

**TOWNSHIP OF DENNIS
ZONING BOARD OF ADJUSTMENT**

**571 Petersburg Road
Dennisville, NJ 08214
(609) 861-9705**

MARCH 28, 2012

MINUTES

This meeting was published in accordance with the "Open Public Meetings Act". Notice of this meeting was published in an annual meeting notice in the Cape May County Herald and posted in Township Hall.

The meeting was called to order by Chairman Sorenson. The following members were present: Mr. Sorenson, Mr. Daniels, Mr. Butto, Mr. Penrose, Mr. Baldwin, Mr. Germanio, Mr. Jones and Mr. Robertson. Also present were Tony Harvatt, Board Solicitor; and Vincent Orlando, Board Engineer.

Applications:

FISHER, THOMAS & DIANA - Block 121, Lots 1 and 2, Qualifier C0030:

Located on Dennisville Road in South Seaville in a Residential (R3) Zone. Applicants seeking a use variance to construct a 300 square foot addition to an existing cottage located in the South Seaville Methodist Camp Meeting.

Mr. Baldwin indicated that he will have to recuse himself from this application due to conflict.

James Pickering, Esquire, appeared as the- attorney for the applicants.

Thomas Fisher and Diana Fisher were each sworn in.

Mr. Pickering provided background of this application. He indicated that the Board has heard several similar applications in the past for the South Seaville Camp Meeting. He referred to the plan and showed the location of the subject property. Cottage is #30 and on the property line. The cottage was purchased by the applicants and they hope to put a small addition on for purposes of a downstairs bedroom. This cottage straddles the property line. The Camp Meeting purchased the triangular shaped lot and added it to their property. There is a mortgage on that piece of property.

Mr. Pickering directed questions to Mr. Fisher.

Mr. Fisher confirmed that everything that Mr. Pickering has said so far is correct. He testified that the current bedroom is too small to use as a bedroom and they would prefer to have their bedroom on the first floor. (A-1 through A-12 photographs marked into evidence.) The second floor is a loft and is about 8 feet deep and if you include the railing it makes it about 7 ½ feet deep and too small to function as a bedroom. They plan on reconfiguring the downstairs. The proposed master bedroom will not include a bathroom. He further indicated that the addition will not impact on neighbors or any other cottages or adjacent property owners. He further testified that there are other cottages that have added additions in the recent past.

Mr. Pickering said that they are asking for an expansion of a non-conforming use. He advised that the Camp Meeting has been there for 150 years and probably existed before zoning. He has asked for similar requests for 6 or 7 other properties in the Camp Meeting.

Mr. Sorenson asked the Board for questions.

Mr. Penrose asked if it will be used year round. Mr. Pickering advised that only certain cottages were considered full time. Mr. Fisher advised that this is a year round cottage.

In response to a question by Mr. Butto, Mr. Pickering said that because it was a pre-existing non-conformity, the applicants have to come before the Board for any change in the footprint of the building.

There were no other questions from Board.

Vincent Orlando was sworn in and presented his Engineer's report. He indicated that the property encroaches onto Lot 1 with no set back. The applicants are looking at a D-2 and a C variance. There is no site plan issue for the Board to consider. The applicants will also need a side yard variance. He advised that he feels the encroachment needs to be addressed.

Mr. Pickering submitted a letter from the Camp Meeting stating that they are aware of the property line and the septic system issue. He doesn't believe it can be handled by consolidation since there is a mortgage on the other lot, but it may be able to be handled with a license agreement.

Mr. Harvatt asked Mr. Pickering how he would like to handle the matter. Mr. Pickering advised that either a license or encroachment agreement would be acceptable.

Mr. Orlando added that there is nothing to say that Lot 1 can't be sold tomorrow.

Mr. Pickering suggested that a condition be included that if the Camp Meeting were to sell Lot 1, they would have to notify landowners. He suggested a written agreement of some type. He also advised that the mortgage should be paid off in 2 or 3 years.

Mr. Harvatt and Mr. Pickering discussed the matter and agreed on an easement from the adjacent lot. Mr. Orlando advised that it will have to be delineated and described on the plan. Mr.

Pickering will have Mr. Martinelli prepare an amendment.

Mr. Butto said that he just wants to see it done right and no problems down the line.

Mr. Sorenson opened the meeting to the public, there being no public comment, this portion of the meeting was then closed to the public.

Mr. Harvatt then asked for discussion and/or comments on the application. There were none.

Mr. Harvatt then presented a form of motion to approve the use variance. A motion to approve was made by Mr. Butto, seconded by Mr. Germanio, and carried by all members voting on same.

Mr. Harvatt then presented a form of motion to approve the C variance. A motion to approve was made by Mr. Penrose, seconded by Mr. Butto, and carried by all members voting on same.

Mr. Baldwin then returned to his seat on the Board.

R.E. PIERSON CONSTRUCTION, INC. - Block 224, Lots 68.01, 73, 74.02, 75.03 and 78.04:

Located on Woodbine-Ocean View road in Ocean View in both the B (Business) and C (Conservation) Districts. Applicant seeking a use variance to construct and operate a ready mix concrete plant and a Class B. recycling facility in addition to the existing mining operation. Applicant also requesting a height variance where 35 feet is permitted and 82 feet is proposed.

Mr. Germanio recused himself from this application due to a conflict.

James Pickering, Esquire appeared as attorney for the applicant. He advised that it was his recollection of where we are is that the public portion was complete. He indicated that there are two small issues he would like further testimony on by Mr. Mitchell as a rebuttal.

Mr. Orlando wanted to confirm that he would not be talking about specific sounds. Mr. Pickering confirmed same. Mr. Sandman objected, saying that the rules of fairness apply and he will be deprived of an opportunity to cross examine.

Mr. Pickering indicated that he wanted testimony regarding Ms. Pron's testimony and that he wants Mr. Mitchell to testify as to what was happening that day that was not ordinary. Mr. Sandman asked what was the relevance. Mr. Pickering indicated that it was a one time incident and he is going to make sure it won't happen again. Mr. Sandman said his expert was here and he thought that was the end of it. Mr. Pickering advised that Mr Mitchell is not going to testify that the noise was not in excess. Mr. Sorenson indicated that he feels Mr. Pickering has made his point that there were unusual circumstances that day.

Sal Perrillo, Esquire, the attorney for some objectors, was also present and said he was asked if he wanted to pay for the other experts to appear if he brings his expert in to testify. He advised that there would be no cost to the Board if his expert is permitted to testify. He indicated that the other experts took an entire evening and even if his expert was here that evening, the Board would have had to have his expert come back another evening anyway.

Mr. Pickering said he would like to get through summations and to a vote tonight. He feels an appropriate ruling was made at the last meeting, and feels it's unfair that this came up as a last minute item.

Mr. Orlando indicated that the Board's expert was here for 2 meetings and sat through Mr. Pickering's expert's testimony and released her early from that meeting, and that it was also opened to the public regarding sound so that she could leave.

Mr. Perrillo asked that if his expert was present at that time, would his expert have been permitted to testify. Mr. Harvatt advised that the issue was done and moved onto next expert. Mr. Sandman joined with Mr. Perrillo in his request.

Mr. Sorenson advised that he still wants to move forward with summations and a vote. He advised that this Board is being merged with the Planning Board in the near future and he feels obligated to move forward and get this matter resolved.

Mr. Harvatt indicated that the Board would move forward with summations.

Mr. Sandman presented his closing summation. He thanked the Board for its time and attention. He indicated that this applicant was before Board with the same application in 2008 with the only difference being the addition of an asphalt plant. An environmental expert, vibrations expert and other experts were deemed necessary in the 2008 application and this Board was denied the opportunity to hear those experts and the previous application was denied. Pierson then sued. The Board and the Township settled that matter because Pierson put a gun to their head. Pierson is now back and wants special treatment. The case boils down to noise, dust, fumes and traffic. The land has been de-nuded and destroyed already and part of it is Conservation. He referred to the applicant's sound expert and the fact that it was done at a time when the applicant knew the test was being done and that the Board had no real comparison between the tests done at this site and their other facilities, such as vegetation, lake, equipment operating, etc. Tests between this site and the Winslow site can't be compared because there is nothing to compare it to at this site, such as the sound of crushing concrete. He said there is also a need to consider the number of trucks (big, loud, diesel). The noise issue alone is enough for the applicant to not meet the criteria. Traffic is another issue and no way of telling at this time what it will be like come summer. Pursuant to the amount of product the applicant is permitted to mine, which is a prohibited use, it works out to a large number of truck trips which are added to already existing traffic. You then have to add in the concrete and recycling business and the traffic from same. He then discussed the zoning criteria. There is no need for any further recycling facilities in the County - existing facilities are down to 16%. He

discussed air quality - chemicals will be introduced into air. Odors were addressed at the previous application, but not during this application. Violations at other of the applicant's facilities were addressed at previous application, but not at this application. Applicant is proposing a heavy industrial use when the Township is looking for light industrial in their Master Plan Review process. Township Ordinances, the Master Plan and Master Plan Review all say they are looking for light industrial. He said that the applicant cannot satisfy the negative criteria. He discussed the purpose of zoning and the promotion of health, safety, morals and well being and that the applicant does not meet any of these. He asked if the community is better off with what is there or what they want to put there.

Mr. Perrillo then presented his summation and joined in with Mr. Sandman's. He said the Board has to apply the facts they have heard with the applicable law and decide if a variance can be granted. This is a non-conforming use and they are disfavored and are to be extinguished. Also, use variances and D variances require very heavy burdens on applicants seeking them. This is an existing non-conforming use requesting 4 additional D variances. They want 3 principle uses, as well as almost doubling the permitted height. The applicant has to show special reasons and the uses requested by the applicant must promote the uses outlined in the Municipal Land Use Law. He reviewed various hurdles that the applicant must comply with. He feels it is all about the noise as well. He referred to the report of applicant's expert (passed out several pages of that report to Board members). Pursuant to that report, the berm will not shield the noise. Also, all operations operating at same time will exceed the acceptable noise level and there was testimony from Mr. Mitchell that they some times begin operation early in the morning. Applicant's sound expert averaged the sound level over a period of time - this is not the way sound is to be measured. His client operates a campground and would like to expand his operation. If this application is approved, it will put all of his client's plans in jeopardy.

Mr. Pickering then presented his summation. He also wanted to thank the Board and for giving the applicant a fair hearing and listening to the facts. The land is what it is - has been used as a mining operation for 60 or 70 years and has supported many Township families. He thinks the application has the potential of bring a benefit to the Township. He reviewed the variances he believes are necessary: D variance for height; D variance for multiple uses on site. He advised that this is the first step in a process. If granted, the applicant will have to come back for site plan, need County approvals, DEP approvals, and CAFRA approvals. He discussed the site - significant portion is still wooded; site has been mined and provides a product that is needed; site has had a mining permit since permits were required. The Supreme Court has said that if you have a use that exists at the time that zoning changes it to a non-conforming use, you have a Constitutional right to continue with that use. The Conservation District on the site is Township, not State, implemented. He said hopefully he has presented enough information to meet the burdens. He is not asking that the application be "rubber stamped". He described surrounding properties to this site and their uses - many of which have multiple uses on them, as well as existing structures that are the same or higher than what the applicant is proposing. There are several residences in the area and none of those property owners have appeared to object. The only objectors are the owners of nearby campgrounds. He discussed the noise issue. No one from Resorts Campground or residential homes have complained about the noise, including during the short period of time when they were crushing

concrete. The first time anyone complained about the noise was when Mr. Owen appeared and complained. The applicant responds to complaints and if they had heard a complaint about noise, they would have done something about it. He compared testimony of the applicant's noise expert, Ms. Sherwood, with that of Mr. Dotti - testimony was very similar in their findings. Ms. Sherwood's testimony found the applicant to be in compliance with acceptable noise levels and Mr. Dotti did not dispute it. Ms. Sherwood did testify that if all operations were running at the same time, the applicant would exceed acceptable noise levels and she testified as to what could be running at the same time to remain in compliance. He reviewed Ms. Pron's testimony and the fact that he was stunned that she was acting as a taxpayer funded witness. He has no reason to doubt that her readings were what they were at the time they were taken. It has been questioned as to who is going to enforce issues - it doesn't just apply to this application but to all sorts of uses. He discussed "purposes of zoning". He read from case law and categories of special reasons. He discussed special reasons and how they relate to this application. He explained how the uses on this site are "accessory" or "complimentary uses" to the sand mining operation. Also, jobs will be created. The operation can't be seen from the road; the site allows for similar uses; site is large enough for vehicles to travel on the site; Mr. Walters, an adjoining property owner, testified that he is in favor of the project; site is being used and re-used as opposed to disturbing other lands for the creation of a new facility; site is on a County designated truck route. He reviewed the negative criteria and criteria for same. He discussed traffic - the only expert testimony was from Mr. Horner in addition to the Board's expert. With regard to the noise issue, the only objectors are the campgrounds and they have not complained prior to this time. With respect to the comment that the applicant "held a gun to the head" of the Board, that was not done. It was due to 1 or 2 of the previous Board's members doing inappropriate investigations on their own. This applicant is here seeking to have the application heard as a new application. The only thing to be recycled by the Class B recycling facility is concrete with a little bit of asphalt. They are limited in what they can recycle as a Class B facility. Doesn't believe that "need" or "capacity" is an issue. Discussed height - believes that sufficient testimony has been given. He thanked the Board again for its patience and consideration of the application and believes the application should be granted.

Mr. Harvatt reviewed conditions that had been discussed and asked if there were any other conditions that Mr. Pickering recalled were discussed such as traffic on Corson Tavern Road, hours of operation. Mr. Pickering said the applicant is willing to make it a condition that applicant's drivers not use Corson Tavern Road, but he doesn't recall it being discussed however.

Mr. Orlando presented his Engineer's report. Identified use variances - 2 D variance and 1 D-6 variance; no bulk variances needed. He discussed the various prongs that need to be determined in the consideration of D variances. He discussed the height variance; types of materials to be utilized; and testimony as to hours of operation and number of employees.

Mr. Sorenson then called for a short recess.

After the recess, Mr. Sorenson called the meeting back to order and indicated that it was time for the Board to discuss the application.

Mr. Harvatt explained to the new Board members how the process works: have to deliberate

and put on the record their opinions as to the positive and negative criteria. He said he will ask the Board whether they want to take separate votes as to the concrete facility and the recycling facility as some one may be in favor of one and not the other.

Mr. Perrillo asked if that decision shouldn't be made now before Board deliberates. Mr. Harvatt said specific testimony was given as to each facility; and he sees it as a form of function. Mr. Perrillo said the applicant should make decision now as to whether it is voted on as 1 or 2 separate issues. Mr. Harvatt said he will let Mr. Pickering respond.

Mr. Pickering was given time to discuss the matter with his client. Mr. Pickering responded that Mr. Orlando felt they were separate D variances, Mr. Perrillo feels the same, and he is OK with doing 2 separate votes.

Mr. Harvatt then reviewed what is to be voted on.

Mr. Sorenson asked for Board comments.

Mr. Daniels said that he listened to 11 hours of tapes and didn't have much chance to ask questions. He has concerns with sound testing and testimony given pertaining to same and lack of personal observation of the experts, conflicting testimony and methods used. He has other concerns with the findings of the engineering expert for the applicant. He feels the addition of 1 extra truck creates traffic concerns in his opinion. He is concerned with testimony of Mr. Mitchell, who is in charge of compliance, and the fact that he wasn't aware of violations that occurred on the site. He referred to the Zoning Ordinance and criteria that must be met that the applicant is in violation of. He feels that there wasn't enough evidence regarding the need of a recycling facility. He saw nothing on environmental issues. Concrete involves chemicals and gasses and dust. The applicant should have covered environmental hazards and mitigation of same. He feels all of the negative criteria has not been addressed and that he can not vote in favor of this application for this and other reasons.

Mr. Penrose said he would like to build on what Mr. Daniels said. Much of the testimony regarding traffic was built on projection which he believes may have been low and the Board is held to the worst case. It would be convenient to have a recycling and concrete company nearby, but at the same time, that is a personal thing, but overall it will impact many people and has potential of increasing. He also objects to averaging - has heard the tailgates slam and it is a shock and people coming to the campground and surrounding neighbors it will disrupt.

Mr. Baldwin said that traffic has to be considered and all negative aspects of this application at their upper limits and we don't know what those upper limits are. The more traffic we have the more difficult it is to get around our Township and it will affect many.

Mr. Jones said he was about a quarter of a mile from the machines and could hear them; he feels it is detrimental to the Township as a whole; he feels for the campground people and those that

are trying to relax a little and have to hear the noises.

Mr. Robertson said that on the positive side, this is probably the best place to put this type of operation in the Township. Mr. Pierson is probably a good businessman and probably won't sent trucks out on days when traffic is heavy and they won't be moving. On the negative side, campgrounds bring a lot to our community and we should protect them. He said he wants to listen to more comments as he doesn't know where he is yet.

Mr. Butto said he grew up on Route 50; and dealt with the noise of traffic. Pollution is dealt with by the DEP. He doesn't see Pierson running their trucks on Saturdays. As a contractor, he likes knowing that there is competition and would like to see jobs that pay enough for some one to support their family. The Township has allowed a liquor store on Sea Isle Boulevard, and a cemetery with 6 people in it. He sees both sides and is torn, but sees benefit to applicant's project and thinks it would be a nice thing to have. He hasn't heard many, other than people from the Environmental Commission, speak out against it.

Mr. Sorenson said that he wants to commend all of the attorneys in this matter who have voiced different opinions and facts. He added that testimony can be confusing as to who is right, and there are many negative and positive aspects. He has now heard 3 applications from this applicant.

Mr. Harvatt presented a form of motion to approve a D-1 variance for multiple uses and structures on 1 site. Mr. Orlando said that he feels having separate votes may be more advantageous.

Mr. Harvatt agreed and then presented as the first vote a motion to approve the construction of concrete plant. A motion to approve was made by Mr. Butto, seconded by Mr. Jones. The motion was defeated with 5 no votes and 2 yes votes.

Mr. Harvatt then presented as the next vote a form of motion to allow the recycling facility. A motion to approve was made by Mr. Butto, seconded by Mr. Baldwin. The motion was defeated with 7 no votes.

Mr. Harvatt then advised that the remaining votes are moot at this point. He announced that this completes the application and the Board now has other business.

OTHER BUSINESS:

Mr. Sorenson then asked for approval of a corrected Resolution correcting square footage. A motion to approve was made by Mr. Daniels, seconded by Mr. Baldwin and carried by all members voting on same.

Mr. Sorenson requested a motion to pay the bills. A motion to approve was made by Mr. Jones, seconded by Mr. Penrose and carried by all voting members.

Mr. Sorenson advised that the Township Committee will be merging the Zoning Board with the Planning Board in the near future and that the only items to take care of next month will be to pass Resolutions and pay bills.

Mr. Harvatt advised that he will not be at the meeting next month.

Mr. Orlando thanked the Board for appointing him as their Engineer and that he hopes to see everyone from the other side of the table. He, too, advised that he will not be at the meeting next month.

There being no further comments or business to discuss, the regular meeting was adjourned at 9:50 p.m..

Carla A. Coffey

Carla A. Coffey, Secretary

Dennis Township Zoning Board of Adjustment