

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

May 18, 2016

The meeting was called to order at 7:05 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 Gazette and Atlantic City Press and is posted on the bulletin board showing the time and place for the meeting.

Mr. Coombs swore in the following:

1 Year Term- 2016 (For the remainder of 2016)
Ben Pagano (Class III)
Replacement for Charlie Arena who resigned in April.

Members Present: Joe Pino, Glen Smith, Ron Esposito, Joel Spiegel, John LaPollo, Lou DeStefano, Dave Cappuccio, Ben Pagano, and Michael Veneziano, Claude Jones

Members Absent: Charles Pitale

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

APPROVAL OF MINUTES:

A motion was made by Mr. Esposito and seconded by Mr. Smith to approve the minutes of April 20, 2016. There was a roll call vote with ayes all and two abstentions.

RESOLUTION: KURT SANTORA

Application # 01-ZB-2016 – Kurt Santora, 1208-A 11th Street, Folsom, N. J. is seeking a D Variance for the size and height of a 30’ x 36’ pole building at Block 1502 – Lot 18.01

A motion to adopt the Resolution by Mayor DeStefano and seconded by Mr. Smith. There was a roll call vote with ayes all and two abstentions.

HARLEY DAWN DINER:

Application # 03-ZB-2015 – Informal Review of Changes to Landscaping Plan

Mr. Coombs swore in April Emmons and David Emmons 4004 Coles Mill Rd., Franklinville, N. J. 08322 owners of Harley Dawn Diner. Ms. Emmons explained she wanted to informally go over some changes to the landscaping plan for the new diner they are building. The Board members had a copy of the plan which was approved.

Mayor & Council granted a waiver of the Performance Guarantee and time period of 2 years to complete the landscaping plan by Resolution.

Cape Atlantic Soil Conservation District may need for the landscape plan to be done completely before they approve and issue a Certificate of Compliance. The Cape Atlantic Soil is not held to the Borough's Resolution which allows them two years to complete the landscape plan.

A Certificate of Occupancy (CO) from the Construction Office would need to be issued before the diner can open, but Cape Atlantic Soil Conservation District's Certificate of Compliance approval of the landscape plan is part of the requirement before the Certificate of Occupancy can be issued.

Ms. Emmons asked for the informal review of the changes to the landscaping plan before obtaining the okay with Cape Atlantic Soil Conservation and if they wouldn't expect the full plan to be done. She believed Cape Atlantic Soil Conservation was more interested in the erosion control plan and stabilization of the soil. In checking with the Borough's Engineer, who couldn't speak for Cape Atlantic Soil Conservation, it seemed there was an interest to have a swale along the property line between the diner and the green space which is shared with Folsom. The swale was not shown on the hand out, but it is on the Site Plan. There is a swale which is in place and the top soil and mulching will all be done. Anything about stabilization, the soil, will be done, but we just won't have all the plantings listed there.

There are four QC (quotient cube) trees. Three (3) of the trees border the property of the diner with the Folsom green space and one borders the diner property with the pantry side. Currently along the swale area; where they are showing the three (3) trees, there are two (2) existing trees in the center. The two (2) trees that are at the other corners we would prefer not to put those in for the site as far as they are coming from either direction. One of the reasons why we have the building sited the way we do is so that people can see that all the way down the pike could see the building itself. With the two (2) existing trees that are already there we would like to be able to eliminate the 2 corner trees and the one that is in the center because there are already two (2) existing trees at that location.

On the pantry side there is also already a current tree placed there. There are also two (2) more on the pantry side as well. It is close to the septic area. Ms. Emmons wanted to not have to put another tree in that area to mitigate (lessen) root systems or whatever going into the septic area.

Closer to the building (left side) there are a lot of planting close to the building. Some of this planting was put in was when they were first developing the site and maybe didn't know exactly

where some of the utility placements were on the building. On the left side of the building, the plan showed some rhododendron bushes and some kind of holly tree. This area is where the walk in coolers are located and also next to a mechanical room door. The plantings are where the mechanical doors are. There is a micro scrubber piece of equipment which has to do with the septic. We couldn't put any plantings at that location. The area between the septic area the rest of that (coolers & mechanical room) is being reserved for the herb garden.

Also as you go around the corner where the herb garden is and the front facing corner; there is the electric meter, the shut off for all of the electrical, and the gas service. Ms. Emmons was told there is about a 3 ft. code clearance which has to be there for accessibility in case there is a fire. The solar shut off switch is there and wouldn't be able to put plantings right in that corner because of the electrical stuff that's there. The rest of the area everything that's shown on here as far as seating and turf and sod and topsoil were completing all that now and mulching everything a lot of the planting that's around that patio area is were actually putting in instead of some the different plants that they are calling out were putting some there called Photinia Redtops there's 20 photinia redtops, there's 10 maiden grass, were putting pots with flowers and it will be completely mulched all the way along the patio area all the way around to the back of the building. The turf whether its sod or grass seeds will all be completed there. The other areas too is in the 2 islands – parking islands. There's river rock that's shown on both of those and we would like to just keep those mulched and then have future plantings as well for there. We have wells that are located in each of those parking lot islands for our geo-thermal and we want to look closer revisit once we get open what kind of plants would be best. Were not sure whether those are the best plants to be putting around the well that's there. Then the front island area where the existing sign is now and its labeled that there's existing plantings to be pruned as necessary and mulch refreshed. Which is what we intend to do but then they put a kind of a line of again river rock there – we just think that's a unnecessary cost for the river rock we think we can do just as well with the topsoil and the mulch and to be able to put future plantings there as well. And the current plantings that we have there once we clean those up.

But again were are looking at all of this as a requirement or that folsom has the requirement cause we do realize we have to have a also required for the CO is a Planning Board Inspection before our CO so we wanted to review with the Planning Board now to see if those changes would be ok. We do realize that we do have the 2 years to fully implement all of the plantings. But how this would affect what we would give to Cape Atlantic Conservation District for them to look at as far as what their expectation would be if they look at the full plantings or if there is something that we could get from the planning board that lets them know that we have that 2 year time frame and that their looking at that we have all the soil stabilization the swale the topsoil and the mulching but not every planting that was shown on the original landscape plan. So that's what we're looking for direction on we don't know whether that's something that at this time if there's anything the planning board can do for that. Im not sure what the informal review consist of as far as changing anything here or if there's anything that we can give to Cape Atlantic Conservation District.

Mr. LaPollo asked if they are planning on replacing the 3 large trees with smaller bushes where the Borough property and the parking lot come together. There were two trees there now, but Mr. LaPollo was concerned with keeping the vehicles from driving across there like they have in the past. Across the grass and the irrigation the Borough put in to exit. Ms. Emmons explained

there is a six (6) foot swale of river rock where the asphalt parking ends. Mr. LaPollo questioned if it would keep the cars from getting in there. Mr. Emmons stated he would be surprised if anyone would drive through it. It is wide and it is rock. It is where the parking lot ends and then there is six (6) foot of that (river rock). There is two to three feet of seeding after that (river rock) and then Folsom's property starts.

There will be bumpers at the end of the parking spaces on the Mays Landing Road side of the parking, but didn't think the code called for bumpers between the Borough property because it is not a roadway. Bumpers between the two properties would keep people from driving through.

The Site Plan called for holly bushes, but there were no plans to put the bushes. In the past nothing would stop cars from driving through. A sand hill was currently there, but nothing to stop cars from driving through. There will be curbing which extends at the corner. It will not be parallel, but it will extend the corner. Basically the cars were driving through the 50 foot section to get to Rt. 322. The Site Plan showed shrubbery in the area, but now was planning to do only a mulch area now and revisit the shrubbery to put there as part of the two year plan. The bushes wouldn't be there when the diner opens, but had two years from the time of the Resolution. They would like to put the bushes, just not right now. Ms. Emmons was agreeable to put a row of shrubs beyond the swale instead of the tree along the property line shared with Folsom. It wasn't a problem if it could be done in the two year context and agreed something should be there to keep the cars from driving through. She didn't think they would be put in at the time of opening. Mr. LaPollo was not concerned to see the bushes in at the time of opening, but was more concerned to see something to prevent the cars from driving through. Their concern with putting the tree was the site lines from the highway and were agreeable to put a row of bushes.

Mr. Polistina explained the reduction of landscaping was up to the Board. They will be heavily landscaping the site and a significant investment into the community. Even though there was no Bond posted, the two year provision is put in. Bonds are posted because sometimes developers or insurance companies are unable to complete a project for different reasons such as the economy is bad. The two year provision gives a definitive time where if the work is not done the Bond could be called and get the work done. It becomes problematic because a lot of times all of the improvements are done prior to the Certificate of Occupancy (CO) being issued.

The Emmons asked to defer it. There is a little bit of a risk to the Borough:

- 1.) We don't have a bond – we are letting them open, with no guarantee in place the landscaping will ever get built. In terms of reducing the and changing the landscaping there were issue with it or saw any difference in the site as a result of what was proposed to be changed. The Borough property does have some trees already and the elimination of the trees (on the site plan) wasn't a big issue. The access will be restricted with some bushes and some other changes. There wasn't a noticeable difference from what was initially approved with the possible exception of the river rock.

Some guaranty should be in place. If for some reason the landscaping isn't done within the two year period then the Borough will have some mechanism to at least get some of it done. Mr. Emmons responded when the business opens the site will be fully landscaped except for some plants called out now will not be in place. Everything will be seeded, sodded, and

mulched. This is our business. It has to look good for us. Mr. Polistina explained typically there would be a Bond. A TCO (Temporary Certificate of Occupancy) would be issued. The business would be operational, but because the Bond was waived there is a risk. If for any reason the landscaping isn't completed the Borough has no ability to have a Bonding Company complete it or compel the owners to complete it because we didn't secure the Bond. It was suggested to put it on a TCO in the short term until everything is completed. It won't be converted to a permanent CO until all of the landscaping agreed to is done. It is an option. In terms of Cape Atlantic Soil Conservation as long as the mulch is done, the stabilization is done, and get the storm water in they won't be concerned about the landscaping. It was suggested there was a need to give something to the Borough to make sure the landscaping approved on the plan is installed.

Ms. Emmons asked if an amount of funds could be placed in the escrow account maintained for various inspections while the landscaping was being completed as opposed to a TCO because she wasn't sure how a TCO would affect financing for the project. Mr. Polistina thought it was the easiest way for the Borough also. Rather than dealing with Insurance Companies. Posting cash to escrow which will stay in place until the landscaping is done was something the Borough would consider. He would take a look and work with Ms. Emmons in terms of what is going to be done verses what would be needed to defer and reduce the amounts because cash will be posted. The amount will be posted and the Borough will have the ability, if for some reason the landscaping isn't done, to finish the landscaping. Mr. Polistina will work with the Emmons between now and the time of the CO Inspection to come up with an amount for the unfinished landscaping to be posted to the escrow account before the CO is issued.

The Planning Board will agree with anything which will not be done tonight. The Emmons will need to explain which plantings they need to defer and the Engineer will estimate an amount to be posted. It can be done through email and didn't need a whole new plan. The Planning Board was okay with it and the Emmons were appreciative.

Mr. Coombs clarified the Emmons were seeking modification of the landscaping plan and the deferred work be contingent upon and estimate determined at the time of CO Inspection.

There will be a requisite time period of two years for the work to be complete or the escrow to be surrendered to the Borough which was specified in the Resolution from October 14, 2015. Two years will be October 14, 2017. The Emmons were agreeable.

There were no other questions or concerns from the Board.

A motion was made by Mr. Esposito and seconded by Mr. Cappuccio to approve the changes in the landscaping plans and an agreement for escrow to be set up should the plantings not be planted on the said schedule of two years or the escrow account would be forfeited to the Borough to deal with the plantings. There was a roll call vote with ayes all.

APPLICATION: COLLINGS LAKES FOOD MARKET

Application #02-ZB-2016 – Collings Lakes Food Market, 10 E. Black Horse Pk., is seeking a Change of Use for the existing hair salon and South Jersey Gas office and Expansion of Use to Expand the Use of an existing Package Goods Liquor Store with a bar area.

Mr. Coombs swore in Cathy Berenato, 1205 Mays Landing Rd., Hammonton, NJ; Lance Landgraf Licensed Planner, 9 S. Harbor Ave., and Fred DeClement Attorney on behalf of PUJA3, LLC, the Applicant; and Collings Lakes Food Market, the Owner of the property.

Mr. Polistina gave a background of the application: There was some confusion last month because there was an expansion (addition) on the drawing which was submitted. It was initially submitted to the Borough, but it was a mistake. It was not supposed to be used on the plan. It created confusion because the expansion would have created a need for a Pinelands Certificate of Filing. Before the error, the Borough could have heard the Application, but because it was submitted with the expansion (addition) the Borough was concerned. The Application was tabled last month. Since last month, the expansion (addition) was removed. There were no changes proposed in the footprint. There were some comments offered related to the circulation and parking which was submitted and the Applicant modified. There was no change in paving, no change in the building, no real site improvements.

The Applicant requested waivers:

Item 19 – The natural and artificial watercourses on the site.

Item 20 – The wooded areas indicating predominate species and size.

Item 21 – Location of trees 6 inches or more in diameter.

Item 25 – Location of existing easements or rights-of way including power lines.

Item 29 – Plans and profiles of proposed utility layouts, such as sewers, storm drains, etc.

Mr. Landgraf for the applicant addressed the request for the waivers. The five waivers were items not pertinent to the Application. The items would apply if something were being building on the site.

Item 19 – the natural and artificial watercourses there – were no new areas to be skirted.

Item 20 – The wooded areas indicating predominate species and size – they were not cutting down any trees.

The Applicant was expanding a Use within an existing building and the footprint of the building was not being changed, and will be restriping five parking spaces. The Items which were requested; predominant species and size, and location of trees, and the locations of existing easements. There were no existing easements on the property. There were none to show. There were no plans and profiles of utility layouts. The items would be consistent if the property were being developed. There will not be planting of trees, grading on the site. Five parking spaces will be striped, a split rail fence, and expanding the liquor store inside the existing footprint of the building. For those reasons the Applicant respectfully requested the Application being complete and the five waivers be granted.

A motion was made to deem the application complete by Mr. Cappuccio and seconded by Mr. Pagano. There was a roll call vote with ayes all and one nay.

Mr. Landgraf gave a presentation of the updated Concept Plan submitted for the Application.

New striping – closing off the access to the – out on the black horse pike and split rail fence to block off the access going out or entering the site. Signage for the handicap spaces were not in place and would need to be a part of the Approval.

The Use permits the use of this service. It is a Conditional Use. However, there were no other Conditions.

Mr. Polistina commented. As indicated this use is a conditional use by permit in the Zone. When there are Conditional Uses, they are Conditional Uses for a reason or conditions imposed to meet the Ordinance. In this case there were no Conditions. Structurally, what was opposed was the Permitted Use in this lot. In the zoning nothing was required for this Use. There were discussions about putting Conditions on these types of Uses, which is appropriate and the Borough should make some action for it, but the Code is silent on Conditions and it is a Permitted Use.

There were a few comments: Mr. Landgraf would need to submit issues with the ABC Application. It (the ABC Application) didn't have parking and septic. Mr. Landgraf explained the number of stools will be set at six and the Application was made by the Applicant before he received the file. It needed to be revised. It was a pending Application. It (ABC Application) had more seats in it as opposed to Mr. Landgraf's plan. It will be set at the Board's Approval, but it will be six seats the maximum they could have in the building for the required portion of the liquor store. The testimony tonight showed the bar has to be there as part of the liquor license. The liquor license the Applicant has requires them to have so many seats. Six is what they have proposed. The seats in the bar only make \$30.00 per day and was not the driving force behind the Application. The driving force would be to create more shelf area and cooler space for the liquor products. Shelf space for liquor and cooler space for a cooler. The more the Applicant can display, the more they could buy in bulk and reduce their prices to their clients. It will save them money as well by spending less money on purchases. They were trying to expand to add more selection and product through their facility. From this aspect the proper calculation is correct it is down to six barstools to meet the requirement.

The capacity was not known. The capacity was based on the square footage of the building / number of seats. The Applicant met those requirements. If there are too many people in the building, it is a violation of the Fire Code. They can be sited for it. They have to comply with all of the laws.

Here they must comply with all applicable land use laws. It is a permitted Conditional Use with no Conditions. It gives a by right situation and are allowed to have this Use.

The walk unit provides a safe setting for vehicle access. The issue of access to the west of the property which was brought up last month was rectified. The two access points were eliminated.

The owner of the property did not want to close the access off, but needed to do it in order to provide the parking and resolve the issue of safety concern. Now there are two controlled access points to make the site safe.

Mr. Polistina commented. There was confusion because there was an application showing 18 seats. The calculation for parking and septic for 18 seats was changed. More parking would be required and the septic would be different if the calculation was based on 18 seats, but the Application was restricted to the maximum of 6 seats within the 1,554 square foot area which will be the bar. They addressed the hours of operation. They indicated they would comply with the side. Given the scope of the changes the Borough required a Site Plan Application. The circulation of the site and the parking is much better than what is currently there or what was proposed in the 2014 Application. Given the scope of the changes the Borough should ask for a formal Site Plan and should be placed on record. It would be safe to require a Bond with a formal Site Plan Application. There should be some kind of bond or guarantee in place to ensure the Borough could do it (the work) if for some reason the Applicant did not pave the asphalt. The Approvals are very good for the site along with the safety at the site, but the Borough should have some type of guarantee it would be done if this is Approved. The Borough should end up with some type of guarantee they get done if this is Approved and any other Approvals which are required as a result of this Application.

The Applicant added stripping and a fence on the plan and asked what more was needed to be added. There was no issue with posting escrow to cover the stripping and fence (split rail).

Mr. Pagano asked if the entrance way in the back of the building would be enclosed, but he was told there was nothing in the back of the building.

Mr. Polistina suggested they might want to see this area landscaped, or to restrict people coming in, or the asphalt removed. The landscaping was discussed and all of those things were difficult and confusing on the Site plan. There were former things that the Borough or at least (we) would like to see the aesthetics of the site.

Mr. Landgraf stated from the Ordinance standpoint all that was required for this Use was the Conditional Use Permit. A Site Plan was not listed in the Conditions. It is not a vacant site. There will be very minor changes to the site. He for discretion. All they had with closing off the fence area suffice as a Site Plan and make it conditional if landscape was needed or grass the asphalt area and remove the asphalt. He asked for leeway at the Boards discretion. Mr. Pino asked if the issue for a Site Plan was an issue to press for or if it is not needed. Mr. Polistina responded, he has been asking for the Site Plan with respect to include the building and parking area. Mr. Landgraf asked to waive the requirement and submit this plan as the document as amended. It was amended to show the fence closing the area off. If there was a potential interest in grassing the area, to make it an agreeable condition. The changes were very minor and the Applicant would like to get the changes done and open for the season.

Mr. Cappuccio asked if there was lighting on the back. Mr. Landgraf explained there was no lighting on the back. There is lighting on the front parking area, but was not sure if there was lighting on the side of the building.

A brief recess was taken.

The meeting was called back to order.

Mr. Landgraf explained the lighting. There were two Atlantic City Electric utility poles which light the parking lot. It cost \$50.00 per month per pole to have the area lit. There is one light on the side of the building and there is a light on the back which is on a sensor. When someone walks around the back, the light comes on and there is soffit lighting across the building.

Mr. Landgraf showed Mr. Esposito the two entrances and two exits. There is an entrance and exit which is being closed off. There was no signage, but a Do Not Enter sign could be installed.

Mr. Cappuccio asked if there was blacktop at the entrance/exit being closed off and if it would be removed. The asphalt was still there, but there were discussions with Mr. Polistina to remove the asphalt. It would alleviate traffic from entering and exiting to put up a Do Not Enter sign and when the grass grows.

There were no other questions about lighting, ingress, or egress on the property.

Mr. Pino asked for a motion regarding the request by the applicant to have a Site Plan waiver for Collings Lakes Food Market. It would include the stipulations of removing the black top, putting the signs up for the entrance, and to consider the submitted plan as amended to amend the original plan for the site, and waive the requirement to submit another Application for a Site Plan.

Mr. Polistina commented, with the Conditional Use Application the Site Plan issues would not be looked at. The Applicant agreed to do a lot of the things which would require a Site Plan with this Application. He initially recommended a full Site Plan Application to resolve the issues in conjunction with the Application. A plan which would reflect everything which was going to be done at the site is needed to be on file with the Borough. If something occurs at the site, the Zoning Officer will have something which could be pulled out of the file to review for compliance. There needs to be a Site Plan on file to rely upon and to make sure the Borough has the proposed improvements done.

Mr. Coombs noted the Decision Resolution could have Conditions put in, but it is just writing. It is not a Site Plan. The Site Plan is easier to follow. Mr. LaPollo was in agreement to recommend a Site Plan.

Hearing no Motion made, the waiver for a Site Plan Application was denied. The Conditional Use Permit will be heard, but a requirement for a Site Plan Application will be a Condition of the Conditional Use Permit if the Conditional Use Permit is Approved.

Mr. Landgraf reassessed. The Applicant was asking for the Conditional Use Permit to be issued. It is a Permitted Use. There are no Conditions to meet. The required parking was provided. The Applicant will submit a Site Plan to address the issues the Engineer raised and were raised during

the meeting. The issues will be resolved with a formal Site Plan Application, but asked to move forward with the Conditional Use.

Mr. Coombs swore in Mr. Viresh Patel, Egg Harbor Township one of the members of PUJA3, LLC who will purchase the property and operate the liquor store if the Application is approved.

Mrs. Berenado the current owner of Collins Lakes Food Market was present to answer questions regarding the current and future use the Board might have with the Conditional Use with the bar. Mr. Coombs suggested it would be best to bring the witnesses in to respond to points and questions raised by the public.

Mr. Patal stated he needed to get a permit and any site plan required he can do.

Mr. Pagano asked if Mr. Patel could elaborate as to his experience in liquor store sales. He had liquor store experience for nine years. Mr. DeClement stated it was irrelevant.

There were no further questions from the Board and the Public session was opened.

Mr. Coombs swore in members of the public, Donna Sutts, 15 E. Park Ave.; Christine Esposito, 9 E. Park Ave.; Catherine Heinesh, 11 E. Black Horse Pk.; Shirley Passalacqua, Cranberry Run; Patricia Pecorara-Arena, 1002 Black Horse Pk.; Robert Sutts, 15 E. Park Ave.; and Jason Dircks, 19 E. Park Ave.

Donna Sutts gave testimony. As the resident living behind, should have a long term relationship with Mr. & Mrs. Berenato. She trusted two years ago they (Berenato's) were going to do what they said they were going to do. I also trusted the Planning Board which sits before her and Town Council to do what they were expected to do with Conditions. She read the minutes. There was a comment made the people who were present at those meetings were all renters. She wanted to let the Board know she has lived in this town and owned for 50 years and so has her brother who lives directly behind. She requested, not to be called renters. It is a neighborhood she lives in and lived in all their lives. She stated she respected Cathy and Joe (Berenato) for the request before and was fine with anybody making a living. She had a problem with was the lawyers keep referring to it as a liquor store. It is a bar license which they keep correcting and there is a red neon sign which flashes daily and say "Bar". Ms. Sutts asked if it was operating as a bar or is it operating as a package goods store? Once it becomes bigger, from three bar stools to six (stools). It was her only complaint. She didn't want it advertised as a bar if it was being operated as a liquor store. She wasn't well versed on the ABC laws to know all it. She just wanted to say she didn't want a bar behind her house. There is a bar two lots down. She hoped the Planning Board would look into it and heard there are regulations about how many liquor stores, about the license, and when they should be renewed, and when they are dropped and when they are not. She repeated she was not against anybody having a business, but the Conditions here tonight and in the future should be somewhere on paper because when she started to read the minutes and they (the Conditions) are discussed, but never put on paper. She also found out by going to Town Council meetings and Planning Board meetings no one is giving the public the name of whoever it is who is supposed to be enforcing any of these laws for anything. She wasn't saying they need enforcement, but who exactly in the Town of Folsom

would someone call with a complaint where someone isn't following. She asked to have it addressed.

Mr. Cappuccio commented they could call Borough Hall or they could call the police. Mr. LaPollo elaborated, it depended on what the issue was. Mayor DeStefano explained it depended on the issue. If it was a Zoning issue they would call Borough Hall. Mr. LaPollo added if it is an ABC issue they would call the State Police. Mayor DeStefano added, if it is an ABC issue or a liquor license issue it is the State Police. If it is a local Zoning Ordinance, then it would be our Zoning Officer, John LaPollo. Mr. Pino commented, it sounded like it was more like a question with a comment. Ms. Sutts explained she was here a couple years ago and was told there was going to be Conditions. She agreed with them opening up because she understood it would open and make money. She understood he is a business owner and stated she trusted Cathy and Joe (Berenato), but now they are selling it and it is very confusing in the Application who is applying for this because they (PUJA3, LLC) doesn't own it from what she understood. How are they applying for adjustments for a license they do not own yet or do they own it and we weren't told.

Mr. DeClement commented, it is a little complicated, but the way it works with this Application is they (PUJA3, LLC) are the Applicants who want to buy the store. Mr. Berenato currently owns the store. On the Application there is PUJA3 who is the applicant. The owner of the store is Cathy and Joe under the Trade Name or business name of Collings Lakes Food Market. The reason they (PUJA3) is making the Application is because they are paying to get this before the Board.

Mr. DeClement address the issue with the bar / liquor store. The Applicants do not want the bar, but they have to operate the bar. They would rather not have it (the bar), but their license transfer requires bar stools and a bar space. The ABC requires part of the license Mr. Berenato owns is the bar area has to be 15% of the total retail space. It has to be bar area. The Applicant had to, by ABC Regulations, increase it from three to six stools. He asked for receipts for the bar area.

Ms. Sutts stated Joe and Cathy Bernardo will be the owners of this new bar with this Application. Mr. Landgraf stated whether it is called a bar, a tavern, or a liquor store all of it is a permitted Use. They are not going to operate it as full fledge bar. All they were asking for under this Approval was six seats.

Mr. DeClement explained, the bar receipts for the last couple of weeks were \$14.00, \$30.00, and \$67.50. It is not primarily operated as a bar. Ms. Sutts appreciated the information, but would like her mind, Town Council, and Planning Board to put down in writing it is not going to become a full fledge bar. Mr. DeClement explained it couldn't be done because the ABC governs what they do. It is not Council's jurisdiction. They can enforce what ABC does, but that is not who regulates it. Ms. Sutts requested her Council who is on her Planning Board to try and figure out how to do this. Mr. DeClement explained again they do not have the authority. The State doesn't allow Council, but Council could restrict the number of seats and they are doing it. Ms. Sutts asked for it in writing, Mr. Landgraf explained it was on the plan. Ms. Esposito stated it was not on the last one. Mr. DeClement explained, it is on this plan and the last Resolution had three stools. This Resolution, if the Board decide to pass it, will say six

stools. Ms. Sutts wanted to let the Planning Board know as a citizen who lives behind Collings Lakes Food Market to look out for her interests and have it in writing. Ms. Sutts was told it will be in writing.

Christine Esposito addressed the Board. She asked where the Conditional Uses were? In May of 2014 the Conditional Uses were the primary issue. In October 2014 it was brought up by the Board in the Minutes. Conditional Uses were needed. In November of 2014, there some examples from other towns, but still no Conditional Uses. After that it was not mentioned. She wanted to know what happened to all of the Conditional Uses that many people from the Board said they needed to do them. They (the Applicant) could put a nightclub in. She stated there are no Conditional Uses and no one in the room is protecting our town from anything. They could build a nightclub if they wanted to because right now there no Conditions on anything. She asked when somebody will finally do something about it.

Mr. Pino asked the Solicitor if this question was one for the Planning Board or if it was something for the Council. Mr. Coombs answered, Council is the legislative Body. Council passes the Ordinances. We have looked at some samples, but something needs to be drafted and presented to Council. Ms. Esposito felt it was ridiculous. We (the Borough) have seven liquor licenses and 1,800 people. She asked who is going to do it. Mr. Coombs responded, the public can lobby their Council Members with recommendations for what you want to see. Mrs. Esposito responded you can put a minimum on their bar stools. Two years ago all they wanted was the 518 square feet and all they wanted was 3 bar stools. Two years later there are no Conditions and now they want more and more. When will it stop. When will there be put Conditions. This is my back yard. She recalled, Mr. Schenker told Council in the Minutes (Minutes of 2014) the people who were here to complain were not owners. How come? Ms. Esposito believed Mr. Shenker lied and wanted to know why he would have said it.

Mr. Cappuccio then attempted to explain the issue of the number of stools. The original Application was for three stools because it was the size of the building. He had to have three stools in there. Ms. Esposito added, but all they wanted was 518 square feet. Mr. Cappuccio continued, it was in the regulations he needed three stools. He has three stools. Ms. Esposito argued it was the minimum stools he could have. He could have more. Mr. Cappuccio explained but there was only three. Ms. Esposito continued there is no Condition whatsoever which says they already have the maximum of three bar stools. Mr. Cappuccio explained ABC limits it. Ms. Esposito argued, our town has to do that. The ABC is not going to say he can't have five (bar stools). He is bigger now. Mr. Cappuccio explained for the size of the building he needs 15%. Ms. Esposito stated 15% was a minimum and could put more than 15%. Ms. Esposito expressed concern that everybody didn't understand they could put more than the 15% minimum. Mr. Polistina explained two years ago they asked for three bars stools and that was all the approval which was given. Ms. Esposito asked how many (people) will stand in the store. Mr. Polistina replied this (Approval) is six. All the parking, septic, and everything the Borough is considering is based on six. They cannot do any more than six without coming back to the Planning Board. Ms. Esposito thought everything she said a minimum of three. Mr. Polistina repeated everything presented to the Board is six. Ms. Esposito debated minimum it doesn't say maximum and how many people can stand in the building. Mr. Polistina explained every calculation done and provided is six stools. They can't do any more without coming back to the

Board. Ms. Esposito asked how many people can stand in the bar. Ultimately it is a bar with a liquor store, but how many people can stand. It was Ms. Esposito's understanding one of the regulations were they could only have liquor on the outside/exterior walls. The store would be knocking down two walls and only gaining the two back walls because the other wall isn't an exterior wall. It has a business on the other side. Mr. Coombs referred to the diagram which was submitted. Mr. DeClement explained the diagram was a part of the liquor license Application. It was revised. Ms. Esposito questioned if the store would double the sales a whole \$11.00 if they were only adding half of what they had. She questioned if it would keep the business intact.

Mr. Pino suggested the remedy Ms. Esposito was seeking was to be restricted by making Conditions. Ms. Esposito wanted a Condition. Mr. Pino thought at this juncture with this body would not be able to address what Ms. Esposito wanted because as the Solicitor pointed out this was an issue for the Governing body which is a Council. They have to do it. Ms. Esposito thought a Board should be put together for the seven liquor licenses which exist in this town. Mr. Pino understood Ms. Esposito's frustration and wanted to be sensitive to the public. Everyone had a right to voice their thoughts and concerns, but thought the remedy sought cannot be addressed by this body and under this circumstance there is no restrictions for the Applicant. Mr. Pino thought Ms. Esposito's recourse would be to go forward with the next Council meeting to discuss those things. Ms. Esposito had already gone to the Council meeting. She claimed the Planning Board lied to the Council. They said the only people there to complain were renters. She quoted the October 2015 Minutes page 8: "Mr. Schenker added the people who were here complaining do not own the property. They rent the property. They received the mailing which went out from the Borough, but they weren't the owner of the property to be here to have any credit". It was from the Planning Board to the Council. Ms. Esposito felt her concerns were not addressed. She felt she was being told nothing could be done about it. Mr. Pino felt it was a misstatement.

Mr. Coombs clarified, he addressed Ms. Esposito. You have the Ordinance which is applied. We do not make Borough Ordinance. Council does. The Ordinance in which there is this Conditional Use which is permitted as long as the Conditions are met which don't exist. Then there was an issue of concerns from anyone, but especially the Public. Renters, owners, or people driving by can all be affected. If there is a concern, in regards to public health, safety, morals, general welfare, and the concern is reasonable we will hear it, consider it, and perhaps put Conditions in a Resolution. Ms. Esposito was under the impression she was just told the Conditions couldn't be done. Mr. Coombs explained there were two different things:

- 1.) Conditions within the Ordinance.
- 2.) Conditions we impose.

The Conditions would be based upon concerns voiced by the public, our Engineer, and questions from the Board. If there are specific, reasonable, concerns with regards to public safety, noise, morals, congestion, etc., tell us. Ms. Esposito didn't believe it would improve the community, but the Solicitor didn't have the authority to answer. Ms. Esposito's concerns were noted, but the discussion was getting outside of the scope of the Application. Ms. Esposito asked if there was a fire exit and how many exits would be in the building, but her recourse was to take it to the higher level and address the issue with the Fire Subcode for whatever is required. Mr. Landgraf

explained it was not this Boards purpose to handle issues with the Fire Code. He explained the Applicant was there for a Permitted Use that is required to be a Conditional Use Permit. They knew they had to go back for a Site Plan next month, but they were asking for at the time was a Conditional Use Permit which the Use is a permitted use to move the Application forward. It would be addressed at a future meeting.

Mr. Landgraf explained a Site Plan deals with site improvements such as the parking striping, more detail of where the lighting is, the sign details, the landscaping/sod/grass area. It shows the outside. It is this Boards purpose. When dealing with a Use. The internal part is Zoning Officer, but more the Construction Office will do Fire Code inspections. A Site Plan deals with what you see as you drive by the site. The parking, the lighting, the landscaping, and access points. There is not a lot being changed and is why the Applicant asked for the waiver.

Mr. DeClement explained the changes to the floor plan was part of the license (ABC), but hasn't gotten that far yet because the Change of Use Application needed to be figured out first. If it granted, then they could move forward.

Kathryn Heinisch, 11 E. Black Horse Pike, asked for the operating hours 9 am to 8 pm to be placed in the Decision. Ms. Heinisch addressed the Certificate of Filing for the septic wasn't going to be necessary because it was based on three seats and now six seats. There was a statement made which by eliminating the hair salon which is not vacant would be putting approximately 150 gallons less per day into the septic system. The hair dresser doesn't do many washes. It is mostly cuts, perms, and dyes four days a week a couple hours every day. There is absolutely no way the hair salon contributes 150 gallons of waste water to the septic per day.

Mr. Polsitina commented the capacity of the system was not looked at. They have provided categories and demonstrated and we have looked at the flow from the bar/package goods use will reduce the amount of sewer flow as possible from the structure. It will work better after the Change. The capacity is determined by the Fire Marshal. The Board considers certain things. If it is permitted Use, and Site Plan issues which were described. They do not get into issues with regard to the septic, or the fire issues, or the building issues. There were a number of things, but they were not issues for the Board. Some of those questions really come after they get the Approval.

Jason Dirks spoke. He appreciated the opportunity to speak. He asked if the Board would consider a 12:00 opening time on Sunday's. It would be sufficient for sporting events. It seemed like a reasonable time 12:00 noon to 8:00 pm. On Sunday morning if he wanted to spend time on the back porch for example. He was also concerned about the picnic tables near the wooded vacant lot. He questioned if the tables were part of the store and could see people at the tables from his back window. He was concerned if cars would be pulling into the area and parking there. He questioned who owned the fence behind the market. He was concerned who would maintain the fence. (Inaudible recording)

Mr. LaPollo responded Property Maintenance would take care of it.

When he purchased his house, because the property changed from one owner to the next he did a septic inspection. He understood in this case the Market didn't need one. He asked if it were true. It was determined if any other Approvals were required, septic inspections and/or regulations would not be something the Planning Board does. It would be done either by the Board of Health or the Construction Official. (Inaudible)

He asked the question because when they put the septic system in his property, the septic now is high. The reason he was bringing it up to Planning/Zoning if he had to do something to use the septic, under the EPA rules, (inaudible). He pointed out where the septic was. (Inaudible) He was not focused on the load of the septic system. He was focused on the design of the septic system. (Inaudible)

Mr. Pino addressed the septic concern with regard to the septic system. He recognized it was beyond the schedule of what the purpose of the public hearing is with regard to that. We do not address septic capacity. We cannot project failure. We cannot project capacities. It was beyond the scales of what they were doing. He acknowledged appreciated Mr. Dirks concern.

Mr. Dirks had one more concern about the traffic. He explained there is a lot of traffic at night and was concerned about the two right hand turns out of the Market's lot to travel down his street to access 14th Street. He had a concern for safety of traffic which goes up and down the street.

Chairman Pino thanked Mr. Dirks and asked if anyone else would like to speak. Seeing there were no other comments from the public, the public portion was closed.

Mayor DeStefano commented and assured Council would be looking into the Ordinance at the next Council meeting. He explained the impact to expand the liquor store/bar to the residents of Folsom. (Inaudible)

There were no other comments.

A Motion was made by Mr. Cappuccio and seconded by Mr. Smith to approve Application 02-ZB-2016 with regards to Conditional Use for the expansion being requested.

There was a roll call vote with 5 ayes, 3 nays, and one abstention by Ben Pagano. The Motion was carried.

The waiver of Site Plan was denied.

There were no other question for the Applicants.

APPLICATION: GARY CAMPI

Application # 03-ZB-2016 – Applicant Gary Campi, 127 Asia Li Lane, Cleveland, S.C. 29635 is seeking a Change of Use and Waiver of Site Plan Approval at 1303 Mays Landing Ave., Block 701 – Lot 2 for a warehouse and office space for an automobile glass repair business.

Mr. Coombs swore in the contact person who will be operating the automobile glass repair and Professional Planner/Professional Engineer Kevin Dixon.

Mr. Michael Malinsky, Attorney of Fox / Rothchild LLC on behalf of the Applicant Gary Campi who was seeking a Change of Use.

Mr. Coombs swore in Kevin Dixon, Professional Engineer and Professional Planner.

The Applicant was seeking a Use Variance to Change the Use of the property. The property was previously utilized as a karate studio. The property is currently vacant. The Applicant was seeking Approval to change the Use to warehousing and office use for Block 701 Lot 2. The building is 936 square feet. The office will be 200 square feet and 736 square feet for warehousing. The property is located in the Village Residential VR Zoning District. The Applicant was asking for a Waiver of Section 172-2 A for the submission of a Site Plan for any Change of Use. The Waiver was requested because no development is proposed on the property.

There were 3 existing non-conforming issues on the property which the Board would require, based upon the nature of the Use Variances, which would grant relief from them. It would include three Variances. A Variance from Ordinance 200-18 A, Table 1 for the lot area. The proposed lot area is 0.68 acres where the 2 acres are required. From Section 200-18 A, Table 1 the side yard setback. The side yard setback is 14.1 feet from Lot 1 where 20 feet are required. Section 200-18 A, Table 1 for the front yard setback. The front yard setback is 40.3 feet where 75 are required. They were all currently existing. The building is there. The property is developed.

Mr. Dixon, Professional Engineer was available to explain the Site Plan. It was an undersized lot just off of the intersection of Mays Landing Rd. and 14th Street. Fourteenth Street connects back to the Black Horse Pike. The spur connects Black Horse Pike and Route 73. There are substantial volume roadways carrying traffic through town. The building was a gas station at one point. The windshield repairs will be done out on the road. It was not anticipated any customer repair would be done on site because now when a windshield needs to be repaired it is done offsite. There will be a warehouse where they will pick up the materials and will be done offsite. There will be only one delivery per day. There will be one entrance and one exit. The site will be largely empty. There are eight (8) parking spaces shown, but will never be used. Only two will be used. It will be a low intensity operation. Mr. Dixon noted the allowed Uses are much higher intensity than the proposed Use.

The property is in the VR (Village Residential) Zoning District. Mr. Dixon explained the site was particularly well suited because the building was already on the site. There will be no need for wells and new septic. The site already exists and is very adaptive with the use. The lot is undersized for a single family home. A single family home requires two acres to build on and there was an element of Pinelands nitrate dilution. An undersized lot would not be capable of supporting a substantial normal (inaudible) for a 21st century single family home on this property with a 3 acre dissolution. The lot was basically not suited for a single family home. Because of its location, with respect to the transportation (inaudible) generates ten trips a day.

There were existing nonconformity deficiencies for front and side yard setbacks. There would be no disturbing new ground, no building on to a small site, and the coverage on the site is 13% where 20% is permitted. The site did not utilize maximum coverage of the site.

The site will serve the need of a particular use very well. It will not function as a service bay. There are bays, but will not function as service bays. It will be a warehouse. The proposed business will promote open space and prevents urban sprawl promoting reuse of a building. The site is compatible with the region and did not require change in Zoning. The building had a bathroom. There are no hazardous materials will be stored at the site. The trash windshields would be put in a dumpster in the rear of the building. There will be no auto repairs. Mr. Ample will be the soul employee. The windshield seal is stored in tubes and one bottle last 3 months. For the hours of operation, he will pick up glass product between 8:00 & 8:30 am then will be on the road all day. He will go to car dealers and make repairs on location. There will be no overnight storage of vehicles.

Mr. Polistina reviewed the positive and negative criteria and the burden of proof was demonstrated. The Use Variance requested could be considered. It was not a permitted Use, but there are other Uses that are permitted which would be similar. He asked for a waiver of Site Plan. The Board would be considering the Use Variance with a waiver of Site Plan. There are three existing non-conformities. The properties on either side are developed.

There were no other questions from the Board. The meeting was open to the public. Hearing no public the public portion was closed.

A motion was made by Mayor DeStefano and seconded by Mr. Esposito to approve the D Variance / Use Variance and Waiver of Site Plan.

There was a roll call vote with ayes all and one abstention by Ben Pagano.

OTHER BUSINESS:

PORRETTA PROPERTY: Mr. LaPollo addressed Block 3404 – Lot 1, 3206 Oakwood Drive, Folsom, running a commercial business out of a back yard. The property is located in the Rural Development (RD) Zoning District. There were ongoing complaints of trash and debris. Mr. LaPollo recommended a Site Plan be submitted for the property. A landscape business was being run out of the residential property and it was disturbing the neighbors. The site plan should include the hours of operation, description, and things of this nature. There was no violation, but running a commercial business out of a residential property was not a residential nature. The Mayor suggested issuing a summons.

SAMPSON PROPERTY: Mr. LaPollo also addressed the Sampson property. Block 3409 – Lot 8, 1416 Black Horse Pike, Folsom, was running a commercial business out of a building in front of the house. The building had no operations running out of it in the last ten years, but now there is activity there. It was not being run as an automotive repair shop and thought it was being rented out as an apartment. The owner of the property explained they were renting it out as an automotive commercial property. Mr. LaPollo did not see automotive repairs being

conducted. The Owner has not applied for the CCO or any other Approval. Mr. LaPollo asked a site plan should be required for the Board. It was recommended to write a letter to the party. There were written warnings and the next step would be to cite the property owner. Discussion ensued.

FERRIS ASSOCIATES: Mr. Darcy who represents Ferris Associates requested to be placed on the June 15th Agenda for a full public hearing. Mr. Coombs asked for an update from Council.

Mr. Pagano recused himself and stepped down from the dais. The Mayor explained nothing has been done at the Council level. Ferris came to Council and claimed the Borough had vacated 4th Road. After thorough research there is absolutely no evidence the Borough officially vacated 4th Road. Council would not want to vacate. There is a RFP out and Council is in the process of researching land use attorneys. An excerpt from Mr. Darcy's letter dated May 11, 2016 was read. "Please be advised that if we do not receive such confirmation, my client will immediately file a lawsuit against all relevant parties seeking equitable and legal relief that the Court deems appropriate." They asked to be on the Agenda for the June Planning/Zoning Board Meeting.

It was understood and they agreed with it to be discussed at the Council level. It was explained it a second time when the Ferris Application came before the Planning/Zoning Board again. It was clarified there was a standing agreement they (Ferris) would deal with Council with this (the vacation of 4th Rd.) on the second occasion. It is a legal issue because there isn't an agreement with the paper road. The Mayor believed it would be in litigation.

Mr. Coombs explained he spoke to Mr. Bonchi. There is a due process issue. They have a right to be heard. There are scenarios where they can come before the Board and ultimately be approved before the Planning Board with the Condition that the street be vacated. The Conditions would be met subsequent to the Approval. If the street is not vacated and something happens on the street, the Borough is liable. Mr. Polistina commented all right-of-ways are owned by properties on either side, but the Borough has a right-of-way. They should tell Ferris to restore the road. It was made clear the Application would not be heard until the road was vacated.

The Board discussed siting for failure to meet grades specified on the plan, any areas not graded according to the plant be cited, or site them to restore the road.

The meeting was opened to the public.

Mr. Coombs swore in Ben Pagano, 2201 14th Street, he requested a letter be written to fix the right-of-way on 4 Road to get 4 ft. of water out of it because you can't drive on it. It is unusable. He thanked the Board.

Mr. Coombs swore in Charlie Arena, 1002 Black Horse Pike. He respectfully asked Mr. Cappuccio if he recused himself from the last Planning Board meeting proceedings. Mr. Cappuccio abstained.

With regard to the Ferris Application it was suggested the Board should go with the Solicitors said and not violate any rights an Applicant has. It was discussed and agreed to with the Applicant they needed to resolve the vacation of 4th Road with Council before returning to the Planning/Zoning Board. If Ferris returns, it should be addressed as hearing it to the extent there are new issues. Unless there are new issues there would be nothing further to address.

It was agreed to place the Ferris Application on the Agenda for public hearing and will need to re-notice with ayes all.

Mr. Pagano rejoined the dais.

Mr. Polistina addressed changes to the Conditions in the Conditional Use Ordinance. Mr. Coombs passed out copies of Folsom's Ordinance for Conditional Use and a sample copy of an Ordinance for Conditional Use from another town which showed the Conditional Use Standard for comparison. He reviewed the Ordinances with the Board Members and the different types of Conditions which could be written into Folsom's Ordinance. He asked the Board Member to look at the structure of the sample Ordinance. He suggested talking to other towns and to the public for suggestions to write into the Conditional Use Ordinance and gave some suggestions of Conditional Uses:

- 1.) All bars (in New York) must have air conditioning because the bars have closed windows.
- 2.) Buffers.
- 3.) Restrictions on signs and lighting.

Mayor DeStefano asked the Board Members to put together recommendations for Conditional Uses for the Borough of Folsom and submit them to Council for Approval. Mr. Coombs added Council could modify the recommendations by adding or changing before approving.

Mr. Pagano explained a living document is one which could be changed (through revisions), where the Conditional Use needs to be an Ordinance which could be changed (through the process of Approval by Council).

Mr. Pino suggested a public hearing for suggestions from the public to gather information on Conditions for zones, sites, or certain areas in the Borough.

Mr. Coombs swore in Donna Sutts, 15 E. Park Ave. Ms. Sutts questioned if the Approval for Collings Lakes Food Market could be Conditional upon the Conditional Use changes once in place. She also expressed concern for the new owners (of Collings Lakes Food Market) whom she knew very little and they were purchasing the business to flip it.

There were no other comments from the public.

There were no other comment from the Board.

The next scheduled meeting will be June 15, 2016

The meeting was adjourned at 10:14 pm. Ayes all.

Respectfully submitted,

Susan Carroll; Board Secretary