. It was not used for that, it was used for a generator company. It wasn't heavy construction. It was light generators. The generators were kept in the building, they were started and taken off site. They didn't store anything behind the building. It was one of the agreements. No storage behind the building. They were there maybe a year. Colligan Water Company came in next. They sold conditioners and salt. Next a landscaper came in. There was an issue with the landscaper storing things behind the building and was told there were other plans for the building. No one has been there since the landscaper left a couple of years ago.

Ms. Leggadri did not agree there was currently substantial screening behind the building between her property and theirs. The photos (Exhibit 0-1) were from a month ago. The buffer zone was planted in 1999 – 2000. She had to come back before the Board again to ask for additional screening because it wasn't met the first time and asked to have more additional screening, it still wasn't met. She had to call the town and ask to enforce it. A few more trees were put in. The trees are supposed to be trimmed once a year to enhance the growth, but it was never done. She called the Board and one time it was done. The septic is supposed to be pumped every three years according to the Resolution, but it has never been done. Pictures 1, 6, 7, & 8 show short bush trees on the near side of the fence, but it was Ms. Leggadri's attempt to grow something taller. It was not something planted by the Applicant or current owner. The pictures of the back of some cars are race cars she found online of the company who plans on purchasing the building. They have testified they will be working in race cars and custom cars. Before we talked about the approval being auto repair, but there was never anybody in there who did auto repair. From back edge of Ms. Leggadri's building to the (Porretta) building is approximately 95 to 100 ft. from building to building. She has a good view of what is happening on the property all the time. When the sassafras trees bloom, it covers the property a little bit. Sassafras trees lose their leaves in November. They are starting now in May to bloom. From November to May they are bare.

We have tried to be good neighbors, but every time we try to meet them halfway they do not comply and do their end. The original site plan called for 12 or 15 trees. We had to come before the Board and fight for 12. Several years later we came back before the Board again because the 12 trees were not planted. They took half of the trees and planted out front. They only left us 6 trees. No berm was planted like it was supposed to be. They came back to the Board in 2001 and asked to have additional trees to help fill it in. They agreed to put another 11 trees in, but maybe 8 or 9 went in. The Zoning Officer was called again and he had to enforce them to put a few more trees in. The trees were only trimmed one time. They are sparse and there is no buffer with them.

Ms. Leggadri travels the Black Horse Pike in the area and didn't believe the ingress and egress from the property is safe. There have been numerous accidents on the Black Horse Pike. She contacted the State Police and they are in the process of doing the research of how many accidents have been there. Her memory recalls since 1998 -2000 there has been approximately 6 fatalities from Cains Mill Road to Penny Pot. There will be people going into the property to have their cars souped up and customized when they pull on the Black Horse Pike and will want to test the material out. Now the cars will be zipping up the Black Horse Pike and it will add to the fatalities. There are no traffic lights. Three streets go out on to the Black Horse Pike from her development, but there is not 1 traffic light there. There was an accident on 14<sup>th</sup> Street in 1998 where a young child was killed. There were motorcycle and car accidents where people were killed. Down the street from Cherokee there is a cross where someone was killed a few years ago. He came over the overpass and came down the road. Someone came out of Cherokee and hit him. Those are just the fatalities not mentioning the accidents where people haven't been killed.

Ms. Allen Wooldyillen added her summary and testimony was based on the summary of what the homeowner testifies to and she maintained her testimony based on what has been entered into evidence and spoken about and testified to.

There were no other comments or questions from the public. The public portion of the meeting was closed.

Mr. Malinsky addressed customers picking up vehicles and testing them out on the Black Horse Pike to alleviate the Board's concerns. He called his client Mr. Sweeten and asked how most clients drop off and pick up their vehicle at his facility now. Mr. Sweeten answered the majority are dropped off and picked up on trailers. They are not street legal vehicles. They don't have head lights or tail lights and wouldn't be driven down the street.

The picture from Exhibit 0-1, a picture of the cars was located at Englishtown, N. J. and the picture of Mr. Sweeten behind the wheel of one of the cars was a picture of him driving to the staging lanes at Englishtown raceway. The picture with "Winners Circle" was a customer car which set a world record at a race in Maryland, Bucks Creek.

At his current facility there are other businesses around his and residential property 150 ft. away.

He hasn't had any complaints from the residential or has never been in Municipal Court for noise violations, and has never had the police come to his establishment because he is in violation of a noise Ordinance or site him for any violations.

Mr. Malinsky concluded. There is no Use Variance needed. It was previously approved by this Board in 1984 and is a less intense version of what this Board already approved.

The conditional use permit provision was reviewed. The conditions were explained and how the conditions are satisfied in Folsom's Code. There is no development here. It is indicated and represented under direct testimony and are looking to purchase the property. The experience with the prior owner was known. The concrete handicap portion was never installed was recognized. It will be put in. The rear of the property is not going to be utilized as was approved in 1984 and 2001. The landscaping will be maintained completely. The client will own the property and run his business there. He has had no issues or complaints where he is now. He is renting and is looking to move to buy. This Planning Board has jurisdiction to hear and can vote on this matter and asked to respectfully to grant the Waivers requested and the Change of Use to go back to the less intensive version of the 1984 Use subject to the Conditions set forth by the Pinelands and agreed upon by the Record.

Mr. Speigle questioned the height of the fence on the back of the property. Mr. Porretta answered 6 ft. ~~Mr. Cappuccio asked if the Applicant will be required to clean up behind the building, plant shrubs, and make the property appealing to the neighbors prior to the sale or move in, or if it will be a condition of the Approval. Mr. Coombs asked Mr. LaPollo about the condition of the property. Mr. LaPollo thought the back of the property could use more foliage to block the view of the back of the building and buffer any noise from the property. He added in the winter and fall the foliage is off the trees there is a clear line of sight because the pine trees planted are not tall enough to block the view or buffer the sound. Mr. Pitale asked if the trees will grow. Mr. LaPollo responded the trees have been growing, but the existing foliage obstruct the new foliage and stunts the growth. The foliage there is stunting the growth of the trees. The trees are not getting the proper sunlight and nutrition and are fighting for survival. Mr. Coombs suggested if additional seedlings were planted they may not grow. Mr. Cappuccio suggested a different type of pine. A scrub pine and fertilizer to help it grow. Mr. Polistina explained there is an upper canopy the white pines are all underneath the existing canopy. They are sparse and some variety would make sense. The berm discussed in 2001 will give variety and would make sense. There are limits because Pinelands dated species must be used. Mr. Coombs asked for clarification of the berm. Whether it should be a vegetative berm. Mr. Polistina explained it was supposed to be an earthen berm with vegetation planted along the berm. There is no berm. He was told a low berm was planted, but he didn't see any berm. The berm should be 3 ft. graded off with variety along the berm. The well and existing trees are there. The earth could not be put against the existing trees because it would kill the existing trees. The existing trees would need to be welled. The fence extends the whole length the slats (in the fence) only extend 8 ft. Standing on the subject property and looking into the Leggardrini property the fence and landscaping block the view, but from the Leggardrini side of the fence the view is not blocked. Discussion ensued. Plantings could not be in the area of the septic or well areas. The tree line did not extend 45 ft. along the whole property line only 10 ft. along the back of the building. Mr. Malinsky submitted pictures. They were marked as Exhibit A 3, A 4, A 5, A 6, A 7. All of the~~

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~~pictures were taken within the last couple of weeks on a Saturday. Ms. Leggardrina explained the pictures submitted is the area where the densest trees are and her house was not shown in any of the pictures marked Exhibit A-3 through A-7. She explained the area behind her house is bare. They (the Applicant) won't plant anymore trees there because it is already overgrown. She didn't understand why the buffer zone looked the way it did and why there wasn't a decent buffer put in from the very beginning.~~

~~Mr. Schroeder suggested it might be possible to find an appropriate strain of plant which can be worked at. The right strain of trees might mitigate and make possible to correct the things that should have been correct years ago. The issue is the fruit of the poisonous tree means if the~~  
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initial approval was not correct everything which follows is corrupt. This is why at the very minimum a Variance would be required.

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Mr. Malinsky responded the fruit of the poisonous tree is an evidentiary issue which for example there is a violation of the 4<sup>th</sup> Amendment and obtain something illegally then any evidence associated with it is not admissible for evidence. It is not the case here. With regards to the 2001 Approval which changed the Use from the auto repair shop to the equipment sales rental and service. The Approval is in effect and the Approval remains. There is no challenge to the Approval nor has the objectors indicate any challenge to the Approval. The 1984 Approval was fine. There was correspondence after the fact with Pinelands. There was never any challenge to it. The objector saw the publication and have 45 days from the date of publication to object. Objection could have been made at that time on notice grounds of because she did not receive notice. It was never done. There was a complaint filed, but it was resolved by a Consent Order. The original Approval was never overturned or never found to be arbitrate.

Mr. Schroder responded from the beginning things were not done properly and from that point to this point have not been done. Things have been left undone 10 to 15 years. The home owners/residents are asking for the integrity of the Board to be upheld and hold people to the Resolutions that have been produced. They need assurances things will be done correctly.

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Mr. Malinsky stated the Applicant is looking to purchase the property as a new owner and has already indicated the back of the property will not be utilize at all. The intention is to improve the landscape on the property and will deed restrict lot 826. He has agreed to the Conditions. This is a Change of Use with Waiver of Site Plan for a Permitted Use. A Conditional Use for which they meet the conditions for. There are no Variances associated with the Application and no proposed development.

Mr. Coombs stated the scope of additional landscaping needed clarified and defined to be written into the Decision Resolution because it may preclude the owner from selling and cause the potential buyer to back out if it is an obligation he could not meet. Mr. Malinsky spoke with the owner and will agree to work with the Board's Engineer at the Site to provide additional plantings that may be required at his discretion and to satisfaction. Ms. Leggardrini was not agreeable because of the history and the financial burden to hire legal representation.

The owner was not agreeable to post a bond for the landscaping, concrete apron, gate, handicap parking space, grading improvements needed, but agreed to plant 12 trees (1 dozen) of local variety, 6 ft. high of a local variety acceptable to the Board's Engineer. The Board's Engineer felt 12 would probably reasonable and appropriate and necessary to screen, but not white pines. It is the standard a Waiver of Site Plan was requested. It would be a Site Plan Requirement imposed even though they asked for a Waiver of Site Plan. The Applicant will update the Plan they gave the Board. The Existing Conditions Plan to reflect the actual Conditions at the Site. The Applicant was asked to put on file with the Borough a plan which reflects the Existing Conditions at the Site currently in conjunction with the Approval.

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Mr. LaPollo suggested to put in the Resolution the Maintenance Order to enforce the Court Order as a Condition recommended by the Engineer and enforce the Resolution through Fines and Penalties Violation and to name the Zoning Officer to inspect the property.

Mr. Shroder's client were agreeable if it is in the Resolution for the owner to maintain the trees as a Condition.

Change of Use the proposed Use is Conditional Use by Permit based on the Boroughs Zoning Code for Roadside Retail Sales & Service Establishments to serve Pinelands residents and travelers. It is a conditional Use, but Section 7 has no conditions. These types of uses are permitted.

The second is a Site Plan Waiver with Conditions: 12 trees 6 ft. high local species trees determined by Board Engineer to screen adjacent property owners – handicap parking space to be concret4e – a gate for fence missing – parking & grading

A Motion was made by Mr. Pitale and seconded by Mr. Pagano to permit the Change of Use for the Conditional Use with the Conditions as put in place by the Planning/Zoning Board. There was a roll call vote with ayes all.

A Motion was made by Mr. Pagano and seconded by Mr. Cappuccio for Waiver of Site Plan Requirements Section 172A; Waiver of Off Street Parking Surfacing Section 200-29 C1; Section 200-29 C2 with regards to curbing. There was a roll call vote with ayes all.

**APPLICATION: David & April Emmons/Harley Dawn Diner**

Application # 03-ZB-15 – David & April Emmons of 4004 Coles Mill Rd., Franklinville, N. J. 08322 are seeking review and approval of Preliminary and Final Site Plans(s) to demolish the existing diner and construct a new diner with formalized parking lot, relocate site lighting, landscaping & new septic system. The diner is located at 1402 Black Horse Pike in the Rural Development Zone. They are requesting Variances for minimum lot size and minimum front yard setback.

Mr. Olivo with offices located in Hammonton Attorney for the Applicant. Also on hand was Professional Planner Mr. John Helbig of Adams, Rehmann, & Heggan to testify; a representative of The Bennett Group, the Architect David Grierson; and the Applicant April Emmons.

Mr. Coombs swore in April Emmons, 4004 Coles Mill Rd., Franklinville, N. J.; John Helbig of Adams Rehmann & Heggan.

Mr. Olivio explained the Application is to raze an old structure and to reconstruct a modern facility to service the residents as well as travelers through Folsom. Mr. Helbig gave an overview of the Site Plan. The existing diner is about 3,000 sq. ft. and has a footprint which sits in the middle of a fairly expansive area of asphalt. There is some stripped parking around the existing building. The parking lot is informal. It is a large asphalt lot which handles the daily traffic in and out of the diner property. The diner has existed on the site for the better part of 60

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years. When the process was started with the Pinelands Commission the Applicant came before the Board in 2009 because it was important to establish the intensity of the Use which existed on the property when the Comprehensive Management Plan for the Pinelands came into being in 1979. With the site of 1.4 acres and trying to build a new diner. The only way the Applicant could get it through the Pinelands Commission given the ground water standards which are extremely stringent was to show the proposed Use is less intense which existed on the property in 1979. It was determined the restaurant which existed on the property in 1979 had 85 seats and a full time apartment associated with it. The plan this evening is an 85 seat restaurant with no residential component.

The site is 1.426 acres, 62,000 sq. ft. It has about 340 ft. of frontage starting about 700 ft. east of the intersection of the Black Horse Pike and 8<sup>th</sup> Street. There is a solar array on the back of the site along the Mays Landing Road portion of the property and an existing septic system. The Use next door, to the west, is Pantry One. The old Wawa store. The site is in the RD Zone and this is listed as a Conditional Use in the zone.

The proposed condition shifts the building slightly to the east. The footprint of the new building will be about 4,600 sq. ft. with no basement. There is an existing subgrade space under the existing building used for storage. It will be completely back filled as part of the demolition. The building will be on one floor slab construction.

The Applicant wanted to formalize the parking and provide better traffic circulation around the site. The Boroughs parking standard for this type of Use requires 27 parking spaces customers and employees. There will be 47 parking spaces of 9 x 18 (regular size) and 2 handicap spaces. The handicap spaces will be shifted slightly to the east to put them into the proximity of the main entrance of the new building. The necessary handicap ramp can be provided from that location in conformance with the ADA standards. Ten thousand square feet of existing paving on the property has been eliminated. There is a significant amount of green space will now occupy the site in the proposed condition. The existing paving will be pulled up where it is not needed. There is a lot of illegal traffic maneuvers between Mays Landing Rd. and the Black Horse Pike. The formalizing of the parking and adding parking islands which will be curbed and the reduction of impervious cover, which benefits drainage which accrues, there will be a much better and well defined traffic circulation plan. The Applicant will keep the driveways which currently exist along the Black Horse Pike where they are now, expand the landscaping islands along the Black Horse Pike, extend new curbing to connect into the existing curbing which runs into the right of way of the Black Horse Pike. The driveway to the western side of the site will be a one-way drive (going out) and the driveway to the eastern side of the site will be two-way entrance and exit. On Mays Landing Road there is currently two driveways which provide access and egress to the site. The western most driveway will be closed off and funnel all of the traffic through a single driveway on the western most portion of the drive isle. This will reduce impervious coverage, meet the Boroughs parking standard, and allow a much better circulation plan.

There will be LED Site lighting which will provide a much even illumination levels across the property for a much longer period of time. The LED lighting is consistent with the green theme which the Applicant has already demonstrated with the installation of solar energy on the site. There will be four new site fixtures to provide LED lighting. There are provisions for

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geothermal wells on the site for building, heating, and cooling.

The loading area is clarified to the rear of the site. There will be a ramp for box trucks to unload supplies for the restaurant.

Solid waste disposal would be maintained in the same area it is currently. It will be well screened. The septic system will be re-constructed.

An expansive landscaping package is proposed with over 30 new trees and approximately 300 shrubs all around the property. There will be foundation plantings and buffer plantings.

There is a Harley Dawn sign on the Black Horse Pike right-of-way in front of the existing building which the Applicant proposes to keep and add one 6 sq. ft. sign at the rear exit/entrance driveway maintained along Mays Landing Rd. side.

A new well was proposed for potable water supply.

A Variance for lot area was requested. The code has been changed since the building was built. The required area today would not be substantially greater than what exists. There are no properties which can be joined to this property. The property is segregated by highways. The property to the west is developed commercially and the property to the east is owned by the Borough. It has been substantially planted with very nice landscaping and is a nice entrance to the Borough and the applicant's property and would like to see it stay.

A Variance for a front yard setback was requested. There is no reasonable way to achieve the required setback because of the roadway configuration around the site. There are two front yards. Both require 75 ft. setbacks and provide the building in this location. The scenic setback for paved roads require 200 ft. This is an Ordinance provision that paved roads within the Rural Development Zone maintain a 200 ft. scenic setback from center line. The development is along a State Highway. It is an arterial highway. The Variance for the front setback will be consistent with the Pantry One which is adjacent and the Pinecrest which is down the street and also in the RD Zone. The 200 ft. setback would eliminate the entire property from development.

A Variance was requested for the solar panel array in the rear of the property. When the Applicant hired Go Solar the solar installer and the vendor was supposed to have applied for and received the local Approvals. The Applicant is not sure if the vendor ever received the Variance setback approval prior to installing the solar array. The Applicant would like to legitimize the Variance for the solar panel.

There was no detriment to the Master Plan. The practical difficulty which would accrue to the Applicant in terms of trying to provide the required setback and provide the solar array no substantial detriment was foreseen. There is buffering which exist to the west of the property with a detention basin. There is one residential Use across Mays Landing Road, but it is setback relatively far. Under the Municipal Land Use provision solar arrays and renewable energy facilities are deemed inherently beneficial. The relief requested for the Variances pose no substantial detriment to the public good or no impairment to the Zoning Plan or Ordinance.

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The intended plan will be far greater than what is presently there. From an aesthetic standpoint, the commitment to renewable energy, and landscaping plan. It will be a facility the entire community will be proud of and in a great location in terms of access to the community.

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A Waiver for Checklist Item #27: Location of existing wells and septic systems was requested. The Applicant knew approximately where the existing well is located, but will find it when the property is demolished. The Applicant will know the exact location.

A Waiver for Checklist Item #28: When applicant intends to use a conventional septic disposal system: location of test holes, test results, and approximate location of the intended disposal field. The septic system will be designed by South Jersey Engineering and are dealing with the NJDEP to get approvals for it.

A Waiver for Checklist Item #29: Plans and profiles of proposed utility layouts, such as sewers, storm drains, water, gas, communications and electric, showing feasible connections to existing or proposed utility systems. The Bannett Group, Architect for the site will be laying all of the utilities systems for the HVAC and Mechanical. It will all go to the Construction Department.

A Waiver for Checklist Item # 39: Design calculations showing proposed drainage facilities to be in accordance with the appropriate drainage run-off requirements. There were no formal storm water management plans or calculations because there will be a substantial decrease in impervious cover which will be provided on the property. The Pinelands did not require it either.

Mr. Polistina requested an explanation for the difference in square footage from the prepared plan which indicated a growth of 4,590 ft., but the Certificate of Filing from the Pinelands indicated a building size of over 5,000. Mr. Helbig explained the plan which came through was the first iteration. It was larger. It will be the exact same footprint except for the cutout on the back of the building was added. The footprint on file (which showed 4,590 ft.) is correct.

The Applicant, April Emmons, advised there was a plan for the demolition and re-construction and hoped to have the demolition permit by the end of May or June and have the diner built and operating by the end of the year. The hours of operation will remain the same: 6 am to 10:00 pm, 7 days a week, all year and closed on Christmas Day. She and her husband own and operate the restaurant. Her husband is the chef and they have been there for 20 years.

Mr. LaPollo asked if the shrub line along the Borough's point would be curbed and if there would be curb stops to keep cars from going through. The applicant Engineer explained to try to reduce the amount of drainage and simulate the existing drainage pattern they will remove about 300 sq. ft. of asphalt which extends across the property line onto the Borough's property line. There was a plan to trench a shallow 4 inch deep stone trench along the edge. As the storm water sheaths off of the paving it will go into the trench. If it overflows the trench, it will go into the grass. There will be curb stops.

Mr. Esposito asked how far onto the Borough (property) the asphalt will come. Mr. Helbig replied there is an area of about 300 sw. ft. about 10 x 30 where the paving and property line was not clear. It will be taken out of there and replant it.

Mr. Coombs swore in Mr. David Grierson of Bennett Architect Group addressed elevations and building design and architectural elements. The floor plan provides for 85 seats. The exterior finish of the building will be an EIFS System as a base finish will be accented with Metal Panel and Fiber Smith Panel System. It will be a modern style. The EIFS System looks like a traditional stucco and the Fiber Smith Panel system are smooth panels with regular joints 6 ft. x 18 in. the metal panel system is corrugated roof deck.

The ashed lines on A-1.0 on the left side of the drawing above the office is a configuration for cooler boxes and will be on the exterior of the building on the private side. There will not be a step up into the diner. The footprint of the building is 6 inch curbed based. The reveal of the curb will be the elevation lift. For drainage the butterfly roof will drain onto the flat roof then downspouts on the back side of the building, but wasn't sure of the size pipe to be used. The square footage drainage will pour down into one central location. It could be put underground. Mr. Pagano mentioned it will be a lot of water going to one place. The downspout will be sized to match the required area. Ms. Emmons stated Bennett is a design build firm. This was done as a Phase I. A lot of the details being asked about are issues which will be addressed in Phase II in about 2 or 3 months. The Phase I referred to the actual hard construction drawings.

#### **ENGINEERS REPORT**

**DESCRIPTION:** The subject property is known as Block 3408, Lot 4 and is located at 1402 Black Horse Pike. The site is located in the Borough's RD Rural Development zoning district. The site contains an existing one story restaurant known as the Harley Dawn Diner. The site consists of 1.426 acres and has frontage on the Black Horse Pike (N.J. State Highway 322) and Mays Landing Road (N.J. State Highway 73). The site contains the existing building, an asphalt parking area and a solar panel field.

The Applicant proposes to demolish the existing building and construct a new 4,590 square foot building and parking for 49 vehicles. The Applicant is proposing to improve the existing circulation on the site and limit the access from Mays Landing Road. The Applicant will close off one of the two driveway entrances onto Mays Landing Road and install new concrete curb. The Applicant is also proposing a new septic disposal field. The Applicant intends to locate a temporary storage trailer on the site during construction for storage of the existing building's contents.

The Applicant is seeking a preliminary and final major site plan approval with variances for lot area, front yard setback, and the 200 foot scenic setback from paved roads in the RD zoning district. Variances for the existing solar panels located within the required front and side yard setbacks and lot coverage are also required.

#### **COMPLETENESS REVIEW:**

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

**Item 27- Location of existing wells and septic systems. The Applicant has requested a waiver from providing the location of the existing well since it is unknown at this time.**

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Item 28 - When applicant intends to use a conventional septic disposal system: location of test holes, test results and approximate location of the intended disposal field. **The new septic system is being designed and permitted by others. The Applicant has requested a waiver.**

Item 29 - Plans and profiles of proposed utility layouts, such as sewers, storm drains, water, gas, communications and electric, showing feasible connections to existing or proposed utility systems. **The Applicant has requested a waiver.**

Item 39 - Design calculations showing proposed drainage facilities to be in accordance with the appropriate drainage run-off requirements. **The Applicant has requested a waiver.**

There is no problem with granting the 4 items it will not impact the application. Most of them will be dealt with throughout the Construction process, but it is not necessary to have them this evening prior to site plan approval.

**ZONING REQUIREMENTS:** The site is located in the RD Rural Development zoning district. Roadside retail sales and service establishments, bars, taverns and nightclubs, garden centers, banks, auto car washes, sales and service centers, hotels, motels, theaters, offices and like uses to serve Pinelands residents and travelers are conditional uses by permit.

The following is a list of the area and bulk requirements for the proposed development

<b>Standard</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Status</b>
<u>Lot Area</u>	<u>5.5 ac.</u>	<u>1.426 acres</u>	<u>1.426 acres</u>	<u>ENC</u>
<u>Lot Width</u>	<u>150 feet</u>	<u>340 feet</u>	<u>340 feet</u>	<u>Conforming</u>
<u>Lot Depth</u>	<u>200 feet</u>	<u>feet</u>	<u>feet</u>	<u>Conforming</u>
<u>Building Setbacks</u>				
<b><u>Front Yard</u></b>	<b><u>75 feet</u></b>	<u>48.9 feet</u>	<b><u>44.78 feet</u></b>	<b><u>Non-</u></b>
<u>Black Horse</u>	<u>75 feet</u>	<u>88.1 feet</u>	<b><u>56.45 feet</u></b>	<b><u>Conforming</u></b>
<u>Pike</u>	<u>75 feet</u>	<u>10 feet</u>	<b><u>10 feet</u></b>	<b><u>Non-</u></b>
<u>Mays Landing</u>				<b><u>Conforming</u></b>
<u>Road</u>				<b><u>Non-</u></b>
<u>Principal</u>				<b><u>Conforming</u></b>
<u>Building</u>				
<u>Solar Panels</u>				
<b><u>Side Yard</u></b>	<u>30 feet</u>	<u>80.2 feet</u>	<u>115.12 feet</u>	<u>Conforming</u>
<u>Principal</u>	<b><u>30 feet</u></b>	<b><u>11.4 feet</u></b>	<b><u>11.4 feet</u></b>	<b><u>Non-</u></b>
<u>Building</u>				<b><u>Conforming</u></b>
<u>Solar Panels</u>				

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<u>Rear Yard</u>	<u>25 feet</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
<u>Building Height</u>	<u>35 feet max</u>	<u>&lt; 35 feet</u>	<u>&lt; 35 feet</u>	<u>Conforming</u>
<u>Coverage</u>	<u>10%</u>	<u>I</u>	<u>+/- 45%</u>	<u>Non-Conforming</u>

<u>Off-Street Parking</u>				
<u>Restaurant - 1 space per 4 seats plus one space per employee</u>	<u>85 seats/4 = 22 spaces +5 spaces</u>	<u>=</u>	<u>49 spaces</u>	<u>Conforming</u>
<u>Total Parking</u>	<u>27 spaces</u>			

ENC = Existing Non-Conforming  
All other aspects of zoning must comply at the time of the issuance of building permits.

**VARIANCES:** The following variances have been requested:

**1. Section 200-17.A., Table I - Front Yard Setback.** The minimum front yard setback required in the Rural Development zoning district is 75 feet. The site has frontage on the Black Horse Pike and Mays Landing Road. The existing front yard setback from the Black Horse Pike is 44 feet and the Applicant is proposing to construct a building which will have a front yard setback of 44.78 feet measured to the Black Horse Pike. The existing building has a front yard setback of 88.1 feet and the proposed building will have a front yard setback of 56.45 feet measured to Mays Landing Road. The existing solar panels are setback a distance of 10 feet from Mays Landing Road and are located within the required front yard setback. A variance is required.

**2. Section 200-17.A., Table I - Side Yard Setback.** The minimum side yard setback required in the Rural Development zoning district is 30 feet. The existing solar panels on the site are setback a distance of 11.4 feet from the side property line and are located within the required side yard setback. A variance is required.

**3. Section 200-17.A., Table I - Lot Coverage.** The maximum lot coverage permitted in the Rural Development zoning district is 10%. The Applicant is proposing to demolish the existing building and construct a new 4,590 square foot building and is also proposing to reconfigure the existing parking area. The Applicant indicates that the lot coverage is being reduced overall on the site. Based on the site plan, it appears that the lot coverage is approximately 45%, whereas a maximum lot coverage of 10% is permitted. A variance is required.

**4. Section 200-48., Scenic Corridor Setback.** In accordance with §200-48.A.(1), except for those roads which provide for internal circulation within residentially developed areas, all public paved roads in the Forest Districts, Forest Commercial District and Rural Development District shall be considered scenic corridors. The Applicant is proposing to demolish the existing building and construct a new building which will not be setback the minimum 200 feet along the scenic corridor. The Applicant shall demonstrate that the existing development patterns of the

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corridor are such that buildings are set back less than 200 feet within 1,000 feet of the site. A variance has been requested.

**REVIEW COMMENTS:**

1. The Applicant is required to obtain a Certificate of Filing from the Pinelands Commission. This must be provided prior to the public hearing.

2. The plans should include the required building setback lines and all dimensions, including, but not limited to, parking aisle width, sign setbacks, driveway widths, etc.

3. The plans should include a detailed calculation for the proposed impervious coverage. The Applicant has indicated that the impervious coverage has been reduced on the site and has indicated that no changes to the existing drainage pattern are proposed. The Applicant must comply with any conditions imposed by the Pinelands Commission regarding the storm water management on the site and must verify that the proposed improvements will not negatively impact the adjacent properties.

4. The Applicant is proposing to install concrete curb in the parking area and driveways. The proposed curbing at the driveway must tie into the existing curbing on the Black Horse Pike. The two-way driveway is approximately 63 feet wide and is not in line with the existing depressed curbing along the site's frontage. This must be addressed.

5. The proposed one-way egress onto the Black Horse Pike should be perpendicular to the right of way. The proposed curbing must tie into the existing curbing and the driveway width should be dimensioned on the site plan.

6. The Applicant is proposing to construct a freestanding sign on the Mays Landing Road frontage. The sign setback dimensions should be provided on the site plan.

7. The Applicant installed solar panels on the site with no prior Board approval. The solar panels are located within the required front yard setback and side yard setback and variances are required to legalize the structures.

8. The Applicant is proposing to locate a temporary trailer on the site. The Applicant must provide testimony regarding the anticipated length of time that the temporary structure will be located on the site. We recommend that the temporary structure be removed upon the issuance of a Certificate of Occupancy for the proposed building.

9. The Applicant has submitted a construction cost estimate for review. The Applicant has requested that the performance bond be a condition of the project's final approval. Upon approval by the Board, a review of the construction cost estimate will be prepared and the performance bond and inspection escrow will be reviewed.

10. The Applicant is proposing to install a new septic system. Evidence of approval from the Atlantic County Board of Health is required.

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11. The Applicant is required to obtain approval from the New Jersey Department of Transportation for the improvements along the Black Horse Pike and Mays Landing Road. An access permit may be required for the proposed improvements.

12. This application is subject to the approval of any other agency having jurisdiction on this project. Evidence of approvals from all other agencies shall be required.

There were no other question for the Engineer.

A motion was made by Mr. Speigle and seconded by Mr. LaPollo to deem the Engineers Report complete. There was a roll call vote with ayes all.

The meeting was opened to the public for questions or comments. Hearing none the public portion of the meeting was closed.

A motion was made by Mr. DeStefano and seconded by Mr. Pagano to grant the four requested Design Waivers including the 200 ft. scenic setback and the requested Variances for front and back setbacks, solar panels, and lot coverage. There was a roll call vote with ayes all.

A motion was made by Mr. Pagano and seconded by Mr. DeStefano to grant Conditional Use by permit and Final Site Plan Approval. There was a roll call vote with ayes all.

The Board Members reviewed a Resolution for Harley Dawn prepared in advance. The proposed waste water impact/septic flow is an estimated 300 gallon reduction per day less then what existed in 1979 due to the lack of no residential use/component needed to be included in the Resolution.

**Application # 03-ZB-15 – Harley Dawn Diner**

David & April Emmons of 4004 Coles Mill Rd., Franklinville, N. J. 08322 are seeking review and approval of Preliminary and Final Site Plans(s) to demolish the existing diner and construct a new diner with formalized parking lot, relocate site lighting, landscaping & new septic system. The diner is located at 1402 Black Horse Pike in the Rural Development Zone. They are requesting Variances for minimum lot size and minimum front yard setback.

A motion was made by Mr. Pagano and seconded by Mr. DeStefano to Memorialize the Resolution for the Harley Dawn Diner with an Addendum. There was a roll call vote with ayes all.

There was no other business for the Board.

The next scheduled meeting will be June 15, 2015 at 7 pm.

Meeting adjourned at 10:52 PM.

Respectfully submitted,  
Susan Carroll

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Board Secretary

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