

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

August 3, 2015

The meeting was called to order at: 6:45 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:** Charlie Pitale, Ron Esposito, Joel Speigel, John LaPollo, Dave Cappuccio, Ben Pagano, Mike Veneziano

**Absent:** Joe Pino, Glen Smith, Ed Malec

Lou DeStefano was not present for roll call, but joined the meeting shortly after.

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

**DECISION RESOLUTION: 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. Coombs reviewed the Resolution to explain what obligations there are on behalf of the Applicant and what obligations there are on behalf of the seller to make clear what the obligations are prior to taking a vote. He explained when a Decision is Memorialized a Decision and Resolution are needed. He explained we are acknowledging the Resolution contains information which the Board was acting upon and summarizes the Decision of the meeting where the action was approved.

He noted a correction for Ms. Leggadri's first name. It is Sheryl, but was taken from prior Resolution which incorrectly lists her as Shirley. It will be stricken and changed.

Mr. Coombs reviewed the Resolution which Memorializes the Minutes of the May 20, 2015 action by this Board prior to taking a vote.

Page 4 – Paragraph 7:

Applicant, being the buyer, will install additional concrete wheel stops and delineate each space individually on the plan as suggested by the Board Engineer. Applicants propose to install the concrete pad for the handicap parking space, shown on the prior approved plan, in compliance with ADA requirements.

Page 4 – Paragraph 9:

Lot 826 shall remain as a vacant wooded lot and will not be developed. It is explained later on in the Resolution as a Deed Restriction.

Page 4 – Paragraph 11:

Applicants agreed to show where the current trash enclosure is located on the site plan. Applicant estimates one (1) trash can full of waste per week.

Page 5 – Paragraph 11 (continued):

Applicants will not utilize the rear of the property for the storage of any vehicles or for any work. Customer vehicles will be kept inside for security purposes.

Page 5 – Paragraph 14:

Applicant stated the shop will only be opened five (5) days a week, Monday through Friday, 10:00 AM to 7:00 PM.

Page 5 – Paragraph 15:

Applicant proposed no changes other than the ones described with respect to cleaning the site and installing the required paved handicap parking space.

Page 5 – Paragraph 16:

Applicant agreed to grade, stabilize, compact, and ensure the stone driveway and parking area are brought up to original design conditions. Applicants agreed to clean the aggregate parking lot and remove the vegetation growing through the stone.

Page 6 – Paragraph 18:

Applicant will delineate the individual parking spaces on the Change of Use Plan.

Page 6 – Paragraph 19:

Applicants will either locate individual trees of a certain caliper or show the tree line at a certain density on the plan. Applicants also agree to maintain and improve the landscaping on the site. This was explained in more detail later on in the Resolution.

Page 6 – Paragraph 20:

Applicant will not be storing anything behind the structure and will not be utilizing the rear area of the property. Applicant will not be storing automobiles within the fenced-in area. No vehicles being worked on will remain outside for more than 48 hours. They agreed to abide by

those regulations and is found in the Borough Ordinances.

Page 6 – Paragraph 21:

Applicants are under contract for sale contingent upon receiving all necessary approvals from the Board.

Page 7 – Paragraph 22 (continued from page 6):

Applicants agree to only utilize only two (2) of the service bays for customer work. The third bay will only be used for storage.

Page 7 – Paragraph 23:

There will be no diesel powered equipment on the site and there not be storage of oil or gasoline on the site. This is later explained, but no more than 5 gallons of such materials will be on the site and will be disposed of weekly.

Page 7 – Paragraph 25:

Any shipping would be limited to common carriers, such as UPS and USPS, for pick-up and delivery.

Paragraph 27:

Applicant plans to clean and maintain the area behind the building. Trees need to be cut for growth and future visual buffer coverage.

Page 8 – Paragraph 31:

The Seller responsibility. Mr. Jones had given a history behind the Consent Order and indicated vinyl fencing was installed in front of Lot 826 because it is wooded vacant land and a designated portion of the property that will be used as a dissolution field for their calculations and Lot 826 will not be used for any other purpose and will not be developed.

Paragraph 32:

It was stated there were existing old growth trees along the back which provided a canopy and a shallow berm was installed. It stated a single row of White Pine trees was later supplemented with a second row of trees and in 2011 additional trees were planted in requested locations at the direction of the Borough. Three rows of trees were planted. This was based upon the testimony of the Sellers Attorney.

Paragraph 33: Applicant/Buyer Obligation

Applicant will maintain and increase the existing landscaping to improve aesthetics. Applicants will not remove any trees.

Paragraph 35:

Applicant agrees to Deed Restrict the portion of the consolidated lot, presently known as Lot 826, for nitrate dilution calculation purposes.

Top of Page 9 – Paragraph 36

Summarized some of the additional requirements of the Consent Order. Sub-Paragraph (e)

provided the use of the rear fenced-in area shall be restricted to emergencies and deliveries. Storage of any vehicles or materials shall not be permitted inside or outside the rear fenced-in area.

Page 9 – Paragraph 40:

No equipment will be stored in the rear of the property and Applicant will not be using forklifts.

Paragraph 41:

No vehicles or materials shall be stored in the service drive area. The rear of the property will not be used.

Paragraph 42:

Applicant agreed to comply with the Borough Ordinance requiring customer automobiles to be stored inside within 48 hours of arrival.

Page 10 – Paragraph 43 (Engineers Report with other Recommendations and Conditions):

Sub-Paragraph e: Applicants' Engineer indicated site conditions will be cleaned up as proposed in the original Site Plan.

Sub-Paragraph f: Applicants' Attorney stated the gate will be replaced by the current owner.

Sub-Paragraph g: Applicants' Attorney confirmed the loading in the rear of the property will be limited to UPS or Fed Ex deliveries. Rear door is an emergency exit door only.

Sub-Paragraph h: No diesel equipment is proposed.

Page 11 – Paragraph 46:

Applicants have agreed to Deed Restrict Lot 826 in the Deed Consolidation for nitrate disolution and septic purposes.

Page 12 – Paragraph 53:

This was based on the testimony of the neighbor, Sheryl, where she indicated there was a buffer zone planted around 1999 – 2000. The first plantings did not provide enough additional visual buffering. After a call to the Borough a few more trees were planted and were supposed be trim and pruned once a year, but it was never done. The septic system was to be pumped every 3 years, but it was never done. Those Conditions were discussed.

Page 13 - Paragraph 54:

The neighbor stated only 6 trees were planted and no berm was installed as per the agreement. Although the present owners agreed to plant another 11 trees, only eight (8) or nine (9) were planted. They were only trimmed once, are sparse, and do not provide a sufficient visual barrier.

Page 13 – Paragraph 59:

This is an Applicant/Buyer responsibility. The concrete handicap parking stall which was never paved will be installed. The rear of the property will not be utilized as was approved and

landscaping will be maintained.

Page 14 – Paragraph 62:

Mr. Polistina indicated he was told a low berm was planted, but he did not observe a berm on the site. The earth berm should be three (3) ft. and graded off. This would be an obligation of either the Applicant or the Seller. Existing trees would need to be welled. It would appear to be an obligation of both buyer or the seller.

Page 15 – Paragraph 68:

Applicants' intend to improve the landscaping on the property and deed restrict Lot 826 and are agreeable to the proposed conditions.

Page 15 – Paragraph 69:

Applicants' attorney spoke with the seller and agreed to work with the Board Engineer at the site to provide additional plantings that may be required at his discretion and satisfaction. It appeared to be a joint obligation on behalf of both the seller and the buyer to make those changes.

Page 15 – Paragraph 70:

The owner did agree to plant twelve (12) 6 ft. high trees of a local variety acceptable to the Board's Engineer.

Page 16 – Paragraph 70 (last two sentences):

Applicants will update the Site Plan they provide to the Board to reflect the actual conditions on the site. Applicants were asked to put on file with the Borough a plan reflecting the existing conditions at the site in conjunction with the approval. Mr. Coombs was not sure whether it was done yet or not, but there did not appear to be a timeline in which to do it.

Page 16 – Paragraph 71:

A maintenance order was recommended as a condition of approval where the Borough Zoning Officer has been named to inspect the property and impose fines and penalties for violation of the landscaping and buffer tree conditions contained in this Decision and Resolution.

Page 16 – Paragraph 74: Applicants requested a Site Plan Waiver with the following conditions:

Mr. Coombs noted, some of the additional things which he discussed all along and highlighted are here and not exclusive of any other conditions mentioned in the Resolution.

Sub-paragraph a.: Twelve (12) 6 ft. tall trees, of a local species trees to be determined by the Board Engineer, shall be planted by JJP Properties, LLC at the rear of the property to buffer the view between the subject property and the adjacent homeowners' properties. Mr. Coombs noted it is the seller (responsibility).

Sub-paragraph b.: A maintenance order to enforce the maintenance of the property's landscaping and particularly, the trimming and pruning of the buffering trees as required in the prior Consent Order shall be enforced by the Borough Zoning Officer. The Zoning Officer shall inspect the property from time to time and impose fines and penalties for violation of the landscaping and

buffer tree conditions and recommendations described here. Mr. Coombs explained it meant the Maintenance Order affects either one the Seller or the Buyer. Whoever happens to be in possession of the property. If this Resolution is adopted, the Zoning Officer can go out and fine people immediately for not complying.

Sub-paragraph c: The required handicap parking space shall be paved with concrete pursuant to the prior Site Plan approval. Mr. Coombs noted this is something the Applicant was to do.

Sub-paragraph d: The missing fence gate shall be installed by JJP Properties, LLC – the seller.

Sub-paragraph e: The trash enclosure shall be relocated by JJP Properties, LLC – the seller.

Sub-paragraph f: Applicants shall remove vegetation and weeds presently growing through the gravel, repair pot-holes, and improve grading and delineate parking stalls within the parking area – the applicant.

After giving a summary of the obligations of the seller and buyer under the Resolution, Mr. Coombs explained the Board was there to vote on the Resolution and asked for an amendment in regards to the neighbors' name which was incorrectly listed as Shirley and should be Sheryl and neither the Applicant or the Seller needed to be present to have the Resolution Memorialized. The attorneys for both Seller and Applicant were called earlier this day to be here and they knew it was going to happen today and neither one is here. Testimony is not necessarily needed to Memorialize a Resolution. It is Memorializing what was already testified to. He explained what effects could be if the Board does not memorialize the Resolution. Beyond 45 days of the meeting, which it is beyond 45 days, the Applicant can choose through Council to make a Motion before the court to compel the Board to reduce its findings to a writing. If that isn't done within the 45 days and the Court finds on behalf of the Applicant then cost of the Application including the Attorneys fees can be assessed against the Municipality under N. J. S. 40; 55 D 10 g2. Additionally once this Decision and Resolution is adopted the parties can appeal the content of the Application if they find it to be deficient. It was given to everyone to review prior to last meeting and believed it contained an accurate representation of the obligations on behalf of both parties.

Mr. Pitale asked how the Board will hold the Seller of the property responsible to take care of the things which are the Sellers responsibility. Mr. Coombs answered they can be fined tomorrow. They could have been fined at any time. This is a written form of what we already said they had to do. Now it is written.

Mr. Cappuccio asked for clarification. Once they sell their property, it will no longer be their responsibility. Mr. Coombs answered there were actually responsibilities they already said they would be responsible for in this document regardless of whether they are the owners of it or not. Mr. Cappuccio could understand the Applicant not doing anything until he buys the property. The Seller has not done one thing to this property. There is no reason not to have it done if he is selling the property and making a profit. This is a very few items which needed to be done. He asked if it would be feasible to postpone the Resolution, fine the Seller, and wait until our next meeting in two weeks on August 19<sup>th</sup> (2015). Mr. Coombs advised it may be likely if there is a

postponement of this Resolution they will more than likely file with the court to compel the Resolution.

Mr. Esposito clarified the municipality would have to pay something if it is postponed why would we postpone it they are obligated.

Mr. LaPollo added whether we approve this or not I can take JJP Properties to our next court.

Mr. Pitale stated they could be sited. Mr. LaPollo explained according to the Borough's Ordinances he would have to write a ticket and bring them to court. Mr. Coombs responded he could do it tomorrow morning. He has never been out at the site, but he knew Mr. LaPollo kept a close eye on it. If that is the case, act accordingly.

Mr. Cappuccio asked how do you know what the fines are. Mr. LaPollo answered it would have to go in front of Judge Raso. Mr. Coombs explained it would be presented to the Judge.

Mr. Esposito believed it would be detrimental to the Municipality not to do inspections. Mr. Pitale stated if we don't agree to the Resolution or Memorialize it, they will go to court. Mr. Coombs advised they could bring it up as a Summary Action. They could bring it up within a few days. He did not know if they will, but they could do it as an order to show cause. They could request attorney's fees for having to do it. Mr. Cappuccio noted for 15 years he (Mr. Poretta) hasn't done what he was supposed to do and has gotten away with it. They have been here plenty of times and there have been plenty of complaints and yet they haven't done one thing. No one is going to make him do it this time or make him pay. He questioned if the sale (of the property) would be stopped. Mr. Coombs responded he would imagine the buyer would not buy until this is approved.

Mr. LaPollo asked if the Resolution could be approved, but hold the CCO (Certificate of Continued Occupancy) he couldn't move in until all of these Conditions are completed and issue a fine to Poretta. Mr. Coombs stated they can be the owner of the property and not be given the CCO. These are Conditions of the Approval.

Mr. Esposito clarified this was their (Owner/Seller) opportunity to come and ask questions. Mr. Coombs added they were provided with a copy (of the Resolution) just as the neighbor was provided a copy. They had their opportunity to review it and they were fine with the content and the description of the Conditions. Also, when it goes up to vote, you can vote no. He couldn't tell the Board Members how to vote, but advised there was that option.

Mr. Pagano ask for an elaboration on what triggered to vote this evening and not the normally scheduled meeting. Mr. Coombs responded the Special Meeting was requested by the Applicants attorney because there was a timeline with regards to completing the sale. He wasn't sure if it was a financing issue or if a delay would ruin the sale or not.

There were no other questions from the Board. The meeting was opened to the public.

Sheryl Leggadri of 214 Mohawk Drive was sworn in by Mr. Coombs. Sheryl wanted to bring to attention and have it noted in the records Barbara Wolley-Dillen's comment about the permit extension act. The site plan had actually expired when Mr. Poretta came back before the Board and asked to get three (3) permit extension acts all at one time verses applying for it yearly as he is supposed to. In reference to the buffer zone Ms. Leggadri agreed with the Board. It has been sixteen (16) years and every time she came before the Board nothing was being done the way it was supposed to be done. She was looking forward to dealing with the new people. She thought they might be better to deal with than the Poretta's. They (the buyers) seemed like they were much more agreeable to at least meet her half way. Ms. Leggadri had the concern that once Mr. Poretta sells the building will he walk away and not have any responsibility. She questioned if it (the Resolution) is to be approved why can't the CO be withheld so nobody can operate the business until the Conditions are met. Mr. Coombs responded the CO is a separate issue from this. It will be up to the Housing Inspector whoever gives who gives the CO, but this is a Condition of Approval, absolutely. Ms. Leggadri was fine with giving the Approval to go ahead and do what he needs to do, but keep them from operating until all of the Conditions have been met. She thought more than sixteen (16) years has been more than patient and waiting for them to do the things they had to do. She explained no one has been there (at the property) since the last meeting (Planning/Zoning Meeting). The grass has not been cut, the gate is not back on again, and nothing has been done with the buffer zone. Nothing has been done and they had two-and-a-half (2 ½) months. She agreed with Mr. Cappuccio where they were serious about selling this building and why haven't they done anything. It wasn't like they didn't know they had to do it and questioned why they wouldn't do it (meet Conditions). She didn't understand it. Ms. Leggadri questioned why a Special Meeting was called and ask for Conditions. Wouldn't you have done nothing in return for what you are supposed to do. Ms. Leggadri preferred to see the sale go through because she rather deal with the new people than deal with the current owner. She thought he should be held responsible for what he has to do. She believed it was ridiculous he hasn't done it in all this time. She also wanted to make sure the prior Court Order where she had to go to court to fight for and had to pay for stays in place. Mr. Coombs assured Ms. Leggadri the Approval does not replace the Court Order, it replaces the prior Decision Resolution. This is a quasi-judicial Board. They are all like judges and when they rule on this it has the force of law. There are several very explicit points in the document where the seller needs to do. The Applicant doesn't have to do anything on some of those points. Some of the points are joined (Seller/Applicant) and some which are clearly Applicant. There are some things like the trees which are clearly within the Seller. Mrs. Leggadri stated there was never a berm installed on the property. Even when there were an amount of trees were supposed to be put out there they only put half of the amount of trees. We went back there again and still they didn't put the proper amount of trees. Sixteen (16) years later she felt she shouldn't be looking at the back of the building. There is not three (3) rows of trees. Mr. Coombs responded this can also be enforced by the Buyer against the Seller. Mrs. Leggadri was not opposed to new people because they actually seemed to be much more willing to cooperate with us and try to be a good neighbor. Ms. Leggadri thanked the Board.

Mr. Cappuccio asked how we (the Board) will stop the CO since the Building Inspector issues the CO and not us. How do we stop them from getting the CO? Mr. Coombs wasn't entirely sure what the requirements were for a CO in Folsom, but the Conditions of Approval on this document will exist prior to any application for CO. Mr. Cappuccio clarified the Applicant who



is the buyer, does everything he is supposed to do and the Seller doesn't, how could the Buyer be stopped from operating business if he has done everything he was supposed to do and the Seller hasn't done anything? Mr. Coombs answered, at that point if he is not issued the CO, he was pretty certain Mr. Malinsky would probably file suit against JP Properties.

Mr. Pitale thought there were two separate issues. We (the Board) can't stop the CO. Discussion ensued in reference to the issuance or withholding of the CO until Conditions were met and other options.

Mr. Coombs made a recommendation for in the future, that during the discussion if there are Conditions and where there is a situation where it is contingent on sale, perhaps we (the Board) put in a stipulation all things by Seller should be completed within 30 days of the meeting. Regardless of the Resolution thirty (30) days to get it done. Then at least on the Sellers part those Conditions will be on a time line. The Resolution was not memorialized at the July Meeting because the Applicant did not have escrow.

A phone call was made to the Applicants attorney, Mr. Malinsky to confirm he will or will not be in attendance for this Special Meeting.

The Record reflects Mayor DeStefano stepped onto the dais prior to the vote.

A Motion was made by Mr. Pagano and seconded by Mr. Esposito to Memorialize the Resolution with all of the given stipulations. There was a roll call vote with six (6) ayes and two (2) nays. The Motion was carried.

There was no other business for the Board.

The next scheduled meeting will be August 19, 2015 at 7:00 pm.  
Meeting adjourned at 7:39 pm.

Respectfully submitted,

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Susan Carroll  
Board Secretary

