

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

May 21, 2014

The meeting was called to order at 7:20 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, Joel Speigle, John Hehre, Ron Esposito, Greg Schenker, and Byron Gummo.

Absent: Tom Ballistreri, Joe Pino, Joe Stuhltrager, John LaPollo

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

APPROVAL OF MINUTES:

A motion was made by Glen Smith and seconded by Charlie Pitale to approve the minutes of April 16, 2014. There was a roll call vote with ayes all and abstentions by Glen Smith, John Hehre, and Greg Schenker.

Mr. Pitale provided notice of the adoption of the Resolution for the Eckhardt Application. A Motion was made, and the Motion was seconded, and a roll call vote was taken, and it was agreed upon by e-mail / electronic means on April 30, 2014, to approve Resolution 03-2014 for George and Pamela Eckhardt, 1350 Mays Landing Road, 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.

APPLICATIONS:

Application # 03-ZB-14 - Collings Lakes Food Market, 10 E. Black Horse Pike, Folsom, New Jersey 08037 is seeking Conditional Use for a 518 square foot portion of the 3,596 square foot retail facility from dry cleaners to a package goods retail sales store for the sale of packaged liquor and seating area.

Fred DeClement on behalf of Collings Lakes Food Market, LLC. Their application is before this board for a change of use which is a conditional permitted use, we believe under ordinance section 217 B7. A correction there will be no variance just a chance of use. Mr. Landgraf will present the technical aspects of the application and Mr. Berenato is here.

Mr. Coombs swore in Mr. Landgraf and Mr. Berenato.

Joseph Berenato, 23 Samantha Dr., Hammonton, N. J. My father owns the store and I am the Secretary of the Corporation.

Lance Landgraf, Licensed New Jersey Planner of Marathon Engineering, 2922 Atlantic Ave., Atlantic City, N. J.

Mr. Landgraf presented testimony. He stated, as Mr. DeClement indicated, we are here for a Conditional Use permit. It is a little different then what you have seen before. We originally asked for a Change of Use, but under your Ordinance we are a Conditional Use permitted by Ordinance under Section 200-17 B (7). Roadside retail sales and service establishments, bars, taverns and nightclubs, garden centers, banks,... offices and like uses to serve Pinelands residents and travelers.

It is pretty much is anything you can think of that sells something that can go into this location. It works out there is roughly a 3500 – 3600 sq. ft. building. Mr. Landgraf presented a plan which was submitted with the application. It was an aerial picture of the Collins Lakes Food Market. Mr. Coombs marked is as Exhibit A-1. Mr. Landgraf continued, it is an aerial photograph of the site. The plan is dated March 6, 2014. It was revised April 10th 2014 and it is a 2012 aerial of the site. The Black Horse Pike runs through the bottom of the page and Cains Mill Road to the left side of the site. The site is centered in the middle. It is roughly just under 2 acres, 1.77 acres in size and has a 3600 sq. ft. existing building on it. It has various retail uses in it. It had a dry cleaners that since been closed, an office, a deli, a grocery store at the front end (eastern end) of the building. We propose to change the dry cleaner, a 518 sq. ft. end of the building, into a packaged goods store. Because of the type of liquor license we have, it is a C License / Consumption License, we have to have 3 seats. There will be 3 bar stools. That is what it is going to have. It is mainly there for package goods that will be sold out of the property, but we do have to have seats because that is the type of license. If they want to come in and sit down and have a beer they can certainly do that. It is not going to have taps or anything like that. It is bottled products. It is in the Rural Development District and we are a permitted conditional use and with that we submitted a very basic plan because we are not proposing to change anything on this site. We are just cleaning up inside, clean up that part of the property, and change the use of the building so it functions. We will add a cooler box inside the building and it will be about 300 of the 500 sq. ft. You will see a list of about 19 different waivers we asked for in your Engineers Report. All of those pertain to a Site Plan type Application. It is asking for a lighting plan, landscaping plan, storm water management plan, soil borings plan and profiles, proposed utility locations, required road dedications, site easements. None of that is involved with this application because we are not changing the physical properties of the site. We are taking a very

small portion of the building and changing its use to a permitted use in this zone. We are asking for several waivers with that aspect of it.

There are two (2) existing non-conforming conditions and that is the lot area under your ordinance the zone requires a minimum of five and a half (5 ½) acres for any use in this zone. We exist at 1.775 acres. It is an existing non-conformity. We are not expanding upon that we are not making the building bigger to impact the site parameters of this property. We ask for that to be continued existing non-conformity allowed to continue. There would be no variance needed for the condition. The second is the lot coverage. The maximum lot coverage in this zone is 10%. With the size of the parking lot we are at about 31% with the building and parking area. The parking is quite large. We only have designated 26 parking spaces designated, but there is a lot more space out there that could be used for parking if needed. There has never been a problem there in the 30 years Mr. Berenato's family has owned this site. They have not had an accident or parking problems there. There was an incident where someone drove into the building, but it had nothing to do with the parking. It was someone putting the accelerator down instead of the brake. There are 22 spaces against the building. If those are filled and even if they are not filled, sometimes people will park in front of a little island where just 4 cars can fit. We will have cars parked along the side. I did not delineate them because they are not really spaces. They wouldn't function as legal spaces, but people will park there if need be. There is a delivery truck where deliveries will come in right through the front door. They do not access the back of the building. We have met the criteria under the conditional use permit and would ask the Board grant the approval.

Mr. Pitale asked what type of signage is proposed. Mr. Berenato replied the sign is on the building and we already have a sign out front, "Collings Lake Food Market". We will have a sign coming down the roof. Mr. Pitale asked if the sign there now is for the dry cleaners. Mr. Berenato replied there was one in the window, but I don't know if there is one on the roof. Mr. Pitale asked if there will be signs added out by the street. Mr. Berenato replied we have one sign there we are going to keep. We only have the one sign and it is going to be on the building.

Mr. Hehre asked how many entrances are there for that particular unit. Mr. Berenato answered just the one, just the outlet. Mr. Hehre asked if just the one door is going to remain the same. Mr. Berenato answered just the front. Mr. Landgraf added the back will mostly be made up of the cooler.

Mr. Coombs asked if the Fire Marshal indicated what the occupancy is beyond the three (3) stools. Mr. Landgraf answered as part of his review the building permit will tell them how many people will be allowed to be in there at one time. Mr. Coombs asked if he has made an estimate. Mr. Landgraf answered we have made those applications, but we came here first.

Mr. Spiegle questioned the general clean-up of the area which use to be a dry cleaning business and if dry cleaning was done on side. Mr. Berenato answered it was a drop off site. There was never dry cleaning done on site. The dry cleaning was sent out. They would drop them off and bring them to a dry cleaner.

Mr. Schenker questioned if the State licensing has certain requirements for where the coolers are allowed to be located, for the exterior walls, or any other requirements with the particular license

being used which the Board would be obligated to enforce. Mr. Landgraf responded he would defer to the State license. Mr. Berenato added he had a liquor store before where we had to have 3 benches, we were not allowed to have anything in the walkways, and everything had to be on the walls for safety hazards. Mr. Schenker responded he believed it states exterior walls. Mr. Berenato added exterior walls and floor. If we were running specials, we weren't allowed to put them in the middle of the floor. Mr. Shenker stated his in his experience with Horse'n Around, which no longer exists, exterior walls were one of the issues. It is why they put things on either side because they couldn't. Mr. Landgraf stated we are on the end of the building. Mr. Schenker asked if both walls are considered exterior walls. Mr. Berenato answered we only have one exterior wall. Mr. Schenker stated the back wall would be exterior also. Mr. Landgraf answered there would have to be a space between the cooler and to serve. Mr. Schenker asked if we (the Board) would enforce it or if the State does. Mr. Coombs replied the State does and they have to submit a schematic to the state. Mr. Berenato added we reported when I had them on the floor and they came in, and they told us we had to get everything off the floor. Mr. Schenker added I just wanted to be sure of that clarification because I know it was an issue years back with Horsin Around.

Mr. Gummoe asked if there will be any bathroom facilities inside the bar itself. Mr. Berenato answered there is a bathroom in there now, it would be pre-existing and it is the bathroom we will be using. It's been there for years. Mr. Gummoe asked if they are going to have the people drinking. Mr. Berenato responded our main concern is to sell packaged goods. Mr. Gummoe responded the way I understand it you are going to put the stools out and it requires facilities. Mr. Berenato responded he understood. There was a bathroom there and it been there for years.

Mr. Gummoe asked if there is going to be food service available. Mr. Berenato answered there are no kitchen services allowed. We have a deli two (2) stores down if they want to get something to eat. Mr. Gummoe answered I understand that, but you are saying there will be a bar. There is no room there for a kitchen.

Mr. Esposito asked what you anticipate the hours of operation. Mr. Berenato answered the same as the deli. Maybe 9:00 for closing. Maybe 10:00 we are going to sign her out. We are not looking for a 24 hour bar. My father is 71 years old.

Mr. Coombs stated he noticed it (the liquor store) is the end unit and asked if there are any improved seating area, patio area, or anything on the outside of the end unit. Mr. Landgraf answered we are not looking for that. Mr. Berenato answered no. Mr. Landgraf added if we were going to do it, we would have to come back with a site plan. Mr. Coombs stated he was just wondering if there was anything existing there. Mr. Landgraf stated we wanted a packaged goods store and because of the license we have to have 3 seats.

Mr. Gummoe asked if the parking spots on the Site Plan are 9 x 18. Mr. Landgraf answered it is a concept plan. The existing conditions are 9 x 18. That is what they are now. We are not changing it. Mr. Gummoe stated currently there are no lines (on the lot) for locations. Mr. Landgraf answered no there are not. I did that (included lines on the exhibit) so I can see how many spaces I could fit on the site. If I have to make them larger, it's not a problem. We would lose spaces along the frontage. Mr. Berenato added I would like to keep the spaces along the

front of the store because if we try to change anything at the island it will cause havoc. There are people pulling in all the time. They pull in from the corner of the driveway. It has always been that way. There are people backing out and it will create havoc. Mr. Landgraf added the purpose of the sketch is to see how many could fit on the site. It isn't something we are going to change. The Engineers office asked for some kind of parking plan. This is what we came up with to see how many we can fit there. We had another iteration that had 10 x 20 spaces. I can still get the 24 that are required if we had to do it. I would rather not put parking spaces in the middle because it becomes difficult to maneuver around the site. Mr. Gumoe asked if parking lines and demarcations will be put in. Mr. Berenato answered both, for cross required building that are required. That is fine. Mr. Gumoe added because of the traffic flow if you are not paying attention someone can back into you. Mr. Landgraf responded we can stripe and we can add the handicap parking spaces. Mr. Berenato added where the law requires too.

Mr. Gumoe asked what handicap access is there for the area. Mr. Landgraf answered when we put the handicap spaces in they will have to have a ramp going up so there will be a strip of walkway along the front that is raised. Mr. Berenato added the walkway to the front of the stores is actually level with the stores. There would have to be a ramp on the left hand side and if it is required then we will have to do it. Mr. Gumoe pointed out there is all curb through there. Mr. Berenato stated once you get up on the curb it is level going into the store. Our main problem would be the access. Mr. Landgraf responded there are a couple ways to do it. Cut into the sidewalk, which I would rather not do, or bring a ramp down into the parking lot. Mr. Gumoe added it should be considered because it has happened before where handicap access was not put in and there were complaints raised.

Mr. Pitale asked how many employees will be on site at any one time. Mr. Berenato answered right now we have 2 employees in the store mostly all the time in the deli and the store and I will have one person in the liquor store.

Mr. Pitale asked if there are any other request from the Board. Hearing none he asked for the Engineers Report.

Mr. Polistina stated the Engineers Report is dated May 15th. This is an application for a Conditional Use Permit not necessarily a Site Plan. The Code indicates this is a Conditional Use by permit in the zones. We are not necessarily looking at all the site plan issues even though we did compare the application versus the checklist for the site plan application just to give a comparison to you to use what has been provided. The only question I have for Mr. Landgraf is we went back and forth on the noticing aspect of this. Mr. Landgraf answered we did provide notice. It was in the newspaper and I believe we provided to Susan the returned green cards. Mr. Polistina questioned if the advertisement was in the Atlantic City Press. Mr. Landgraf responded yes. Mr. Polistina stated it was one of the things that was requested is to provide notice to adjacent owners within 200 ft. It was one of the checklist items they have now addressed. There are no changes of site improvements proposed with the exception now the striping of the parking lot and the addition of the handicap accessibility. We are recommending you grant all the checklist waivers and deem the application complete.

Mr. Schenker made the Motion to grant the checklist waivers and deem the application complete and Mr. Pitale seconded the Motion. There was a roll call vote with ayes all.

Mr. Polistina continued in terms of the zoning it indicates a Rural Development District. There are 2 existing non-conformities associated with the site. The lot area and the existing coverage. They are both existing with the improvements they proposed with the striping and the handicap accessibility it is not going to have any impact on either one of these issues. It is still existing non-conformities. Code is a little odd in that normally you would have conditional uses that are allowed in the zone and then there would be conditions imposed. This is why it is usually called a conditional use. This is odd because it is a conditional use in the code, but there are no conditions. They can basically do what they want and because of that they are not submitting a Site Plan. They are just asking for Conditional Use Permit to change the use of this facility. Normally you would have a condition imposed, but there is no condition to meet. It is essentially a permitted use in this zone. In terms of the parking because it is not a Site Plan application, only a conditional use permit. I spoke with Mr. Landgraf to make sure there are no variances required with the application because if there are variances it would trigger additional requirements. We looked specifically to make sure there is enough parking on the site and to make sure the size of the parking is more comfortable. That one they had enough parking on the site and two they can adequately provide the size that is necessary on the site. In terms of the striping, they are going to stripe against the building. We looked at several iterations of the plan, but the historical use of the property is people are parking where they are parking. I don't like some of the things they submitted to the Board, but it is a conditional use permit. It is not a site plan application. Historical parking has been done there and keep doing it. We don't want to approve a plan that has either parking along the island, or parking in the drive isles, or something that will create conflicts between people pulling in, exiting, and people trying to park. They are going to continue the historical parking at the site with the exception now they will stripe ones in the front and create handicap accessibility. That is all we are looking for with parking to make sure they are not going to trigger any variances. It will not and so we are comfortable moving forward with what has always been done at the site.

Mr. Hehre asked Mr. Polistina if they are going to stripe the ones in the front. Mr. Polistina answered they are going to stripe the ones (parking spaces) in front of the building. They have two (2) drive isles and I'm concerned about having conflicts between people parking in those isles or against the isles or people pulling in and exiting. With t-he additional retail introduced there. They are going to stripe the ones in the front and continue the use as it has been. In terms of signage, there are some regulations in the code related to signage. They will have to meet whatever those requirement are. Make sure the sizes meet or it will trigger another variance and you will have to come back here. Make sure you look at the code and make sure the signage meets whatever is required and get a permit. Otherwise, they would have to come back if the sign triggers a variance as well.

There is not much in terms of Site Plan to talk about. It's a permitted use with no conditions and they are able to do it. They are just asking you to acknowledge they need a conditional use permit.

Mr. Pitale asked if there were any other questions for the Engineer. Hearing none the meeting was opened to the public for comment.

Mr. Coombs swore in Christine Esposito who resides at 9 E. Park Ave. Ms. Esposito stated her husband and her rented an apartment above Horsin' Around. We didn't want to have children until we moved away from there because bars & liquor stores bring people. Now my yard is directly behind it. Ms. Esposito expressed her concern that one bathroom is not going to serve the people going in there. They are going to be urinating in the woods.

Ms. Esposito continued, I have a research that show neighborhoods where bars, restaurants with liquor, and other stores that sell alcohol are close together suffer more frequent incidents of violence and other alcohol related problems according to the research by Prevention Research Center. I personally think Folsom has enough bars to accommodate Collings Lakes, Buena, and part of Hammonton. I don't understand, there is a bar 20 – 30 feet down the street that sells packaged goods. There is one across the Pike, Sneakers. Then there is a liquor store at 54. I don't understand why we need another one. It is bad enough the ones are attracting bad people. I don't want people in my backyard. From what I understand is changing the zoning is supposed to improve the neighborhood. By all means it's not going to improve my quality of life, nor anybody else that live behind it.

My husband found a bag of cloths the other day in the woods directly behind my house. He doesn't even clean up his woods. His whole lot is a mess. It's got wood all over the place. Trees broken down, cut up, and it's horrible. It's just a mess. He isn't going to take care of the liquor store. The other thing I heard is he doesn't want people sitting there, but if it makes money, he will do it. He sells things in the store like cloths and jewelry and anything he can to make money. Why wouldn't he sell beer at a cost where people if they want to sit down, they will.

I have little children. The last thing I need is a bar behind me / liquor store. I just ask you don't change the zoning. They said they need 5 acres. They don't have that. They don't even have close to that. Everybody behind us have children. Not to mention they all know how many people have been hit by a car just crossing the Pike right at the bar or ice cream stand. We will have people crossing more often. I personally don't understand how Folsom has seven (7) liquor license. From my understanding this one was inactive for eleven (11) years. We have 1,800 people in Folsom and yet we have (7) liquor licenses.

Mr. Schenker interrupted Ms. Esposito to explain the zoning is not being changed. Ms. Esposito answered the permitted use for the use of it. Mr. Schenker explained the Board will be approving a Change of Use of the particular spot. It is not going to be a dry cleaner anymore. It is going to be a bar/liquor store and it is a permitted use in that zoning. What we did is say it is ok, you are allowed to do it in that zone. That is what we will do tonight. Mr. Polsitina added this is what we are discussing; not a change in zoning. All they are asking is to get a conditional use by permit to introduce a use that is permitted in the zone in that building. Mr. Schenker gave an example. His father-in-law ran a garage down the street. He did used car sales, under hood repair, and sold gas. He doesn't sell gas or sell used cars any more. We never had to go for a Change of Use, but if someone came in and wanted to rent that building and do carpentry, build

cabinets, we would have to go for a Change of Use. This is the process we are doing now. We are saying it is okay. It is a Permitted Use.

Ms. Esposito stated it is not going to improve the quality of life for anyone around there. Mr. Schenker added if I lived behind there I wouldn't want is either, but it is a permitted use, he has owned the building for probably thirty (30) years. It is a Use he is allowed to do. He is just had to come to tell us (the Board) he was doing it. Ms. Esposito stated she thought there weren't any boundries. They didn't say you could. There is no definition of what a Conditional Use is. Mr. Schenker responded. He read the Conditional Uses were retail sales and bar. He went down the list of things there.

Ms. Esposito questioned the 5 acres. Mr. Polistina answered the zone requires 5 acres of area for the lot. The existing lot the building sits on is less than the 5 acres. It is why it is called existing non-conforming. It is not anything new. It is related to the existing lot. It is an existing non-conformity and the impervious coverage on the site is about 31% where 10% is allowed. They are not adding to any building or parking. The area and the impervious coverage is also existing non-conforming.

Ms. Esposito stated her other concern is for her neighbor next door. Nobody lives there. The house is vacant. People walk through there already. I don't need people. If I didn't have the experience, I probably wouldn't be here right now. I lived on top of Horsin Around. People will be urinating in my woods. Especially if there is one bathroom. I can see the back of the store. She stated the woods behind her house are atrocious and they look horrible. I don't think a bar or a liquor store is going to help this. Mr. Schenker responded if that is a problem and it is not being maintained with what the ordinance requires you can call John LaPollo or call the Clerk and let them know it is not being taken care of according to the Ordinance. They will ask them to do it nicely. If they don't do it, then he will site him and he will be required to come to court. That is the process. Ms. Esposito continued the other thing is we had somebody across the street from us in the woods. We called the police. It takes 20 minutes. Mr. Schenker stated he understood it, but you can't hold him responsible for it.

Mr. Schenker reasoned, if you owned the property, and you were there on the property, and had the opportunity to put the liquor store, and buy a liquor license. Ms. Esposito answered if it affected the neighborhood I wouldn't want to do it. Mr. Schenker asked is it going to affect anyone in the bar two (2) stores down. Ms. Esposito answered exactly two (2) stores down from it why do we need another one. Mr. Schenker stated they have been open for almost nine (9) months now and I haven't heard one complaint from the bar anything has happened. I understand what you are saying. It would be concerns of mine, but from our seat here it is black and white for us. Ms. Esposito stated because you do not live behind there. Mr. Schenker stated there is really no reason for us to not to grant what he is asking for. He is really not asking for anything he not allowed to do.

Mr. Pitale asked if anyone else from the public needed to be heard.

Mr. Coombs swore in Albert Salvia, 13 Park Ave., right behind the store. First of all, I have a couple of questions. I don't understand how, in the Borough of Folsom, or anywhere in the

United States, you can go and find an alcoholic license not in use, not being paid for to the State like it is supposed to be every month; and decide to buy the license and move it and open a bar. Take a license from a regular bar, and move it, and open a bar with three (3) stools. Right now, from 54 down, west all of those bars along there, the properties run from the Black Horse Pike to whatever the existing lot is behind them. So the run from one street to the other street. That is not the case with that. My father was the original owner. I can't understand how you can just blatantly say he is not changing anything. He is changing something. He is putting something that provides a little bit more danger in the neighborhood than a hair dresser, than a dry cleaner, than a grocery store. I don't want to get up and walk outside of my house and bang the gun like they did down the street. That is why that place was closed. I have my grandchildren come over to my house and I don't want to be worried about them going outside to play on my ground where I have lived for 50 years and find a gun from a place that is not supposed to be there. The biggest thing is how can a license you are supposed to renew every year, but wasn't renewed by the State. Find it, and buy it, and renew it? I thought once the licenses weren't used they go back to the state. I know you wouldn't want it near your house, or in Penny Pot, or on the other end of Collins Lakes.

Mr. Schenker responded the Pinecrest has a liquor license similar to this one. Mr. Salvia asked what is behind Pinecrest. A motel. There is a motel he owns. I'm sure it is more than 5 acres. Mr. Schenker stated he didn't know where he got his facts about the legalities of the permit paid for. We don't have any information on that. It goes through the State and the State reference the liquor law book assignments and liquor license. The Borough is not fully involved in any of it. It is something you need to figure out with the State Liquor License Control Board at this time. Is it in liquor license repair? It (the Borough) is not fully involved in any of that. It is something you would need to bring up to the State Liquor License Control Board. I don't claim to know the laws. Mr. Coombs added these Board Members do not cover alcohol license. The ABC does. Alcohol Beverage Control in the State of New Jersey. There are fines imposed for non-compliance or at least re-activate for licensing or any other type of license you have. There are certainly, without getting into specific detail, there are certain noticing requirements. With regards to our specific ordinance our Engineer is absolutely on point with regards to the Conditional Use Permit. I will state bars & taverns are specifically mentioned as Uses within this zone and dry cleaners are not. There is a Conditional allowed Use by permit. There are no additional conditions they have to meet beyond making the request. The Board will make its' determination based on this.

Ms. Esposito asked why they got a letter. Mr. Polistina responded we requested the letter specifically because we wanted you to know this was happening and it wasn't just done one day and somebody shows up with a bar in the backyard. We know that our Ordinance allows for this Use in the zone. There is some restriction as to what the Board can do, but we specifically requested them to be noticing the neighbors. We know it is controversial. We wanted you to have an opportunity to know it was going on, see the plan, and provide any comments. We are here to deal with the Land Use Application. Some of the Uses are not appropriate for this zone. The problem is, it is in black and white in the Borough of Folsom's zoning ordinance as a permitted use. It is online at the Borough's web page. I don't have a code book with me. Discussion ensued between Ms. Esposito and the Board Members. Ms. Esposito stated she understood the Conditional Use is by permit and all of the Board members can stop it, but do not

want to. You want to allow it. Mr. Smith explained we (the Board Members) can say no, but it is in black and white and they could come back to us legally, and fight us, and beat us, and it will cost a lot of money for nothing. Mr. Schenker explained the only thing we can act on is the law. Ms. Esposito asked if she could get an attorney. Mr. Polsitina explained the procedure for approval. They are going to take action at some point tonight and then there is going to be a Resolution prepared, and the action taken. Then they are going have to adopt the Resolution. Typically they will vote yes or no tonight. It will come back 30 days from now, next month. He advised if Ms. Esposito wanted to do something within the period she is certainly welcome to. Mr. Coombs added if you are interested in an appeal you are free to seek help and counsel.

Mr. Pitale asked if anyone else from the public needed to be heard.

Mr. Coombs swore in Robert J. Sutz Jr., 15 E. Park Ave.. Mr. Sutz asked what the hours of operation for the store would be. Mr. Berenato answered maybe it will be 10:00 I would think. The hours will not be long. Mr. Sutz stated it was his only question. I have no problem with it. Mr. Schenker added the hours allowable are until 2:00 by Ordinance. There is an Ordinance which governs us. Mr. Polistina stated they are going to voluntarily cap the hours. Mr. Landgraf answered 10:00 pm is the latest it will be open.

Ms. Esposito added people can climb right over the fence that is there. Mr. Polistina suggested if you want to ask for a condition, such as a fence, you need to ask tonight. You can stand up and ask for them to put a fence up and they might say yes. Mr. Landgraf stated there is fencing all along the rear property. Ms. Esposito explained the location of the fence and stated there is a location where there is no fence. Mr. Berenato explained we do not own that property. It is owned by Adamucci. Mr. Polsitina stated he believed they are agreeing to put a fence along the parking lot to the west side. Mr. Schenker stated he didn't believe their intent is to destroy the neighborhood. They have run a business there for many years. Discussion ensued between Ms. Esposito and Mr. Schenker.

Mr. Pitale asked if anyone else from the public needed to be heard.

Mr. Coombs swore in William Salvia, 13 E. Park Ave. Mr. Salvia described the fence currently in their back yard. The fence in the back yard is chain link. It is 6 foot, but we can see completely into the back. It is 58.9 ft. from our back yard. Mr. Salvia asked if there is going to be a fire exit in case there is a fire. He explained there is only one door in the whole building except for the store where there is an exit in the back for the store room and the front door. All the other stores have one door. Is there going to be a fire exit in the back in case there is a fire? He also asked, when they put the coolers in if they will be running all night so we have to hear them. Mr. Salvia also asked what type of fence will be put up. Will it be another chain link fence or is it going to be a plastic vinyl fence? Mr. DeClement answered I don't think they are putting a fence yet. This just came up. In regards to the question about the fire exits. Mr. Polistina responded the building code will govern the fire exits and the construction of the building will be governed by the building code and handled by the Construction Official. If they have to develop permits after this than that will be governed by a different ordinance. Mr. Berenato responded to the question about the coolers. There are coolers there now and a walk closet. Mr. Salvia asked if they are going to shut them off or leave them on all night. Mr.

Berenato answered once they are attached. Mr. Salvia asked why the light are off when they go by the building. Mr. Berenato answered they are off.

Mr. Polistina asked what type of fence. Mr. Berenato stated he will match the back. The back is 6 foot vinyl and we are going to match the back. Mr. Landgraf presented an exhibit which was marked A-2. The exhibit was used to review the current and proposed location of the fence. It was noted the fence may stop at a certain point because of a site triangle. Discussion ensued about the fence between Ms. Esposito and the board members. Mr. Coombs stated there is an existing white vinyl fence along the back property line. Ms. Esposito expressed concern about the new vinyl fence butting up against the existing chain link fence. Mr. Polistina stated they (Collins Lake Food Market) agreed to tie it into the existing white vinyl fence, extend it down beyond the building, and bring it along the wood line. They will replace the chain link fence with 6' high white vinyl. Mr. Schenker asked if there will be a re-survey of the plot to know if the fence will be on this property. Mr. Berenato answered I have a survey.

Mr. Pitale announce the public portion of the Board Meeting closed.

Mr. Polistina stated to keep in mind they indicated there would be more diminutive subsidy approved then if they are expanding beyond what they have indicated to the Board, they will have to come back. They have (3) three seats. If there are more or a different use, then there is a problem with the Board because the Board is granting approval for (3) three seats. It is supposed to be a takeout facility where people go to their homes away from yours. It is what they indicated and (3) three seats is what the Board will act on. Mr. Schenker added the whole side is 500sq. ft. so there is room for about (6) six people including employees.

Mr. Pitale asked if there were any other question from the Board. Hearing none asked for a Motion to accept or reject the Change of Use application and to record the fence as indicated on exhibit A-1.

The conditions include:

- 1.) Stripe the lot.
- 2.) Add handicap parking spaces.
- 3.) Install ramp on left side to make handicap accessible.
- 4.) Replace chain link fence with six (6) foot white vinyl fence and tie it into the existing white vinyl fence, extend it down beyond the building and along the woods line.

A motion was made to approve the Change of Use application by Mr. Smith and seconded by Mr. Pitale. There was a roll call vote with ayes all.

OTHER BUSINESS:

Mr. Coombs gave an update on Eckhardt. He stated the Decision and Resolution that would Memorialize, we agreed to table to review this, when we came to the last meeting. He apparently was once fine with the easement of the lots. I did speak to Mr. Eckhard's attorney and I made for them an e-mail for all of you and forward to all of you. I did speak with the other attorneys and did confirm the prior agricultural district did have those restrictions. The lease back was clear to be the only solution to the barn issue with the exception, as the Chairman has

pointed out tonight, the exception of perhaps bulldozing it and moving it. The Decision Resolution has been memorialized by the Board. I did receive a copy of the new deed which is not the deed as between the Eckhardt's and the new purchasers. It is the deed for the new lots. The consolidated lots. I did receive back from Mr. Malloy who is Mr. Eckhardt's attorney. Additionally, I received a letter from Pinelands today from Susan. They are looking for where the property issue, the subdivision performance, the property makes a management plan. I will be looking into this. I also reached out to Mr. Malloy to see if he had heard anything with regard to some documents Mr. Forte had been requesting copies of. I don't know if it will end up in litigation. It very well may, but at this point I just wanted to forward it to know where we were with regards to the Eckhardt applicant. Mr. Coombs asked the Board members if they had any questions, but there were none.

Mr. Pitale requested to discuss Ferris Associates. They submitted a plan. Mr. Coombs hadn't seen it. Ms. Carroll stated they came in and asked for an application to apply for it (a permit). Mr. Polistina answered for a mining permit. They received a two (2) year approval from the Board. Mr. Coombs added it goes until August of this year. Mr. Polistina continued they submitted compliance plans and they submitted the Bond. Now they ask for those plans to be signed which I have because they said they were compliance plans and need to be signed by the Chairman and the Secretary. They are asking how to go about getting the actual mine permit to start the mining operations again. We do not have a real good answer on right now. Mr. Schenker asked if they ever complied. Mr. Polistina answered they complied with the conditions of the approval. They provided the Bonds that were required in terms of the reclamation and the improvement bond. The plans were revised to meet all of the conditions required by the Board. The asphalt driveway, the signage, etc., has all been shown. From the Planning Board standpoint they are ready to go, from the actual Mining Permit the last one was issued back in the early 2000's. We don't know what application needs to be filled out and what Borough Officials need to sign off. That is what we are trying to track down now. Mr. Coombs stated he will certainly look into it. I have given Mr. D'Arcy, who is their attorney, notice he has to have our officials out there digging over this and if anything is happening. They are obviously coming up off a steady long, but they have apparently submitted a plan, but I haven't looked at it. I have looked up the zone for allowable conditions. There is a number conditions with regards to no trespassing, ATV's, no motorcycles. Mr. Herhe asked if they (Ferris) started to comply with all the things the Engineer is speaking about. Mr. Coombs answered they would need to renew it. The Board would more than likely not renew the permit if they don't meet the conditions. Mr. Hehre added all of the conditions. Mr. Coombs added and they are going to need to, and it is important to comply with all the conditions we put on the last time. It is a lengthy list. Mr. Hehre asked if they must comply before August. Mr. Coombs responded not necessarily, the bonding is supposed to be so if they don't comply, we can access the money and we can do it ourselves. Mr. Pitale questioned if they still have a permit to mine. Mr. Coombs answered yes, they do. Mr. Schenker stated his understanding was they (Ferris) stopped because they over exceeded their boundaries and supposedly restored it. I don't know if they have. He asked if this plan is showing to do that at this point. This is to restore so they can take mine again. Mr. Smith stated they still have depth. Mr. Polistina stated they sent seedlings out there. To the satisfaction of Pinelands instructions. There are little seedlings out there. Mr. Schenker stated they are gone. They were gone two months after they were planted. Mr. Polistina stated he will take a look again. Mr. Schenker stated he took a walk out there (softball day). Mr. Coombs

added we did walk it. Ultimately it would be up to the Board to decide. There will be an advantage and efforts to comply in the past two (2) years. Mr. Schenker stated they will comply because they want something now. Mr. Coombs replied they agreed to comply two years ago. Mr. Schenker understood but shame on them for not doing it the way they promised it. Mr. Coombs added it is something for the Board to consider. Will they wait another two years?

Mr. Esposito asked if they (Ferris) has until August. Mr. Polistina stated they have until August to perfect the approval they got two (2) years ago. Mr. Schenker added or they can extend it. Mr. Polistina stated they posted a Bond to cover the improvements. It is more getting the compliance plan signed off by everyone. Mr. Pitale asked Mr. Polistina if he reviewed the plans. Mr. Polistina answered yes. Mr. Pitale asked if there were any corrections or additions to them. Mr. Polistina answered we went back and forth with them quite a bit on some of the things Mr. Coombs mentioned. Everything I believe is now on there. Some of the things the Board required, like the asphalt driveway coming in off of 4th (Street). Those kind of things, they didn't originally show. We went back and forth with them for a period of time trying to make sure they provided everything that the Board had required during the approval. Mr. Coombs added the Bonds are good until 2015. They have some automatic renewal clauses in them. The Borough is named as a beneficiary under the Bond. Mr. Schenker expressed a concern they (Ferris) could lease out to someone else to do the mining and not monitor what they are doing. Mr. Polistina stated the Operator, Linda Bloomfield, passed away. She was the applicant. It is now Ellsworth. She passed away and her sons were going to do it at one point in time, but the situation didn't work out. I think right now she is trying to perfect the approvals so she maintains whatever rights she has. Is the mining permit is it still valid. We are trying to see. How do they apply for an actual mining permit? It is a land use approval. How do you actually apply for a mining permit to start taking dirt out? I was looking at it where normally the Construction Official would issue the permit. I was under the impression somebody at the Borough issues the actual mining permit. Mr. Gummo asked if the mine permit comes from the Borough or the State. Mr. Polistina answered that is the question. That is what I am not clear on.

Mr. Pitale asked if the Bond amount was raised or make a recommendation it be increased. Mr. Polistina replied I will look back. Two separate Bonds were recommended. One for the site improvements on the plans. One to cover reclamation. I believe they submitted both. We have a Bond for improvements that are required. The apron, the signs, the clean up and if there is anything else; and we have a Bond for if they took dirt out, destroyed the site, and they disappeared. Then the Borough has a Bond to cover us having to go get the money and restore the property. There are supposed to be two submitted. The total amount was increased, but I don't know the increased amount of one of them. Mr. Coombs stated he hasn't seen the second one, only the first one. Mr. Schenker asked if they (Ferris) fail to do what they are supposed to do, can we take the money from the Bond and do it; or do we take possession of the property if we spent more than is in the Bond. Mr. Polistina replied we would disturb their floor basically. Mr. Schenker added it's their responsibility to do the work she should have done. Mr. Polistina stated actually what we do is we sit in default and we tell the Bond company to go do the work. This is what is required you go do the work. The Bonding company can either choose themselves to go do it or they negotiate with the Borough and come up with a settlement where they (the bond company) gave you the money and you went to do it. We are not paying the

money and going to do the work. We are telling the bond company, you bonded this project and you are responsible under the bond to finish out what was required and they will do it. Mr. Coombs added there were concerns the initial amount of the bond was probably not enough.

Mr. Pitale asked if there were any other questions from the Board.

Mr. Polistina stated the ordinance for Rural Development zone is extremely vague and not to put any conditions on some of those Uses I think is inappropriate. I don't know if you want to talk about modifying the Rural Development District. Simply to remove some of those Uses. At a minimum a night club or a tavern should have some conditions on it. Minimum size, minimum frontage, minimum setbacks, fencing. There should be some kind of requirements on these types of Uses. We should clean up some of that district. If you want to take them out and move them so you don't have to worry about it, but at a minimum at least put some conditions on it.

Mr. Pitale responded with the issue tonight he (Collins Lake Food Market) wasn't opening up a full bar. Mr. Polistina answered correct, but he could have put a night club. He could take the whole building, 3500 sq. ft., and made it a nightclub under your ordinance. He could literally take the whole 3500 sq. ft. building and he could make it a nightclub. I can't imagine anybody wants to see that type of Use right there. I will look through the rest of them (Zoning District Uses) and see, but it doesn't seem some of those are appropriate for the zone. Certainly without any conditions imposed. I don't know if you want to keep those Uses in the Rural Development. Mr. Coombs added perhaps you can make a recommendation to the Planning Board and come up with new proposed amendment for the conditional uses in there be accepted with conditions. Make it different Uses for the taverns, bars, and night clubs to have a minimum of five (5) acres. You shouldn't do it on two (2) acres in somebody's back yard. Mr. Smith suggested it should stipulate how far from a residence it should be. Mr. Polistina answered yes, those are the types of conditions to the Use be imposed.

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

Mr. Pitale announced the next scheduled meeting will be June 18, 2014.

Meeting adjourned at 8:42 PM.

Respectfully submitted,

Susan Carroll
Board Secretary

