

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

April 16, 2014

The meeting was called to order at 7:16 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, Glenn Smith, Joe Pino, Joe Stuhltrager, Joel Speigle, John LaPollo, Ron Esposito, and Byron Gummo.

Absent: John Hehre, Tom Ballistreri, Greg Schenker

Others Present: Solicitor: Jorge F. Coombs, Esq.
Jen Heller for Polistina & Associates
Secretary: Susan Carroll

APPROVAL OF MINUTES:

A motion was made by John LaPollo and seconded by Joe Stultrager to approve the minutes of March 19, 2014. There was a roll call vote with ayes all.

RESOLUTIONS:

George Eckhardt, 1350 Mays Landing Rd., Folsom, N. J. 08037, seeking a minor subdivision to consolidate 13 lots into 1 lot and re-subdivide into 3 lots, also seeking 2 C-variances for setback of house and accessory building. Application # 01-ZB-14

Mr. Coombs asked to be heard on the Eckhardt Resolution. He stated although the decision resolution in this matter has been prepared and distributed an issue has come to my attention prior to the meeting. There is a gentleman here who is involved in the transaction that has some information I feel is important in light of the conditions that were placed upon this application.

Mr. Coombs swore in Mark Forte, 27 LeeAnn Dr., Sicklerville. Mr. Coombs asked Mr. Forte to give the Board a summary of what he told him. Mr. Forte stated there is an issue with the lease in the contract we are struggling to resolve.

Mr. Coombs gave an overview of the Eckhardt Application. There were three lots that were created and then consolidated. One with an existing home, one large lot which is largely Agricultural, then a smaller lot which was to remain vacant also Agricultural. Mr. Forte has made an offer and placed a deposit through an auction for the lot with the homeowner. I believe it was proposed Block 401- Lot 101. That lot if you recall had a home and several agricultural out building including a barn that crossed over the proposed lot line between Lot 101 and the large Lot 100. Approximately half of that metal barn was on each one of those properties. At the hearing it was indicated there had to be a lease negotiated between both buyers which would assist not only with the use of the barn but it would clarify liabilities, responsibilities, and insurances regarding the barn. Mr. Coombs asked Mr. Forte who purchased the large Agricultural Lot and if the transaction on that lot is done or still pending. Mr. Forte answered Mr. Berenato purchased the large Agricultural Lot and the transaction is not completed. The whole transaction involving all three lots will be completed at the same time.

Mr. Coombs stated the purchaser of the large Agricultural lot is making representations that he will not grant a lease to the other perspective purchaser. We are not in the business of putting through real estate sales, but it also seem an easement would have been a better solution to the problem. We can vote on this. It will remain the same and the sale will fall apart or continue, but at some point in the future Mr. Eckhardt or the perspective purchasers may come back and request an easement. I just wanted to make sure the Board was aware of that before we vote memorializing the Decision Resolution.

Mr. LaPollo asked where the easement will go. Mr. Coombs answered the easement will go around the area of the barn. Mr. Forte added right now the property line goes through the barn. There was suppose to be a perpetual method. Mr. LaPolla answered, yes you are suppose to lease it from the farmer. Mr. Coombs added in perpetuity. If this transaction falls apart, there may be two other buyers who may be able to agree. I'm just informing the Board of this issue.

Mr. LaPollo questioned if the easement will go around the barn itself. Mr. Forte responded and the paddock area. Mr. LaPollo questioned if the easement would be deemed to the house. Mr. Forte responded, yes and it is contingent upon the sale. I'm not buying the house without the paddock. Mr. Coombs clarified, this easement was not discussed at all. It wasn't presented to us as a Board and we didn't vote on it and it is not included in any of our Resolutions. We do not have the lease, it was not presented or have not seen it. The lease was included in some of the language of the sale. Exactly what the lease says I don't know, but I wanted the Board be aware of it for voting on the Decision Resolution.

Mr. Pitale questioned if the Board should vote on the Decision Resolution now. Mr. Coombs answered. The applicant presented the application and presented the lease agreement as their solution. That solution was acceptable to the applicant and the State Agricultural Commission. In this particular transaction it seems that it may not work out with those two potential buyers. It doesn't mean that it wouldn't work with other buyers. It seems to be in the interpretation of these two parties. We can go ahead and approve this and they will resolve their issues one way or another. Or, we can have Mr. Eckhardt possibly returning to the Board seeking to modify this in some way in order to clarify this issue.

Mr. Pitale questioned if the language of the Resolution needed to be changed. Mr. Coombs responded, I wouldn't want to change the language of the Resolution at all without having the applicant come back in.

Mr. LaPollo asked Mr. Forte if there is any chance the (lease agreement) arrangement will work out with him and Mr. Berenato. Mr. Forte answered the only way it is going to work out is if it is agreed upon the way it is suppose to be. Mr. LaPollo asked if we (the Board) pass this (The Resolution) tonight if the arrangement will work. Mr. Forte answered he (Mr. Berenato) wants me to forego the lease area or easement area. What is the value of selling it without the barn and paddock area for the horses. The only reason I brought it is because my wife has horses.

Mr. Esposito asked if he (Mr. Berenato) changed his mind if this would work. Mr. Forte answered he (Mr. Berenato) has a little problem with me and giving me the space or the lease, but if he doesn't want it to stay with it. It is in the contract. The language doesn't specifically say. It states it is a 10 year renewable lease. It wasn't to be written like that it was to be written as an easement or in perpetuity. Either way it was not written like that. There was a lot of deception from the auctioneer, not on Mr. Eckhardt's part. He is completely didn't know anything about any of this. He knew there was a lease area for an easement that was to be granted to the home buyer because of the property line and also he it was brought in your last meeting that the guy from Adams Reymond & Hagggen (Mr. Helbig) the State would not grant a subdivision. This is the only way it was saleable which is not true. They just didn't grant George's subdivision because George proposed it to the State that he wanted to make the house, which he called the estate, more valuable. He wanted to add ground to the house so it was more valuable. He didn't say the guy is buying it because he wants to farm it or he wants it Agricultural. So the State told him no. When I talked to the state they told me that I'm the farmer, I'm in the agricultural business so they would have no problem subdividing or moving the line. The only difference was who paid the taxes if they moved the line. The only criteria they have is it stays tillable ground and that is not even a written law. They basically told me it was up to a quorum of six farmers that showed up at the meeting. If they felt like granting you building to subdivide it, they would if they didn't they wouldn't. There is nothing written. George didn't pursue it because he didn't want to spend 30,000 to 50,000 for a lawyer and get it subdivided. He ended up spending more money subdividing it this way.

Mr. Coombs stated I understand Mr. Forte's concerns and wanted the board to be aware of them, but it is also not our place to interject ourselves between these two party's transactions. A solution was proposed, it was acceptable and we are here to memorialize that. If Mr. Eckhardt runs into difficulties with this transaction, he can certainly come back before the Board.

Mr. Forte asked if the Board is still granting the variance with zero setback. Mr. Coombs replied the zero foot variance was granted at the last meeting. Mr. Forte asked, if there were no lease what are The Borough of Folsom's rule and regulations of the barn being on two different properties. Mr. Coombs replied if the variance is granted, the farm can be enveloped. So that means Berenato has to pay the buyer to pay the taxes on the barn. Mr. Coombs responded arguably, yes and that is what the price of the lease should consider.

Mr. LaPollo questioned if he would still own half of the barn. Mr. Coombs answered it is on his

property. Mr. Forte asked if the Borough would allow somebody to build a across the property line. Would you grant a variance to do that? The answer was no. Mr. Coombs stated it was conditioned on the lease. Mr. Forte answered yes. And the lease may or may not have it, we don't know. Mr. Forte reasoned that if you wouldn't grant or allow somebody to do that and there becomes is no lease, then it is not a legal subdivision or variance. Mr. Coombs suggested to table the Resolution and call Mr. Eckhardt back. Mr. Forte stated Mr. Eckhardt has no real knowledge. He knew there was a proposed lease area they led him to believe that everything was fine and everything would be passed and there would be no problem. The state attorney is the one who proposed to George. Instead of us granting you a subdivision of your agricultural ground why don't you leave it alone and give the buyer of the house an easement or lease on the property and that was the plan. That is the way the realtor/auctioneer wrote it up for sale.

Mr. Coombs suggested the only thing can do if the Board would like is table it for one cycle and reach out to Mr. Eckhardt, Mr. Berenato, and Mr. Forte's attorney and see if we can come up with a solution for this and either bring Mr. Eckhardt back in and see if this can be amended to putting an easement and go from there. Mr. Esposito stated it sounds logical because if we make the wrong decision and the other party says it is not acceptable then we are back to square one to amending this again. I think it makes sense to get everybody on the same page and then make a decision that were are supporting what they are asking for.

A Motion was made by Glen Smith and seconded by Ron Esposito to table the Decision Resolution until Mr. Eckhardt could be contacted to resolve the issue. There was a roll call with ayes all.

APPLICATIONS:

Application # 04-ZB-14 – Stern Light Inc. / Bleachers Sports Bar – 40 E. Black Horse Pike, Williamstown, N. J. 08094 to appeal the Zoning Officers Decision for outdoor patio dining. Parking lot issues which originated with The Pinelands Commission need to be discussed

Mr. Frank Olivo Attorney represented the Applicant Stern Light Inc. trading as Bleachers Sports Bar located at 40 E. Black Horse Pike. The primary properties upon which there are improvements are lot 18 and 18.01. There are various additional lots along the back of the property which are undeveloped and wooded. The purpose of our application is determination to put 7 tables outside with a service bar was not permitted under the Folsom Zoning Ordinance. I looked through the Ordinances dealing with land use and did not find any prohibition against outdoor dining. This does not affect the Site Plan. There is no construction, it is on an existing concrete pad. It is within the footprint of the existing building. This property has been there for numbers of years. I have tonight with me Mr. Anthony Kopa who is one of the primary principles on the property.

Mr. Coombs swore in Anthony Kopa who lives at 1901 Steeple Chase Drive, Williamstown, N.J. 08094.

Mr. Olivo questioned Mr. Kopa. Mr. Kopa responded he has been operating the property since October 5, 2013. The primary business is restaurant. The operating hours are 11:00 am to 2:00

am. The property was a restaurant and bar prior to taking over the property. There was an outside deck that was removed prior to Mr. Kopa's occupancy. Mr. Kopa wants to allow his customers to be on the outside patio to have an appetizer, food, or a drink and to be outside and enjoy the weather. There is an existing outside patio which has a fence around it, but no roof. In the event of inclement weather there would not be outside dining since there is no roof over the patio. There are 7 tables right now. Three or four people per table. The maximum occupancy of 21 to 28 people. There is also a service bar where you can purchase soda, a beer, and hire a waitress to come out and serve the food. Mr. Kopa has an ABC Liquor License which covers the entire property including outdoor. Mr. Kopa does not intend to introduce music or bands outside at this time nor does he have speakers outside. Mr. Kopa is only interested in alfresco dining and stated he has tables on the patio for storage only. People will go outside to smoke cigarettes, but we do not permit them in that area. It will not change the occupancy of the establishment. The occupancy is 242. There is a location inside that will not be used if permission is given to use the outside. It will not change or increase the occupancy.

Mr. Olivo continued to question Mr. Kopa and he continued to respond. Since the time he has taken over the property he has come to learn there are requirements of the Pineland concerning the property he didn't know about. He spoke to the Pinelands and learned he had to plant some trees that were never planted and will be planting trees. He also found out there were millings placed upon the parking areas and certain approvals were not appropriately applied for with Cape Atlantic Soil and Pinelands. He resolved the Cape Atlantic issues by submitting an application. Mr. Kopa did not put the millings in the parking area they were all there prior to his arrival. At present Mr. Kopa is working with the Pinelands regarding what he may need to do regarding paved earth areas that were part of some plan in the past. Mr. Kopa does not intend to place anything outside other than place table on the concrete pad. He does not intend to put coverings or roofing. In inclement weather it cannot be used. The outside area hours will be whatever the Planning/Zoning Board allows and will be satisfied with whatever restrictions would be imposed.

Mr. LaPollo asked Mr. Kopa if it was true when they first met and discussed this he (Mr. Kopa) talked about live music, horseshoe pits, and volley ball nets. Mr. Kopa answered we did. We put that on the back burner. We basically want to get the outside open now. Then next year if we want to move forward with those things we will present it next year to the Board, but yes that is correct.

Mr. Coombs asked what type of ABC license he has and what number it is. Mr. Olivo answered plenary, retail, distribution, the license will be considered a broad C. It is not a liquor store. Mr. Coombs asked if he has a bar inside with bar stools. Mr. Olivo answered it is a typical restaurant and bar. Mr. Coombs asked if there is any cash and carry. Mr. Olivo answered he is allowed to sell packaging out of a refrigerator or if it is on a wall. He cannot put displays on the floor. That is ABC Liquor License. It is not a Broad C. It would be considered a Simple C. A Broad C means you could have isles, displays, and consumption on site.

Mr. Pitale asked if the concrete area is on the east of the building. Mr. Kopa answered east of the building looking forward, yes.

Mr. Olivo stated I believe everybody has a copy of the Survey and referred to the Survey as P-1

for the purpose of the record. Mr. Olivo asked Mr. Kopa to put an X on or circle the area of the patio. Referring to the Survey Mr. Olivo indicated the outside patio would be in the right rear corner. Mr. Esposito stated he understood Mr. Kopa actually had people outside for a while. Mr. Kopa responded he had tables out there just for storage because there is not that much storage. Mr. Esposito asked if the tables were ever used for dining. Mr. Kopa stated we never used them.

Mr. Coombs referred to Exhibit P-1 dated April 9, 2014 and asked when the Planning/Zoning Board Secretary received it. Mr. Olivo responded a portion of an older Survey was submitted with the original Application. This has been updated to current time because some of the drawings from the old Survey were not all that good. M. Kopa only got what he got when he took over some of the materials weren't great. This is simply a Survey of the property. It is not particularly noted as a Site Plan.

Ms. Heller of Polistina Engineers asked what the status of the Pinelands Resolution not in the year coming up, but where are you at with these things now. Mr. Kopa responded we spoke with them last week and they are getting back to us regarding how to resolve the issue, but we are willing to do whatever it takes with the Pinelands.

Mr. Speigle asked what the depths of lots 44, 45, 46, and 47 are on the back of the property. Mr. Olivo could not speculate the length of the lot. The entire depth of the property is 350 ft. and I have no way of being able to scale it. The notes state do not scale from drawing. Mr. Gummo stated the scale of the drawing is pretty close, I would say they are around 100 ft. deep. Mr. Speigle asked if the lots are wooded and Mr. Kopa replied everything is wooded in the back. Mr. Speigle speculated there is a 100 ft. wooded buffer. Mr. Kopa responded, between us and Park Ave. Mr. Olivo added actually more on the (left) west side of the property. Mr. Kopa stated on the left side of the property there is more woods. Mr. Olivo asked Mr. Kopa if he had any idea how long the property has been developed as a bar/restaurant. Mr. Kopa responded he didn't know how long, but it has been there a long time.

Mr. Pitale asked Mr. Kopa if he is the party that took down the trees and if he made site improvements. Mr. Kopa answered he did not take down the trees and it was actually done a while back, possibly in 2006 and he did not make site improvements.

Mr. Coombs was looking at the December 9, 2013 letter from the Pinelands to Ettore Tierri and asked who he is. Mr. Kopa responded Mr. Tierri is the property owner. Mr. Olivo began questioning Mr. Kopa. Mr. Kopa stated he knew who Mr. Tierri is. He is the owner of the property. Mr. Coombs asked if he was leasing from him. Mr. Kopa answered that is correct.

Mr. Coombs was looking at items with regards to action items for removal of the parking area, restoration, and re-vegetation; and there is also a storm water management, # 5 on Page 2, as well as providing a list to Pineland of hours of operation and Uses and employees, number of seats, where, and asked if all of this information has been submitted to Pinelands. Mr. Kopa stated from what he understands yes the information has been submitted to the Pinelands by Mr. Tierri.

Mr. Coombs asked Ms. Heller of Polistina Engineer Firm if she had a copy of the storm water management. Ms. Heller replied our office did not review a site plan or storm water. We have nothing nor would we because it was not a site plan application. Pinelands Commission is asking for a plan to remove both parking areas and a restoration re-vegetation plan. Mr. Kopa has already stated he was going to do the re-forestation plan. Mr. Kopa agreed. Ms. Heller asked what he will do about the removal of the parking areas. Are you doing the application for those. Mr. Kopa answered from what he understood when he originally spoke to them (Pinelands) back in December, they told him if you are going to have the millings there you have to have something else there. Not take the millings up but put the trees in for the water / vegetation. Mr. Olivo added it is the recommendation they can keep the millings. They need to have a storm water management plan submitted to the Pinelands as well as to the Planning Board to the extent they would want to see it. The millings were put there by a prior owner without giving thought of getting approval to do it. Many people think millings are stone and the Pinelands considers it a pervious surface. There is plenty of property out there to put the retention basin if required. They are more than willing to do this, but what we have is an operating business. The property was developed probably pre-Pinelands. I'm guessing at that because I don't have any documents as to it, but people shaking their heads here that probably can confirm that it was prior to 1979. We have an ongoing business with an existing site. A prior owner decided to put millings down and never thought about the fact it was an issue with storm water management. The people who are now leasing the property and operating the business, it's an ongoing business, will do whatever they need to do to get the property so they don't get letters from the Pinelands. They never did (receive letters from the Pinelands), the owner of the property did. This application tonight is for seven (7) tables outside on a concrete patio that exists. All the other issues we are not asking to be resolved tonight because we are not affecting the outside whatsoever other than utilized the concrete patio. Nor do I know of any code in this Borough that prevents it. Therefore, I am here tonight appealing the decision of the Zoning Officer with regards to putting seven (7) tables and a service bar on a concrete patio. We will be more than happy to come back to this Board seeking either a waiver of site plan or approval of site plan if that is what this Board believes we need to do. I don't know if this property ever had a Site Plan approval in the history of the property. I don't think the file of this property in the Borough of Folsom is very complete. We are working with what we had to put things together. With an ongoing business and summer coming, outdoor dining is sometimes preferred by some people. We are not looking to create noise or anything that is going to affect the neighbors. I think they are good neighbors to the extent of the type of establishment they are. It is a bar and restaurant and maybe some people don't like the fact that there is activity out there, but he is in a proper zone it is pre-existing and all we are asking to do is to carry seven (7) tables outside so people can sit outside if they would like to have something to eat and a drink. Not a difficult request. Mr. Olivo added we have provided public notice although I don't believe the application required public notice. We notified all the property owners within 200 Ft. as well as published and I don't know if that was really required for this type of application. We are trying to everything above board and not trying to hide anything. We are trying to bring the property in compliance with anything that might be out of compliance.

Ms. Heller asked Mr. Kopa how many employees he has currently and proposed if he were to do the outdoor dining area. The parking requirement is one space required for each four (4) public seats plus one (1) space for each employee. Mr. Olivo responded at one time is what we need to

know. It is not total number of employees. Mr. Koopa answered the largest shift would be six (6) employees. Mr. Coombs questioned the occupancy as 242 seats. Mr. Kopa answered 242 standing. Mr. Coombs asked how many seats he has. Mr. Kopa responded he has 32 seats at the bar, 48 tables. Mr. Olivo stated the occupancy of the building is determined by square footage for fire and safety. Mr. Gummoe stated there is 26 parking spots listed and if my calculations are right the parking should be around 11,970 or roughly 12,000 sq. ft. of parking area to accommodate the whole thing including 242 capacity. Mr. Coombs stated by his calculations he came up with 33 spots. Volume of employees on the shift plus. Mr. Gummoe stated yes there is parking spots listed as 9 x 20. I came up with roughly between 60 to 65 parking spots. Mr. Olivo noted the application does not request increase in occupancy. Mr. Gummoe pointed out there is 26 parking spots listed on the plan right now and given the capacity of 242, the number of parking spots with the personnel would roughly require another... Mr. Coombs interrupted but the 242 is standing. Our Code says public seats. Mr. Olivo answered goes by what you accommodate by tables instead of chairs. Mr. LaPollo stated you would have to add 7 parking spots for 7 tables, for 4 chairs per table. Mr. Olivo answered there is an area that used inside which used to be a catering facility is being moved outside and back. It is an exchange of space not adding additional tables. Mr. Coombs recounted 32 seats at the bar, another 48 at the tables indoors and proposing another 28 seats outside. Mr. Kopi responded right now there is seating in the back. We are going to get rid of the seating in the back and put it outside. Mr. Olivo stated 28 that are within that calculation are going to be specifically moved outside. Mr. Kopi answered correct, yes. Mr. Esposito questioned again 28 of the 42. Mr. Kopi answered yes, correct. Mr. Coombs questioned there won't be any additional seating. Mr. Olivo answered that is correct. Mr. Esposito questioned you will only have 14 left inside. Mr. Kopa answered well we are hoping to go outside. Mr. Esposito thought it was strange. Mr. Olivo asked Mr. Kopa if there is additional space outside for parking besides the spaces that are drawn on. Mr. Kopa answered obviously where all the millings are, sure. Mr. LaPollo questioned where the millings are has to be replanted. Mr. Olivo responded there are supposed to be planted trees. Mr. Kopa answered, but it's not going to cover everywhere. Mr. Olivo stated they do not have to re-forest the area as much as plant the trees that Pinelands wants. It doesn't have to be anywhere in the parking zone. Mr. Coombs asked if they had any idea where Pineland's wants them to put trees. Mr. Kopa answered not yet there is plenty of spots in the back. Mr. Olivo added I believe those issues are issues with the Pinelands. We will absolutely address it with Pinelands and report back to the Board by letter as to what Pinelands requested and the fact they are accommodating their requests.

Mr. Gummoe asked if all drink and eating would be contained to the patio area in the fence and not in the parking lot. Mr. Kopa answered not in the parking lot.

Mr. Coombs asked what Notice was given. Mr. Olivo answered the Notice in the Atlantic City Press as well as notice to all property owners within 200 ft. Ms. Carroll has all the proofs.

Mr. Pitale asked if there were any other questions from the Board. Hearing none he asked for the Engineer's report. Ms. Heller gave the Review Comments from the Engineer's Report.

ENGINEER'S REPORT – REVIEW COMMENTS:

1. The Applicant has submitted an application for the appeal of the zoning officer's decision. No site plan application has been filed and submitted for review and no site plan approval can be granted without the proper filing of the application.
2. It is our opinion that the Applicant submit a site plan application and a site plan showing all existing conditions and all proposed improvements for review.
3. In accordance with §200-6, "major development" is defined as any division of land into five or more lots; any construction or expansion of any housing development of five or more dwellings units; any construction or expansion of any commercial or industrial use or structure on a site of more than three acres; or any grading, clearing or disturbance of an area in excess of 5,000 square feet." The Applicant is proposing improvements which would be defined as major development and when submitted, the application and site plan should include all requirements for major development.
4. The Applicant received a certification, dated October 16, 2013, from the Cape Atlantic Conservation District to satisfy the notice of violation.
5. The Applicant must address the notice of violation issued by the Pinelands Commission for the site. The Applicant was required to submit an application to the Pinelands Commission or prepare a plan for the removal and reforestation of the parking areas. The Applicant must indicate if this has been addressed and approved by the Pinelands Commission.
6. 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.

Mr. Pitale thanked Ms. Heller and asked if there were any questions from the Board about the Engineer's report.

Mr. Coombs asked Ms. Heller if the appeal requesting the use of the outdoor space is a major development and therefore should be considered in conjunction with or at the same time as the other site plan improvements including the parking and the re-forestation. Ms. Heller answered the re-forestation, the parking, all of the improvements that have been done that the Pinelands is calling up would be part of the site plan and then it would be up to the Board to decide on the Appeal. A site plan application should be submitted because of the parking issue and to clarify the inside seating. We had none of this information as far as if anything was going to be added with the outdoor seating area. None of that information was on any of the application materials we received.

Mr. Olivo stated he submitted to the Board Mr. Kopa wants to put outdoor tables outside right now. This Board would have absolutely no jurisdiction over this happening whatsoever. It is a Pinelands issue. No different than Pinelands see someone cutting down forests illegally. This property is pre-existing. It's probably non-conforming in a lot of ways. The ongoing concern of putting seven (7) tables outside for outdoor dining without any construction whatsoever is far from what is considered major development. I understand Mr. Polistana. I respect him, but it is not major development in my opinion, and I have been doing this for 35 years. I can understand if they want to expand their building, I think they wanted to put outdoor activity; such as what I have heard, possibly pits out there for flag football, horseshoes, or whatever outdoor activity. Then I understand is an impact. This is not an impact. I believe there is a mix at this Board and there is no ordinance that I know, and I checked the ordinance on outdoor dining. I come here to appeal the decision because

it has got to come from somewhere. There has to be a rule or regulation or otherwise, but there is none.

Mr. LaPollo stated the decision was based upon his conversation with Anthony (Kopa) of outdoor entertainment, horse shoe pits, volley ball nets and outdoor dining. Not just outdoor dining. Mr. Olivo addressed Mr. LaPollo I think if they want to do all those things, absolutely, but you don't want to do that to the neighborhood. Outdoor dining without music outside, no live music. We are not talking about creating a disco tech or otherwise. Mr. Olivo referred to custard stands with tables outside and asked if that was contemplated at some point in time? Maybe it was, maybe it wasn't, but it's not major development and it is not what would normally have to come before a Board. I am not being critical John. Mr. LaPollo addressed Mr. Olivo and stated he understood, but needed Mr. Olivo to understand the conversation which took place is what was on the table, not just seven (7) tables. Mr. Olivo stated he submits to the Board the gentlemen (Mr. Kopa) who are operating this establishment want to do something more intense than putting 7 tables outside and serving some food and drink then they go before the Board. Then rightfully so, you can ask them to produce a site plan. You want a Site Plan approval, they would have the right to say they would like to have a waiver of it. In which case I present, but as far as this activity I don't believe I would need a Site Plan approval and certainly it is not major development.

Mr. Coombs asked for the description of the fence around the paved patio. Mr. Kopa responded it is a 4' chain link fence surrounding the entire patio. Mr. Coombs asked if there exits and if the exits are open all the time. Mr. Kopa responded yes there are exits. There is an unlocked gate. Right now it is locked so nobody can go in there. Mr. Coombs asked Mr. Kopa to describe the concrete pad. Mr. Kopa explained it is an existing thick, stamped concrete pad. Mr. Coombs questioned if there are steps. Mr. Kopa stated no steps. There is a handicap ramp. Ms. Heller asked if the outdoor area can only be accessed if you go into the restaurant or can the outdoor seating area be accessed from the parking lot. Mr. Kopa answered there is a fence. The patio can be access from inside and from outside. Mr. Olivo added it is gated. Ms. Heller reaffirmed typically the patron can park a car and just walk into the outdoor dining area without going through the restaurant. Mr. Kopa responded yes.

Mr. Stultrager asked if the it could be made an emergency exit only and added normally places like that are set up so that you can run out, but can only run through the building if it is on fire to escape the area. Can it be made so it is only one way so people aren't going in from the outside dining area. Mr. Olivo answered certainly you would for safety purposes. Mr. Stultrager continued it sounds like the concern is having people coming through the parking lot and go out rather see people go through the building. Ms. Heller responded typically a lot of outdoor dining areas you have to walk through the restaurant in order to get outside. Mr. Kopa answered we have that ability to. Are you saying you do not want us to use that as an entrance. Ms. Heller answered we are suggesting to not use it as an entrance. Mr. Stultrager added it would be an exit only. You would put a label on it. Mr. Olivo suggested to put a label on the outside that says exit only. Mr. Kopa responded yes that is probably what we should do. That is an easy fix.

Mr. Coombs stated he is not familiar with the clientele, but for example for purposes of carding and that sort of thing it might be better to just have one entrance. Mr. Kopa responded whatever

you choose.

Mr. Pino stated there are tiers of issues which are muddling a lot of other issues. For the sake of clarity can we sort through these issues. One of which is they are saying that there is no issue with regards to the seating outside because it is being relocated from the inside. Mr. Pino asked Mr. Coombs are you agreeing legally this is the case and we have no Ordinances against the outside issues. Mr. Coombs stated he is not the Borough's Solicitor, but in a check I did not find any limitation on that for seating. Mr. Pino then asked Mr. LaPollo if the citation was because of proposed plans they were doing or was it because of the actual Use at the time. Mr. LaPollo answered he (Mr. Kopa) requested the outdoor dining with the possibility of outdoor entertainment and horse shoes and I denied that. Last week they set tables up outside and it appeared to me that they were being used. Mr. LaPollo believed Mr. Kopa was moving forward with his plans to set up outdoor dining with a horse shoe pit and a band regardless of being denied the request. I issued the summons and that summons brought the cease and desist order. Under the pretenses he was coming in front of the Board, Mr. LaPollo believed it was Mr. Kopa's way of saying I'm setting this up with or without your permission. Mr. LaPollo believed Mr. Kopa was going to set up a horse shoe pit and have a band there next weekend. I sent the cease and desist order because they set up without the approvals. Mr. Kopa stated we did take everything down though.

Mr. Pino asked Mr. LaPollo if he knew there was only going to be dining, no entertainment, no horse shoe pits etc. would you still have issued the cease and desist order? Mr. LaPollo answered no, at the time I was not aware they were taking away seating from inside to put outside. It was Mr. LaPollo's understanding there would be additional seating without parking or compliance with septic dilution and things of that nature. Whether they can accommodate (additional load) or not that is not for me to decide, but it is a County approval. Mr. Pino asked Mr. LaPollo if based on what the testimony has been tonight would he have now. Mr. LaPollo answered if Mr. Kopa were to comply with what he is saying and not have the actual venues and entertainment and was set for a low key seven (7) table seating where the clients are not driving out the back entrance onto Park Avenue. He has made an attempt to stop that. I would be fine with that. I am not against the outdoor dining at all. I just feel he needs get the proper approvals first.

Mr. Pino asked Mr. Kopa if he were suggesting no approvals are needed because this was pre-existing. Mr. Olivo answered it is not intentioned, but there is no rule or regulation or code that prohibits outdoor dining and to the extent there is an occupancy issue, it is a pre-existing, not conforming to today's standards, but he has a right to continue doing what he is doing under the law. If he wants to do an addition to the building, absolutely he has to come before this Board. If he wants to increase the intensity of the use of the property for the actual recreation, as far as platforms and tiki bars etc. he would actually have to come to the Board, but for what he is asking for I submit the only way he would have to be here I am not trying to disrespect to the Board, but they want to be good neighbors and they want to clean this property up and I think they have done a nice job so far. All they can do is keep going along with it and dealing with Pinelands or the issues that they are not really been dealt with. We have already dealt with Atlantic County Cape Soil so to clear up the issue. Now we have to resolve the checklist for the Pinelands. They (Bleachers) didn't do it, but they inherited it. All we are asking of this Board is

appealing to the extent is an appeal of your Zoning Officers determination as to putting the seven (7) tables and service bar on the patio. That is all we are asking for.

Mr. Pino asked Mr. Coombs if he would agree both the Zoning Officer and the Applicant are understanding each other. Mr. Coombs answered it appears this could go through with conditions and Ms. Heller and I are reviewing the conditions. I would also like to note the Borough of Folsom does have this specific noise ordinance for commercial establishments and obviously they would have to comply with that. Specifically, Section 134-3 B(10) of the Borough's ordinance says commercial establishments from which a loud noise emanates as a result of mechanical musical devices, live entertainment, or patrons. There will be a rebuttable presumption of a violation of this section if the noise is plainly audible at a distance of 100 ft. from the place where it emanates between the hours of 11:00 p.m. and 7:00 a.m. As long as you can comply. Mr. Olivo responded that is not uncommon.

Mr. Pino stated in light of the letter that was distributed to us I am curious to hear this side of it as well.

Mr. Pitale asked for any other questions from the Board. Hearing none the meeting was opened to the public.

Mr. Coombs swore in Hazel Pringle, 56 Park Avenue, in the Borough of Folsom. I have been a resident there for forty years. I went there when there was nothing but marble and stones. It was country. I decide to live there, but later they built homes and things which is now enjoyable, but that bar. The bar is okay, but the outside and the music and the drunks they get carried away. I've had them come out the back in my yard with a car. I was here during the time it was 6:00 in the morning to 2:00 in the morning. Because of all of what was going on. They say they are not going to have music outside, but I'm in my house in my bed and I can still hear the music coming from there. That is how close my property is to. They have extended the driveway almost to Park Ave. Even when they had the kids, the young people that had school busses. They were all back on Park Ave. I stood on the porch and looked at them. They were running up and down Park Ave. The noise was coming from over there. The kids weren't drinking they were just having fun. I don't know what school it was, but it was school busses. It looked like young people running up and down looking for some girl that got lost and the busses were getting ready to leave. They try to make a driveway coming from the bar to Park Ave., which is a short distance because now the parking area is no further than from Park Ave. almost just where you are seated. That how far the parking area has been extended with the black tar. They said they didn't cut down trees. They cut down trees to extend the parking lot. I wish you wouldn't let them have nothing on the outside because it is enough on the inside with the noise. I have been there since I was young. This year I am 83 years old. I don't need all that banging. My daughter came to visit me Saturday night and when she rang the doorbell. When I opened the door she said music don't your hear it. I said I hear it, but you don't have to carry on with the music.

You can put things out and say I'm just going to serve a sandwich and a soda. No, when there is liquor and people are drinking, they get loud, they do things, and they carry on. I sat on my porch and watched men fight women. It wasn't the neighbors. It was people coming from

Pennsylvania going to Atlantic City. People coming from Atlantic City headed back to Pennsylvania. They would already be drinking and stopping in and drink more. They would go out the back because they knew if they went out the front the police would stop them. They don't want people to drink and drive this is the law. Do not drink and drive, but then you are allowing them to come out of the bar drinking and get in a car and go. I wish you wouldn't put them on the outside, keep them on the inside. It's enough.

They put a little fence. The truck came from back there and knocked that done. Now they put up one of those red and white things. If they would just put a fence across their property, I would really appreciate it. From the parking lot around so people won't be coming out and maybe that will cut down some of the noise. These people don't live there. They don't live where I live. I live almost at the door of those people with all that drinking. When people get high and get in their cars they come through the back speeding and motorcycles come making noise. These people go home and get in their houses with peace and quiet. Folsom used to be and it still is the best neighborhood I know. Nothing but quietness here. You don't see people carrying on in Folsom. I am just asking for a little peace and quiet. How are you going to bring all of these people there and have them racing carrying on and then go home. They don't have to live there. They don't have to listen to that (noise). I don't have a lawyer. I can't afford a lawyer. I pay enough tax. My tax is more than what my mortgage use to be. I pay all kinds of tax, but I have no voice in what people do that don't even live there.

He said they put the tables out. They had the tables out before. They put the music so loud in the building so the people can hear sitting out there and they allow people drinking are not quiet people. It is having fun to them. I can't find someplace else to live, but I am so old now. Who would sell me a house. I don't work anymore. I came to the Borough of Folsom for peace and quiet. All the forty years I have been here, it has been sort of rocky with that place out there, but people just left. I do want peace and quiet. Why can't you put up a high fence.

Mr. Pitale asked if the restaurant building was there before Mrs. Pringle moved in. Ms. Pringle answered yes, the gentleman who was there when I moved in had a restaurant it wasn't liquor and it was quiet because it was a restaurant. I really don't want them to put the eating area. They can eat inside, they can drink inside, and they can put music inside. Just put a fence. I'm sleeping inside and I don't know when those people are going to come through there drunk. This is why I fear for myself and my children and I don't like for them to see all of that coming out from over there.

Mr. Pitale asked Mrs. Pringle if she would have a problem with the noise if Bleachers complies with noise restrictions in the Borough's Ordinances. Mrs. Pringle answered they say they will keep the noise down, but you come and spend the night at my house. Right now, without the tables being out there especially on the weekend. The noise is there all the time even without the tables and outside dining. Her house is very close to the bar. She stated a fence is needed because people will go right through (the back).

Mr. Pitale asked if there were any other comments from the public.

Mr. Olivo asked Mr. Kopa if there has ever been a fight or altercation on the property since he has taken over the property with his partners. Mr. Kopa answered no. Mr. Olivo asked if there

has ever been an incident requiring State Police to come to the scene for any purposes. Mr. Kopa answered no there has not. Mr. Olivo asked if he ever had any problems with outdoor fighting. Mr. Kopa answered no, we have never had a fight at the property since we have had it the whole time. Mr. Olivo questioned about the dirt drives that have been there from a long time ago and if he has taken every effort to close them off as best he can. Mr. Kopa answered yes, we put an 8 ft. x 6 ft. tall fence in the back to block the one that faces Mrs. Pingle's home and somebody did go through it and smashed it. We ended up putting a temporary construction fence along the outside of the parking area so nobody goes through there again. I have notified John (Mr. LaPollo) and sent him some pictures. We plan on putting a guardrail back there to try to prevent people from going out the back. Mr. Olivo stated planting some trees might also help. Mr. Kopa agreed trees might help. Mr. Olivo continued they are doing everything they could to stop people from doing from what they are not suppose to be doing, but business has a right to operate and they are trying to be a good neighbor by doing the things they are doing.

Mr. Esposito asked if there have been any noise violations reported. Mr. Kopa answered no. Mr. Olivo stated he believed the bar and restaurant has been there since 1950. I believe it was Hallway's and there was liquor.

Mr. Coombs asked Mr. Kopa to point out where the 6 ft. fence is on Exhibit P-1 and what length it runs. Mr. Kopa looked for the old survey. He stated there is an old survey. Mr. Coombs asked what notes he had on the old survey. Unable to find the old survey he began to explain there are two earth drives out the back from 1990. They were there pre-existing to us coming along. Mr. Coombs stated he sees 3. Mr. Kopa responded right there are 3 of them. One we put, there is a dirt pile. One, if you are looking on the far left is non-existing. The other two, the one that goes to the right which is brush. The one to the left is the one that faces Mrs. Pringles house. In the beginning we were having people that were going out the back. We noticed it and we put a fence up. We didn't put a fence across the whole back. We put some concrete pillars on the ground and we put a 6 ft. tall x 8 ft. wide fence covering that area. I took pictures of and sent it. Mr. Coombs asked what type of fence it was. Mr. Kopa answered it was a wood privacy fence and 3 weeks after somebody drove through it and smashed it. At that point I notified the day after before there was a complaint and said I would clean it up and we are going to do what we can. We took an orange construction privacy fence and put it across the entire back of the parking lot. It is a 4 ft. construction fence. Mr. LaPollo explained the put privacy fences on the road side at the wood line and the orange fence is inside the parking area. Mr. Kopa added we plan on putting a guard rail back there too, to prevent people from going back there. These people are driving over tree stumps now. Mr. Coombs questioned these are your patrons? One we actually have on camera is not a patron, but actually cut through the parking lot. We couldn't get a clear enough look at him. Mr. LaPollo stated the last guy who did crash was a patron. Mr. Kopa answered he hasn't been back, but we are doing everything we can to prevent them going out on Park Avenue.

Mr. Olivo asked for a determination.

Mr. Pitale questioned how can we rule on outdoor seating if the Borough's Ordinances do not prohibit outdoor seating.

Mr. Coombs responded the question becomes whether it is an Expansion as suggested by the Engineers office or Use of Space already there and perhaps been used in the past for the same Use. The Borough has an Unlawful Acts Ordinance with regards to alcohol consumption which states no person can drink a beverage on a sidewalk, street, avenue, alley, highway, public park, parking lot or athletic field. The emphasis here is on public spaces or parking lots or highways, but it does not say you cannot drink outside on a private establishment. It does not say that. Mr. Kopa responded it is licensed by the State of New Jersey which pre-empts local law. Mr. Olivo stated the entire property is licensed. Mr. Coombs stated there are not many limitations on what they are asking. Mr. Kopa questioned if there is action required by us since it is not prohibited don't you usually rule on it. Mr. Coombs responded they are not asking for a Site change. Mr. Kopa stated he is asking for outdoor seating. Mr. Olivo stated he is appealing the decision of the Zoning Officer saying he cannot do it. The Board can, if they desire, to say we agree with the applicant. We reverse the decision of the Zoning Officer with regard to outdoor seating. We are not appealing any issue Mr. LaPollo has with outdoor activity. He said no pits, we said fine. We are not appealing that. We are only talking about the outdoor seating and beverage service.

Mr. LaPollo asked what is on the books to say that you still operate inside along with the outside, and you are not adding seating and capacity; you are not going to use part of the inside when you use part of the outside. Mr. Olivo responded we are saying we are not going to increase our capacity. That was the condition and we are only talking about a certain amount of months here. Only when the weather is nice enough to go outside. We are not talking about 12 months out of the year. Nobody is going to want to sit out there in January. Mr. Esposito questioned if Mr. Kopa if what he was saying is during the summer time there will be no more than 14 seats inside in that area. Mr. Kopa stated he will take seats from inside and put them outside. Mr. Coombs asked who will appeal the condition upon no more than 48 seats besides bar seats both inside and outside. Mr. Olivo stated whatever the capacity of the building is. The Fire Marshal or the Board of Health usually determines the capacity. Mr. LaPollo mention the pollution model septic system, but I don't know what it was sized for. Mr. LaPollo stated nobody knows. Mr. Kopa stated we don't even know the date of it. Mr. Olivo stated there are no violations with it and Mr. LaPollo agreed to the point of not that he was aware of any.

Mr. Gummoe found in the Burough's Ordinances under 200-26. Provided the expansion doesn't exceed more than 50% of the floor area it is allowed. Mr. LaPollo responded what I denied was the seating, adding of the capacity, adding of capacity in parking, and along with the music venue and volleyball and activities. It has nothing to do with putting an addition on or the size. My determination was based upon the fact we discussed music, volleyball, horseshoes, and the adding of seating. There was no mention of the removal of inside seating to compare to the outside seating. He wasn't taking seven (7) tables and putting them outside, he was just adding seven (7) tables.

Mr. Olivo stated the capacity has to do with the space. We couldn't find space. Mr. LaPollo responded it had to do with parking. Our Ordinance reads for every four (4) people you have to have one (1) parking space. Mr. Olivo answered for parking I understand, but the capacity of the building is determined by square footage and it is for the interior of the space for life safety reasons. It has nothing to do with parking spaces. Mr. LaPollo agreed and added it has to do with the adding of the clientele outside. The inside is already established at 242. If you weren't

removing seven (7) tables from the inside, you are adding 28 people to the capacity of the existing standing room only. That is why I made my determination. Mr. Olivo agreed and added not to increase the capacity of the restaurant. Mr. LaPollo added when Mr. Kopa and I talked it was not stated.

Mr. Pitale asked if there were any other questions.

Mr. Pino stated based on the fact it seems we have this issue clarified I would like to make a Motion the request we made of them be rescinded if they abide under the conditions we just spoke of and remove the additional seating from inside to accommodate the outside seating. If they violate the noise Ordinances I agree. Also want to add the residents should call the State Police and file a Complaint against violating the municipal noise Ordinance. You have every right to do that. We have no control over that and even the business owners have only a limited amount of control over that. Sometimes out of control people need someone with an uniform to set them right. I suggest you seek that remedy when it occurs. I would like to make a Motion based on the clarification they are going to abide by everything they have spoken of then we rescind the request we have made of them.

Mr. Coombs asked for a summary of the conditions. Mr. Pino stated I think it is important we summarize they are going to make an even trade for what allowable seating is allowed outside. An even trade be made of the interior seating. Any spot checks found by Mr. LaPollo would be in and they would have to accept that. Base on the fact it is not what they agreed to and it would be in violation of what the Engineer said would be encountering an Expansion. Mr. Coombs added no live entertainment, no sports outside, no music of any kind, recorded or otherwise. Mr. Pino stated I believe they are on record as saying that is the case. Mr. Coombs continued perhaps make efforts to re-establish the fence.

The appeal of the Zoning Officer's decision will be rescinded subject to the following conditions:

- 1.) There will be no additional seating. Tables already existing inside will be re-located to the outside patio and there will be no increase in capacity.
- 2.) No outside music, bands, or speakers.
- 3.) There will be no outdoor activity such as horse shoe pits or volley ball nets.
- 4.) The door between the restaurant/bar area and the outside dining patio be labeled and used as an exit only.
- 5.) All drinking and eating will be contained in the patio area and not in the parking lot.
- 6.) A storm water management plan will be submitted to the Pinelands and the Folsom Planning and Zoning Board.
- 7.) A letter will be submitted to the Board explaining what the Pinelands has requested with regard to the planting of trees and/or removal of millings in the parking area.
- 8.) A fence shall be established on the rear of the property.
- 9.) The hours for outside dining will coincide with the Borough of Folsom's Noise Ordinance.

Mr. Pino made a Motion to rescind decision of the Zoning Officer based on the fact of the

information they provided and they are going to abide by an even trade of inside seating for outside seating and not encroach upon the issues the Engineering argues against expansion, and there will be no live entertainment, no sports outside, no music of any kind, recorded or otherwise, and to re-establish the fence was made by Mr. Pino and seconded by Mr. Esposito.

There was a roll call vote with ayes all. Mr. Stuhltrager did not vote as he needed to leave the meeting early and was not present.

Mr. Pitale asked if there were any other matters for the Board. Hearing none he announced the next scheduled meeting.

Mr. Pitale announced the next scheduled meeting will be May 21, 2014.

Meeting adjourned at 8:49 PM.

Respectfully submitted,

Susan Carroll
Board Secretary