

**TOWNSHIP OF DENNIS  
ZONING BOARD OF ADJUSTMENT  
APPLICATION FORM**

1. Name and address of applicant:  
Name: **R.E. Pierson Construction Co, Inc.**  
Address: **426 Swedesboro Road**  
**Piles Grove, NJ 08098-2534**
2. Applicant's telephone number:                      Applicant's fax number:  
Home: \_\_\_\_\_ Home: \_\_\_\_\_  
Work: **856-769-2534** Work: \_\_\_\_\_
3. Property owner's name, address and telephone number if different from No. #1 above.  
Name: **Pierson Pleasantville, LLC** Telephone: \_\_\_\_\_  
Address: **426 Swedesboro Road**  
**Piles Grove, NJ 08098-2534**
4. Relationship of applicant to owner: same
- If holder of Contract to purchase attach copy of Contract.
- If other than Contract Purchaser, explain status and attach written agreement signed by seller consenting to the application.
- \_\_\_\_\_
- \_\_\_\_\_
5. If applicant is a corporation or partnership, list all stockholders or partners owning 10% or more of the corporation or partnership and list their respective names, addresses and telephone numbers:
- |                |                |
|----------------|----------------|
| Name: _____    | Name: _____    |
| Address: _____ | Address: _____ |
| _____          | _____          |
| Name: _____    | Name: _____    |
| Address: _____ | Address: _____ |
| _____          | _____          |
6. Location of premises:  
Street address **384 Woodbine-Ocean View Road**  
Tax Block: **224** Tax Lot (s): **68.01, 73, 74.02, 75.03 & 78.04**  
Tax Map Sheet No.: **25 & 26**
7. Zoning District in which premises is located: **B, C & R-3**  
**All improvements will be located within the B District.**

8. Type of application presented:

- ☐ Appeal from decision of Zoning Official (N.J.S.A. 40:55D-70a)  
☐ Interpretation of Zoning Ordinance or Zoning Map (N.J.S.A. 40:55D-70b)  
☐ Hardship Variance (N.J.S.A. 40:55D-70c(1))  
☒ Flexible (C)/balancing benefits and detriments (N.J.S.A. 40:55D-70c(2))  
☒ Use Variance (N.J.S.A. 40:55D-70d)  
☒ (1) Use or principal structure  
☐ (2) Expansion of non-conforming use  
☐ (3) Deviation from conditional use standard  
☐ (4) Increase in permitted floor area ratio  
☒ (5) Increase in permitted density  
☒ (6) Height of principal structure greater than 10 feet or 10% of maximum height permitted  
☐ Permit to build in street bed (N.J.S.A. 40:55D-34)  
☐ Permit to build where lot does not abut street (N.J.S.A. 40:55D-36)  
☐ Site plans (N.J.S.A. 40:55D-76)  
☐ Major  
☐ Preliminary  
☐ Final  
☐ Minor  
☐ Waiver of site plan itself  
☐ Subdivision (N.J.S.A. 40:55D-76)  
☐ Minor  
☐ Major  
☐ Preliminary  
☐ Final  
☒ Waivers from subdivision and/or site plan standards  
☐ Other

9. Request is made for permission to add ready-mix concrete plant as an additional use to an existing gravel pit

(Describe type of variance sought)

Principal use in B zoning district, height in excess of 10%, more than one principal use contrary to the requirements of Sections: 185-25B, 185-25D and 185-42

of the Dennis Township Land Use and Development Ordinances, Dennis Township Code Chapters 98, 165 and 185.

10. Supply the following information concerning this application. Place an asterisk to the left of the description of all items for which variances are sought.

	<u>EXISTING CONDITION</u>	<u>REQUIRED BY ORDINANCE</u>	<u>PROPOSED</u>	<u>VARIANCE REQUIRED YES/NO</u>
<u>LOT SIZE:</u>				
Lot Area	165 Ac	60,000 SF	165 Ac	NO
Lot Frontage	445.38 FT	150 FT	445.38 FT	NO
Lot Width	445.38 FT	150 FT	445.38 FT	NO
Lot Depth	+1,211 FT	200 FT	+1,211 FT	NO
<u>PRINCIPAL BUILDING:</u>				
Side Yard, each	63.5 FT	25 FT	63.5 FT	NO
Front Yard	100 FT	75 FT	100 FT	NO
Rear Yard	+650 FT	50 FT	+650 FT	NO
Building Height	< 35 FT	35 FT	< 35 FT	NO
<u>ACCESSORY BUILDING:</u>				
Side Yard, each	63.5 FT	25 FT	63.5 FT	NO
Rear Yard	+650 FT	25 FT	+650 FT	NO
Distance to Other Buildings	+/- 90 FT	30 FT	30 FT	NO
Building Height	< 35 FT	35 FT	52.85 FT	YES
<u>MAXIMUM COVERAGE:</u>				
Principal Building %	< 35 %	35 %	< 35 %	NO
Accessory Building %	< 10 %	10 %	< 10 %	NO
<u>GROSS FLOOR AREA:</u>				
Principal Building			N/A	
Accessory Building			N/A	

<u>EXISTING CONDITION</u>	<u>REQUIRED BY ORDINANCE</u>	<u>PROPOSED</u>	<u>VARIANCE REQUIRED YES/NO</u>
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**PARKING:**

No. of Spaces      **NO CHANGE**

**SIGNS:**

Size

Number	<b>1</b>	<b>1</b>	<b>1</b>	<b>NO</b>
Type (free standing FS or building mounted)	<b>FS</b>	<b>N/A</b>	<b>FS</b>	<b>NO</b>

11. Has there been any previous appeal, request or application to this Board or to the Planning Board involving these premises? If yes, state the nature of application, date of application, date of hearing and result received from Board. **YES**

**07-06 ZBA Concrete Plant, Asphalt Plant & Recycling Facility APPROVED 01/24/07\*\***

**08-20 ZBA Concrete Plant & Recycling Facility DENIED 10/22/08**

**10-17 ZBA No Res Judicata upon resubmittal to ZB SETTLEMENT 10/05/10**

**12-06 ZBA Concrete Plant & Recycling Facility DENIED 04/25/12**

**\*\* Approval was vacated prior to memorializing resolution due to technicality surrounding Notice.**

BY LAW, VARIANCES CAN ONLY BE GRANTED WHERE THE APPLICANT IS ABLE TO SATISFY BOTH POSITIVE AND NEGATIVE CRITERIA ESTABLISHED BY THE MUNICIPAL LAND USE LAW. NO VARIANCE RELIEF OF ANY TYPE MAY BE GRANTED UNLESS THE VARIANCE OR RELIEF CAN BE GRANTED WITHOUT SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD AND WITHOUT SUBSTANTIALLY IMPAIRING THE INTENT AND PURPOSE OF THE ZONE PLAN AND ZONING ORDINANCE. HARDSHIP VARIANCES OF THE ZONE PLAN AND ZONING ORDINANCE. HARDSHIP VARIANCES (40:55dc(1) CAN ONLY BE GRANTED WHERE AN EXCEPTIONAL CONDITION EXISTS WITH REGARD TO A SPECIFIC PIECE OF PROPERTY, WHERE EXCEPTIONAL TOPOGRAPHICAL CONDITIONS OR PHYSICAL FEATURES UNIQUELY AFFECT A SPECIFIC PIECE OF PROPERTY OR WHEREBY REASON OF AN EXTRAORDINARY AND EXCEPTIONAL SITUATION UNIQUELY AFFECTING A SPECIFIC PIECE OF PROPERTY OR THE STRUCTURES LAWFULLY EXISTING THEREON THE STRICT APPLICATION OF THE ZONING REQUIREMENT WOULD RESULT IN PECULIAR AND EXCEPTIONAL PRACTICAL DIFFICULTIES TO OR EXCEPTIONAL AND UNDUE HARDSHIP UPON THE DEVELOPER OF THE PROPERTY. RELIEF UNDER THE FLEXIBLE C TYPE VARIANCE (N.J.S.A. 40:55D-70c(2)) CAN ONLY BE GRANTED WHERE, WITH REGARD TO A SPECIFIC PIECE OF PROPERTY, THE PURPOSES OF THE MUNICIPAL LAND USE LAW WOULD BE ADVANCED BY A DEVIATION FROM THE ZONING ORDINANCE REQUIREMENT AND THE BENEFIT OF THE DEVIATION WOULD SUBSTANTIALLY OUTWEIGH ANY

GRANTED WHERE THERE ARE SPECIAL REASONS AS SPECIFIED BY THE MUNICIPAL LAND USE LAW. THE BURDEN IS UPON THE APPLICANT TO PROVIDE PROOF OF SATISFACTION OF THE AFORESAID REQUIREMENTS APPLICABLE TO HIS APPLICATION.

A SHORT SUMMARY OF THE REASONS WHY YOU ARE ENTITLED TO THE RELIEF SOUGHT FROM THE ZONING BOARD OF ADJUSTMENT SHALL BE PROVIDED ON A SEPARATE SHEET OF PAPER AND ENUMERATED WITH THE APPROPRIATE PARAGRAPH NUMBER UNDER WHICH THE RELIEF IS SOUGHT, (PARAGRAPHS NO. 12-15)

See *Appendix to Pierson Zoning Application* (Attached) for responses to items 12 - 15.

12. Attach to this application a statement of the facts showing why the relief sought can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Dennis Township Zoning Plan and Zoning Ordinance. State why the variance can be granted without substantial harm to the neighborhood and without significant overturning of the Township Zoning Plan.
13. Attach to this application a statement specifying the hardship/exceptional conditions of the specific property involved justifying the granting of a variance pursuant to N.J.S.A. 40:55D-70c(1). State what is unique about your specific piece of property noting such things as an exceptionally narrow, deep, or otherwise unusually shaped lot; physical features located on the lot that prevent its use in a normal manner that would be allowed by the existing zoning; the specific location of existing structures that limit compliance with the required zoning. Note how the circumstances relating to your particular lot differ from other lots in the neighborhood. State what hardships would result should the variance not be granted to you.
14. Attach to this application a statement setting forth the facts supporting the contention that the purposes of the Municipal Land Use Law would be advanced by a deviation from the Zoning requirements in question and the benefits of that deviation would substantially outweigh any detriment pursuant to N.J.S.A. 40:55D-70c(2). Among the purposes of the Municipal Land Use Law are following: promotion of public health, safety and welfare; provision of adequate light, air and open space; establishment of appropriate population densities; provision of sufficient space for agricultural, residential, recreational, commercial and industrial uses and open space; promotion of a desirable visual environment; conservation of historic sites, districts, open space and natural resources; encouragement of senior citizens housing. Cite which of these apply to your application and further, cite the characteristics of your land that will present an opportunity for improved zoning and planning to benefit the community.
15. Attach to this application a statement setting forth the special reasons for granting this variance pursuant to N.J.S.A. 40:55D-70d. "Special Reasons" exist where a proposed project carries out a purpose of zoning, (such as those noted in Section 14 above) or where the refusal to allow the project would impose an undue hardship on you; state why the property at issue cannot reasonably be developed with a use permitted by the Zoning Ordinance.

16. Set forth specifically the determination of the Zoning Official from which an appeal has been filed and the basis for the appeal. (N.J.S.A. 40:55D-70a)

N/A

17. Set forth specifically the Zoning Ordinance section and provisions and/or the portion of the Zoning Map for which an interpretation from the Zoning Board is sought. Set forth the interpretation sought by the applicant. (N.J.S.A. 40:55D-70b)

N/A

18. All applicants must supply with this application the required fees (application and escrow) the necessary survey, plan, and plat and the following Zoning Board of Adjustment forms together with all attachments required in connection with the forms:

ZB-1 Application form including verification of application  
ZB-2 Survey, plan, plat affidavit  
ZB-4 Escrow, fees and application fees  
ZB-5 Proof of payment of taxes  
ZB-6 Notice of hearing – **to be submitted prior to hearing**  
ZB-7 Affidavit of Service – **to be submitted prior to hearing**  
ZB-10 Applications involving subdivisions – **Not Applicable**  
ZB-11 Applications involving Site Plans

19. For undersized lot cases only, the following additional forms are supplied. N/A

Notice to Applicant's Concerning Undersized Lots.

ZB-8 Applicant's Offer to Abutting Property Owners.

ZB-9 Response to Abutting Property Owners.

20. List the names, addresses, telephone and fax numbers and professions of any and all professionals employed by the applicant in completing the application to the Zoning Board of Adjustment and/or intended to be called as witnesses at the hearing on the application.

Name:	Address:	Phone:	Fax:	E-Mail:
<b>Brian J. Murphy, P.E.</b>	P.O. Box 484 Cape May Court House, NJ 08210	<b>609-465-7080</b>	609-465-3973	<a href="mailto:b.murphy@mvengllc.com">b.murphy@mvengllc.com</a>
<b>David Shropshire, P.E.</b>	227 White Horse Pk. Atco, NJ NJ 08004	<b>609-714-400</b>	609-714-9944	<a href="mailto:dshropshire@sallc.org">dshropshire@sallc.org</a>
<b>Tiffany Morrissey, P.P.</b>	359 Superior Rd. Egg Harbor Township, NJ 08234	<b>856-912-4415</b>		<a href="mailto:tamorrissey@comcast.net">tamorrissey@comcast.net</a>



**VERIFICATION OF APPLICATION**  
(Indicate Status of Applicant Below)

  X   Applicant is owner of property.  
       Applicant is not owner of property but has an Agreement of Sale and the consent of the owner to make this application.  
       Other (specify) \_\_\_\_\_

STATE OF NEW JERSEY:

SS

COUNTY OF CAPE MAY:

Richard E Pierson, being of full age and duly sworn according to law, upon his/her oath, deposes and says that the information set forth in the variance application, survey, subdivision plan, site plan and related documents submitted in connection with this application is true and correct and that they accurately portray the proposed project for which variance relief and accompanying approvals (if any) are sought.

*Richard E Pierson*  
Applicant's Signature

Sworn and subscribed to before  
me this 12th day of April,  
2022.

*Danielle M Waggoner*  
Notary Public

My Commission Expires: \_\_\_\_\_

DANIELLE M. WAGGONER

NOTARY PUBLIC OF NEW JERSEY

MY COMMISSION EXPIRES 02/16/2025

**CONSENT TO APPLICATION BY OWNER OF PREMISES**  
(Need not be signed if Owner is Applicant)

I hereby consent to the application submitted to the Dennis Township Zoning Board of Adjustment with regard to the premises referred to in this application which premises is owned by me.

*Richard E Pierson*  
Owner's Signature

Sworn and subscribed to before  
me this 12th day of April,  
2022.

*Danielle M Waggoner*  
Notary Public

New Jersey



DANIELLE M. WAGGONER  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES 02/16/2025

## DENNIS TOWNSHIP ZONING BOARD OF ADJUSTMENT

## SURVEY/PLAN/PLAT AFFIDAVIT

STATE OF NEW JERSEY:

SS

COUNTY OF CAPE MAY:

(Name) Richard E Pierson, being duly sworn according to law, upon his oath deposes and says:

1. I am the owner of the property known and identified as Block 224, Lot(s) 68.01, 73,74.20,75.03 & 78.04, in the Township of Dennis or I am the applicant for development in this matter.
2. The attached sealed survey/plan/plat prepared by Gibson Associates, P.A., and dated 10-26-17 and last revised 9-14-20 reflects the physical condition of the property as of the date of this Affidavit and there have been no changes or alterations to the property since the date of the sealed survey/plan/plat.
3. I make this Affidavit in support of an application for development before the Dennis Township Zoning Board of Adjustment and understand that said Board shall rely on the current accuracy of the said survey/plan/plat in considering the application for development of the property.

[Signature]  
Signature - Owner/Applicant

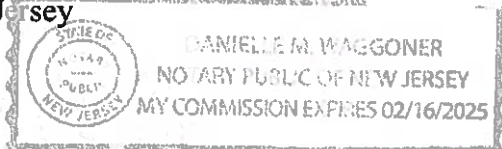
Sworn to and subscribed  
before me this 12th

day of April, 2022.

[Signature]

Notary Public

New Jersey





**DENNIS TOWNSHIP ZONING BOARD OF ADJUSTMENT  
ESCROW FEES AND APPLICATION FEES**

Applicant's Name: **R.E. Pierson Construction Co, Inc.**  
Address: **426 Swedesboro Road**  
**Pilesgrove, NJ 08098-2534**

Address of Property: **384 Woodbine-Ocean View Road**  
Subject to the Application: (Street Address): **384 Woodbine-Ocean View Road**

Block: **224** Lot (s): **68.01, 73, 74.02, 75.03 & 78.04**

Amount of required Escrow: \$ **5,000.00**

Amount of required Application Fees: \$ **1,000.00**

All escrow funds shall be deposited by the applicant with the Municipal Treasurer who shall, in turn, deposit them in a separate escrow account and carry them under the Township's Trust Fund section of accounts on the books of the Township as a professional, inspection and consulting fee escrow fund. Said escrow fund shall be used to pay the fees of professional personnel employed to assist the Dennis Township Zoning Board of Adjustment in review of the application, to prepare Board Resolutions and other legal documents relating to the application, and to inspect and approve construction. Professional fees shall be billed through the Municipality's voucher system and approved for payment by the Zoning Board of Adjustment. Any excess of funds remaining in the escrow account at the time when all required improvements have been finally accepted and all professional work completed shall be returned to the applicant. If at any time it become evident that the escrow account is or will be insufficient to cover said fees, the developer shall increase the fund as required by the appropriate Zoning Board of Adjustment Official having jurisdiction over the matter.

\*\*\*The application fee is non-refundable and is a separate charge from the escrow fee.\*\*\*

I understand and consent to the foregoing.

Date: **4-12-2022**

Applicant: 

## DENNIS TOWNSHIP ZONING BOARD OF ADJUSTMENT APPLICATIONS INVOLVING SITE PLANS

Whenever a proposed development requires approval of a subdivision or site plan in addition to a use variance, the applicant may elect to submit a separate application requesting approval of the variance and a subsequent application for any required approval of subdivision, site plan or conditional use. The separate approval of the use variance shall be conditioned upon the granting of all required subsequent approvals by the Board of Adjustment.

When an applicant submits an application for subdivision, site plan or conditional use approval at the same time as an application for a use variance, and there are contradictions between the requirements of the respective applications as to number of copies of application form or plans, information required or other items, the most stringent (the most demanding) requirements shall apply. When submitting applications for a use variance and other approvals such as subdivisions or site plans, all application fees for the respective items must be submitted with the application itself.

In cases where the applicant seeks approval for premises located within the Pinelands area, the applicant must adhere to all requirements set forth in Township Code Chapters 165 (Subdivision of Land) and 185 (Zoning).

### GENERAL INFORMATION:

Present use: Gravel Pit

Proposed use: Gravel Pit with Concrete Plant

Size of proposed building: See Site Plan(depth)\_\_\_\_\_ (width)\_\_\_\_\_ (height)\_\_\_\_\_  
(no. of stories)\_\_\_\_\_ (total sq. footage)\_\_\_\_\_ (no. of units involved)\_\_\_\_\_

Waivers sought for (describe type of waivers sought and specify the Ordinance Section listing the items for which waivers have been sought) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### MINOR SITE PLAN (AND SITE PLAN WAIVERS)

Definition: See Dennis Township Code Section 165-59B (Minor Site Plans) and 165-59A (Waivers).

Procedures for Submission: See Dennis Township Code Section 165-51.

Plan Details: See Dennis Township Code Sections 165-59A, C and 165-54B.

### PRELIMINARY MAJOR SITE PLAN

Procedures for Submission: See Dennis Township Code Section 165-51.

Plan Details: See Dennis Township Code Section 165-54B(1) and (2).

### FINAL MAJOR SITE PLAN

Procedure for Submission: See Dennis Township Code Section 165-51

Plan Details: See Dennis Township Code Section 165-55B

## **APPENDIX TO PIERSON ZONING APPLICATION**

Variances are requested for the following proposed conditions:

1. 185-25 B Principal permitted uses in the "B" Commercial zoning district
2. 185-25 D Height in excess of 10%
3. 185-42 One principal structure on a lot, 185-7 One principal use on a lot

These three variances will require a "D" or use variances from the Dennis Township Consolidated Land Use Board

### **N.J.S. 40:55D-70d(1) - Principal permitted uses in the "B" Commercial zoning district**

This application proposes the addition of a ready-mix concrete facility on a licensed sand mine facility. The existing mining use requires the use of heavy machinery, the loading and unloading of large trucks, a scale house, storage facilities and an office building. There is also a hydraulic dredge, a sand wash, and multiple material conveyors. The proposed ready-mix concrete use will require a d(1) variance since it is not a specifically defined principal permitted use in the "B" commercial zoning district.

The concrete plant is similar in operation to the sand mine in that it requires the access by large trucks and heavy machinery. The existing office and storage facilities can be used by the concrete operation with no physical change. While a concrete plant is not specifically permitted in any zoning district, it is logical that it would be included with a mining use since so much of the supporting infrastructure can be shared. This application can be granted without substantial detriment to the public good because it satisfies multiple purposes of zoning or positive criteria found in N.J.S.A.40:55D-2. There are Special Reasons associated with the ready-mix concrete use that promote the purposes of zoning. This application advances the purposes listed in letters a, g, i, and m.

- a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public safety, morals, and general welfare. ***It is appropriate to utilize this existing sand mine for the development of a concrete plant. Existing on this site is water, sand and stones, three components for the mixing of concrete. The addition of cement is the fourth component. This site already has large trucks entering and exiting the site. The general operation of the facility will remain unchanged.***
- g. To provide sufficient space in appropriate locations for a variety of agricultural, residential, commercial, and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens; ***Utilization of this site for a concrete plant reasonable and will have minimal environmental impact. The current use on this site is similar and significantly larger in scope than the proposed concrete plant. Having a concrete plant in Dennis Township will assist in providing local residents with lower concrete costs which will assist in managing overall building costs.***

- i. To promote a desirable visual environment through creative development techniques and good civic design and arrangements; ***The visual impact of the addition of the concrete plant use to the sand mine use will be negligible. The alternative of utilizing this site is the creation of an independent site. A new site would require new road openings, necessary support buildings, and heavy machinery use all within an industrial setting.***
- m. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and the more efficient use of land. ***Clearly adding the concrete use to the existing sand mine is remarkably efficient. There is no need for new entrances, no need for more offices, storage or even the need for new truck driving patterns. All of these support elements currently exist on this site.***

**N.J.S. 40:55D-70d(6) - Height in excess of 10%**

The permitted height in the "B" commercial zoning district is 35 feet. The proposed height of the concrete plant is 52.85 feet plus a filter vent. The proposed height of the concrete plant is greater than 10% of 35 feet.

The proposed height of the concrete plant is necessitated by the operation of the equipment. The primary operating force of the concrete plant is gravity. Hoppers are filled with sand, stones, and cement. These elements are mixed in precise ratios and supplemented with water. Gravity pulls these elements from the hoppers. The mixture is then deposited into a concrete truck that is beneath the plant. The increased height of the plant will not offend the purpose of the height restriction in the "B" zoning district.

The purpose of the height restriction is primarily to address light, air, and open space concerns. This site is unique in that it is adjacent to electric substations and the associated high towers that carry the wires that conduct the electricity. Also, this lot is excessively large for the "B" district, over 100 times larger than the required 60,000 SF. The concrete plant is placed behind an existing office building and behind an existing storage building. The plant is set back over five times the minimum setback required in the district (500 feet versus 75 feet). Submitted with this application is a visual impact study that clearly defines minimal impact that this plant will have on the visual environment.

This height variance can be granted without substantial detriment to the public good because it satisfies multiple purposes of zoning or positive criteria found in N.J.S.A.40:55D-2. There are Special Reasons associated with the ready-mix concrete use that promote the purposes of zoning. This application advances the purposes listed in letters a, g, i, and m.

- a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public safety, morals, and general welfare; ***The site is excessively large and the plant is proposed to be set back from the road over 5 times the minimum required setback. There exist two significantly sized buildings between***

***the proposed concrete plant and the public right of way. The proposed concrete plant will have a minimal impact on the light, air, and open space to any surrounding property.***

- g. To provide sufficient space in appropriate locations for a variety of agricultural, residential, commercial, and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens; ***Utilization of this site for a concrete plant reasonable and will have minimal visual impact as well as a minimal impact on the light, air, and open space. The current uses on this site and the surrounding sites will make the concrete plant seem relatively small.***
- i. To promote a desirable visual environment through creative development techniques and good civic design and arrangements; ***The visual impact of the addition of the concrete plant use to the sand mine will be negligible. The alternative of creating an independent site would create a second location with an industrial setting.***
- m. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and the more efficient use of land. ***Clearly adding the concrete use to the existing 165 acre site is remarkably efficient. There is no need for buffers to hide the plant and having such large setbacks and large existing structures will significantly reduce the visual impact of the necessary height required for the concrete plant.***

**N.J.S. 40:55D-70d(5) - One principal structure on a lot, One principal use on a lot**

As per the Dennis Township Zoning Code a structure is defined as “anything constructed, assembled or erected which requires location on the ground or attachment to something having such location on the ground, including buildings, fences, tanks, towers, signs, advertising devices, swimming pools and tennis courts.”

There are a number of structures existing on this parcel that comprise the existing, permitted, excavation use. The site currently enjoys the Township license for resource extraction. This permit allows for the excavation of sand, gravel, earth or mineral products of the soil. The excavation permit specifically allows for three buildings on the site, office, storage, and garage. The excavation permit also requires fencing and allows for signage. There are additional structures currently on the site that are necessary for the excavation use. These structures include a sand wash, a scale with an associated control house, lighting poles, etc. Proposed within the current application is the addition of one additional structure, a ready mix concrete plant

The granting of a density variance requires the applicant demonstrate that the site will accommodate the problems associated with the increase density. This site is unique in that it is over 100 times the size required in the “B” zoning district. There are a number of structures, office, storage, scale house, etc. existing on this site which can be expanded in use to assist in the operation of a concrete plant.

This application can be granted without substantial detriment to the public good because it satisfies multiple purposes of zoning or positive criteria found in N.J.S.A.40:55D-2. There are Special Reasons associated with the ready-mix concrete use that promote the purposes of zoning. This application advances the purposes listed in letters a, c, g, i, and m.

- a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public safety, morals, and general welfare. ***It is appropriate to utilize an existing sand mine for the development of a concrete plant. Existing on this 165 acre site is water, sand and stones, three components for the mixing of concrete. This site already has an office, storage and scale house. The general operation of the facility will remain unchanged.***
- c. To provide adequate light, air, and open space; ***This site is unique in that the concrete plant can be sited in a way where it will have minimal visual impact. The size of the parcel coupled with the significant setback allow for the placement of one additional structure and use without a significant negative impact to the public.***
- g. To provide sufficient space in appropriate locations for a variety of agricultural, residential, commercial, and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens; ***Utilization of this site for an additional structure/use is reasonable and will have minimal environmental impact. The current use on this site is similar and significantly larger in scope than the proposed concrete plant. Having a concrete plant in Dennis Township will assist in providing local residents with lower concrete costs which will assist in managing overall building costs.***
- h. To encourage the location and design of transportation routes which will promote the free flow of traffic will discouraging location of such facilities and routes which result in congestion or blight; ***Placement of the concrete plant on this site will allow for the additional use within the Township without the need for additional road openings and new truck patterns.***
- i. To promote a desirable visual environment through creative development techniques and good civic design and arrangements; ***The proposed new use on this site in the location proposed allows for a minimal visual impact of the concrete plant and the siting of this plant in relation to the current building arrangement***
- m. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and the more efficient use of land. ***Clearly adding the concrete use to the existing 165 acre site is remarkably efficient. There is no need for buffers to hide the plant and having such large***



***setbacks and large existing structures will significantly reduce the visual impact of the concrete plant.***

**Negative criteria**

The variance relief sought with his application can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Dennis Township Zoning Plan and Zoning Ordinance. The proposed concrete use can easily be accommodated by this site because of the existing mining use and the extraordinary parcel size. The special reasons cited above clearly show that this application, as designed, will be a benefit to the general public within Dennis Township. The proposed use, the necessary height variance, and the need for multiple structures and uses on this site, while not specifically permitted within the "B" Commercial district, is clearly suited for this site in Dennis Township. The benefits of granting these variances will outweigh any potential negative impacts as a result of adding the concrete plant to this site.

**Additional Variance requested**

A C(2) Variance is requested from the following standard:

185-6 (D) 1 a      Machinery within 200 feet of a property line.

This is an existing condition that will be exacerbated by this application. The parcel adjacent to the area of the proposed concrete plant is a wooded portion associated with an unmanned electrical substation. There is no negative impact to this site as a result of the placement of the machinery within 200 feet of the property line. As defined above, there are a number of special reasons of zoning that support this variance. It is also well documented that this application, if approved, will have no significant impact to the zone plan and zoning ordinance of the Township of Dennis.

RESOLUTION 07-06

DENNIS TOWNSHIP ZONING BOARD OF ADJUSTMENT

WHEREAS, R. E. Pierson Construction Co., Inc., contract purchaser, on January 24, 2007 received a Use Variance to allow a ready mix concrete plant, an asphalt plant, a class B recycling facility and continued use of the sandwash currently operated on site at the premises known as Block 224 Lots 68.01, 73, 74.02 and 78.04 on the Dennis Township Tax Map;

WHEREAS, a Memorializing Resolution was to be passed on February 28, 2007;

WHEREAS, prior to said passage it was discovered that the application submitted by Pierson and approved by the Zoning Board was incomplete because it failed to include Block 224, Lot 75.03 which lot is necessary to provide access to the site from the Woodbine Ocean View Road;

WHEREAS, said omission made the application itself incomplete and also led to a failure to notice various property owners within 200 feet of the total site;

WHEREAS, the aforesaid constituted a mistake sufficient to cause the Zoning Board to rehear the matter in its entirety and the Zoning Board has decided to do so;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The following findings are made:
  - a. All statements contained in the preamble to this resolution are hereby incorporated by reference. Based on the foregoing, the Board has authority to vacate the prior approval in this matter, to declare void the all aspects of the hearing held on January 24, 2007 including testimony and exhibits and to order a rehearing of the application.
2. The Zoning Board does hereby vacate the prior decision and proceedings and orders a rehearing in this matter. The date of rehearing shall be hereafter determined.
3. A copy of this Resolution shall be supplied to the Applicant and filed with the Township Clerk.
4. A notice of this decision shall be published in the official newspaper of the Municipality by the Secretary of the Zoning Board.
5. This resolution shall take effect immediately.

Presented by Sutton

Seconded by Wm Deen

The foregoing Memorializing Resolution was passed by the Zoning Board of the Township of Dennis at a meeting held on March 28, 2007. It memorializes a decision the Board reached at its February 28, 2007 meeting.

Carla A Coffey  
Carla Coffey, Secretary  
Dennis Township Zoning Board of Adjustment

**RESOLUTION NO. 08- 20**

**DENNIS TOWNSHIP ZONING BOARD OF ADJUSTMENT**

**WHEREAS, R.E. PIERSON CONSTRUCTION, INC.,** owner, has submitted application for a use variance under N.J.S.A. 40:55-D-70(d) and to vary the provisions of Section 400-15A and D of the Municipal Zoning Ordinance as they pertain to permitted uses to construct and operate a ready mix concrete plant and a Class B recycling facility and continued use of a sand wash in addition to the existing mining operation, located on Woodbine – Oceanview Road in Ocean View in both the B (Business) District and C(Conservation) District, known as Block 224, Lots 68.01, 73, 74.02, 75.03 and 78.04 on the Dennis Township Tax Map.

**WHEREAS,** the application and supporting documents were properly filed and all the necessary fees and taxes were paid;

**WHEREAS,** a public hearings began on April 25, 2007 and continued intermittently concluding with further findings of fact November 16, 2008 and testimony having been taken and exhibits reviewed;

**WHEREAS,** at the initial meeting Board Members Germano and VanDrew recused themselves. Throughout the course of this presentation all Board Members who were not present at every meeting have certified that they have listened to the tapes of each proceeding. This was done prior to their vote on the application.

**WHEREAS,** the Board votes to deny the application and pass a memorializing resolution;

**NOW, THEREFORE, BE IT RESOLVED** as follows:

1. The following findings are made:
  - a. All statements contained in the preamble to this Resolution are hereby incorporated by reference. Based on the forgoing, the Applicant has standing to bring this application and the Board has jurisdiction to act in this matter.

b. The Applicant was represented by James H. Pickering, Jr., Esquire.

c. A site visit was undertaken on April 11, 2007. This included a visit to both the site in the application and to an existing site operated by the applicant in Logan Township, New Jersey. Throughout the early presentation various individuals attempted to submit petitions and letters to the Board for consideration. Then Board attorney John L. Ludlum, Esquire, advised that they were not admissible and as such they were not considered by the Board. Although the applicant had originally sought a use variance to allow an asphalt plan, this part of the application was withdrawn by letter from the Board attorney dated May 22, 2007. The applicant, Mr. Richard Pierson gave testimony as the owner of the site. Additional testimony was presented on behalf of the applicant by Mr. Kurt Mitchell, Mr. Walter Surea, Professional Engineer; Mr. Mark Gibson, P.L.S.; Jeffrey Meeker; Mr. David Shropshire, Traffic Engineer; and Mr. John Helvig, Professional Planner.

d. Mr. Gibson testified as to the property in question having previously served as a gravel pit and mining operation and having been licensed through 2008. Mr. Gibson gave testimony as to the specific dimensions of the site as memorialized in applicant's Exhibit A-1. Most of this site is disturbed as it has actively been mined before. Mr. Gibson's testimony continued through Exhibit A-2, whereby the specific buffers of one hundred and fifty feet (150') feet and one hundred (100') feet to the water were explained.

e. An Ariel photograph of the site, A-4 was discussed and reviewed by Mr. Gibson for the Board. This surrounding area and its specific uses surrounding the applicant's property were delineated and discussed in detail by Mr. Gibson.

f. Testimony was given as to the New Jersey Department of Environmental Protection authority to monitor the site after the construction was completed. The maximum of three (3%) percent impervious coverage was discussed.

g. An objector, Resorts Campground, was represented by Robert Sandman, Esquire. Upon cross examination Mr. Gibson admitted that the last actual survey of the property was from 1994. It was disclosed that the current mining license does not restrict the amount of material that can be removed from the site; the only limitations are by depth and the side slop requirements. There was a discussion regarding the Cape May County Municipal Utility Authority's roll in the regulation on the class B recycling facility.

h. Mr. Gibson opined that this site is particularly well suited for the sought after uses. He further thought that there would be little if any effect on the neighboring properties and on the environment.

i. Testimony was further given as to the location of the plant, its entranceway and the distance to County Road 610 and County Road 550 as a designated truck route. The Barrett Mining operation is located approximately one half mile from the applicants on County Road 610, while Daly Mining and Sand Plant Operation is located approximately two miles away. The weekend in the summer time it was acknowledged that traffic on County Road 550 comes to a stand still.

j. The applicant had signed an agreement of sale to buy the property.

k. The applicant Mr. Pierson gave testimony that the plant would generally not be operating on Saturday. Witnesses were subject to cross examination after their testimony and there was significant time taken inquiring as to the impact of the additional traffic on adjoining road. Testimony was further given on the operation of today's modern plants being quiet as they are computer controlled.

l. A discussion was had upon the contents of the concrete that would be recycled at the plant with discussions focused on the content of said materials.

m. Applicant and various experts testified as to the amount of tons per hour which would be processed at the facility, as well as the amount of truck traffic which would ingress and egress the plant. The applicant stated that the site would have natural gas backed up with fifty five to sixty five hundred gallons of fuel oil. Questions were raised about the amount of oil that would be stored on site; the amount of trucks that would be present on site; whether they would be standing idle and running and the specifics as to the type of noise they would generate both while in operation, idling, and backing up.

n. The dimensions of the actual facility to be created were discussed in limited detail. See photographs marked into evidence (The estimated cost of the plant is four million dollars).

o. The issue of spillage and run off pollution was addressed by the applicant and his experts, as well as the issue of fire suppression.



p. Significant time was spent on the discussion of noise and dust pollution caused by the ingress and egress of trucks as well as the actual operation of the plant itself. There will be a steel frame building to be used to house trucks and equipment.

q. The specifics of the operation were testified by the applicant's site manager including the number of employees who would work there, the time and duration of operation, the Department of Environmental Protection's participation in such and the start up time in bringing the proposed operation on line. The applicant proposed that he would voluntarily limit drivers so they would not use roads deemed inadvisable by the Board (i.e. Corson Tavern Road).

r. The applicant also operates two Class B recycling plants one in Logan and one in Winslow Township. Jobs estimated by this individual to be approximately forty or more.

s. Significant amount of time was devoted to the testimony of David Shropshire, the applicants traffic engineer. He testified as to the traffic study he conducted and the methods he employed, and the amount of trips he calculated per day. He placed his methodology for the same upon the record and was subject to cross examination. The applicant's expert further testified as to the traffic vibration and noise.

t. This matter was open to the public to ask individual questions of the witnesses as they testified. Various individuals asked questions of the witness, including but not limited to Mr. Kaczor, Mr. Boyer, Mr. Lombardo, Mr. Bolitskey, Mr. Kurtin, Mr. Adams, Mr. Esteen, Mr. D'Intino, Mr. Calloway, Mr. Dumalt, Mr. Thompson, Mr. Piazza, Mr. Showers.

u. Mr. John Helvig, Professional Planner gave testimony on behalf of the applicant as a Planner in New Jersey licensed since 1995. He gave testimony about the complimentary use which is proposed being one with the existing sand mining operation. Additionally, he gave testimony regarding the air quality, such use would affect. A permit would have to be obtained from the Department of Environmental Protection. He also testified as to similar heavy equipment uses nearby, citing Walter Brothers Construction and the County of Cape May's site. Mr. Helvig also reviewed other permitted uses which could be constructed on this site. He gave testimony as to an analysis of the positive and negative criteria, including his opinion that this site was particularly suited to this type of use as the

area is already denuded of trees and it is large enough for safe vehicular operation, etc. Mr. Helvig also addressed the Township of Dennis 1994 Master Plan, noting that the Class B recycling of concrete is not permitted in the Township.

v. Mr. Alexander Litwornia testified as a Professional Engineer on behalf of an objector Resorts Campground. He curriculum vita was read into the record and he was accepted by the Board as a noise and traffic expert. Mr. Litwornia gave extensive testimony disagreeing in whole with the applicant's expert David Shropshire. Specifically, Mr. Litwornia testified that Mr. Shropshire did not apply all the proper standards as required in N.J.C. 7:29-1.2, including Mr. Shropshire's failure to conduct an Octave Band Analysis. He included by opining that Mr. Shrophsire's report is deficient for the reasons he placed upon the record. As to traffic Mr. Litwornia also disagreed with the applicant's expert citing the New Jersey Department of Transportation Treatise "Managing Transportation in your community" as well as the "Trip Generation Hand Book" published by the Institute of Transportation Engineers and the American Association of State Highway Transportation). Specifically, Mr. Litwornia felt that Mr. Shropshire's failure to take into account the traffic at a key intersection of Route 9 was a critical omission. Mr. Litwornia was cross examined by Mr. Pickering on behalf of the applicant.

w. The witness was questioned by Mr. Pickering regarding Exhibit A-4, an aerial photograph, as to where his client's resides and the witness could not identify the same on the map. The witness was never on the adjacent properties with regard to this application. The witness has never been on the subject (applicant's) property. The witness was questioned on his opinion on the traffic from the camp grounds and he admitted that he did not consider it. The witness did not know how many sites were on the client's campgrounds, and had not done any studies on his client's campground. The witness did not know how far from his client's property it is to the applicant's area. The witness could not identify where on the applicants property the concrete machinery would be located.

x. Exhibit A-19 was admitted into evidence, which was a "Director's Noise Technical Assistant Center Manual" (Guidelines for conducting on octave band analysis investigation). The witness was questioned regarding the above and admitted that he did not do his own traffic study.

y. James Pickering, Jr., Esquire, quoted from a Pennsylvania Appellate case finding witness's business entity had disseminated false and misleading information regarding a traffic study in regard to opposing an application in that jurisdiction.

z. Witness, Mr. Litwornia was examined on rebuttal testimony by Robert Sandman, Esquire. He opine that:

(a) It could not be determined from the data provided by the Plaintiff's expert what the noise level from the property would be, and

(2) The traffic study was inaccurate.

aa. Barbara Allen Wooley-Dillon was sworn. She is a Licensed Professional Planner in New Jersey and a member of the American Institute of Professional Planners. Her professional affiliations were placed upon the record and her curriculum vita was admitted into evidence as Dillon 1. She was accepted by the Board as a Professional Planner and also gave testimony to the Board in a form of opinion testimony, and testified on behalf of the objector, Resorts Campground. She testified that she was present for all but one of the meetings regarding this application. Ms. Wooley-Dillon opined that the use sought to be exercised here is prohibited.

bb. Upon direct questioning by Mr. Sandman, Ms. Wooley-Dillon gave opinion testimony that there would be a detrimental effect if this use were to be permitted as to the surrounding property for the following reasons:

(a.). The master plan speaks directly of Ceder Swamp Creek, which borders directly on the area of the site used for the project;

(b.). Noise and vibration would be adverse to Ceder Swamp Creek;

(c.). The master plan and reexamination report speaks of light industrial uses which do not affect traffic, unlike this project;

(d.) This project is not the "light industrial" as referenced above;

(e.) The reexamination report of 2002 for the Township of Dennis did make exceptions which would allow this type of "heavy industry";

(f.) Resort related development was contemplated in this area of the report.

cc. Ms. Barbara Woolly-Dillon further opined that the project could be a detriment to the Zoning Ordinance of Dennis Township and to the surrounding areas as well in that:

(a.) The noise and activity which would be generated here would be greater than that contemplated for a permissible use;

(b.) There would be a negative impact to Cedar Swamp;

(c.) The traffic impact would be greater than that as set forth by the applicant as the buffers for this site which is the subject matter of this application have encroached into the minimum required into the surrounding areas. The buffers on site have been eroded to the point where they are intruding into surrounding properties.

(d.) The project in question will most certainly generate dust, ash or fumes.

dd. In Ms. Wooley-Dillon's opinion the purposes of Zoning would not be fostered by the granting of this application, and she testified that there was currently adequate capacity in the county for recycling concrete as in 2007 only twenty nine (29%) percent of the capacity was used. She was citing to "Analysis of 2007 Capacity for Recycling Concrete in Cape May County".

ee. In Ms. Wooley-Dillon's opinion there are no special reasons which support the granting of this application. The granting of said application would undermine the public good and the purposes of the Municipal Zoning Ordinances, and there is no public benefit which would be obtained by granting this variance.

ff. Mr. Pickering commenced his cross examination of Barbara A. Wooley-Dillon concerning the positive and negative criteria.

gg. Ms. Wooley-Dillon agreed that N.J.S. 40:55D-70 requires "substantial detriment to the public good.

hh. Ms. Wooley-Dillon also conceded that:

(a.) A creation of jobs can be considered;

(b.) Additional Ratables can be considered;

(c.) That the Board can consider the existing use on the site;

ii. Pursuant to cross-examination Ms. Wooley-Dillon conceded that she is not an expert in traffic engineering in any areas, including but not limited to the following:

- (a) Traffic engineering;
- (b) Vibration science;
- (c) Environmental engineering;
- (d) The field of Geology and Hydrology.

jj. Ms. Wooley-Dillon was also cross examined on the existence of a cell tower nearby and the existence of four hundred and fifty two (452) sites at Outdoor World Campground as well as the number of trips per day allocated to each campsite.

kk. Mr. Richard Pierson testified as a rebuttal witness as a principal for the applicant. He plans to hire at least twenty five (25) new people, four (4) of which have already been hired. He further states that the operation in question will comply with all Department of Environmental Protection regulations. The applicant needs site plan approval and may need additional permits before operation can begin.

ll. The matter was opened to the public for comment.

mm. Mr. Walter Kaczer testified that he lives on Corson Tavern Road and that currently trucks and State Police vehicles going by have caused damage and created a hazard in his opinion.

nn. Mr. Thomas Lepor testified that he lives next to the facility and has for twenty (20) years and that he has not experienced any noise or pollution on site. Additionally, it cannot be seen from his house, and he was employed at the site by a previous owner. He drove a truck removing sand from the facility and many loads were taken each day.

oo. Mr. Gordon Engle gave testimony as did Mr. Edward Chelius, as members of the environmental committee.

pp. Their report was read into the record over objection and the letter was marked into evidence as EC-1.

qq. Both Mr. Engle and Mr. Chlius were cross examined by Mr. Pickering and Mr. Sandman.

rr. All Exhibits considered by the Board are listed in **Exhibit "A"** attached hereto.

2. The following conclusions and findings of facts are made:

a. The Board Members visited a similar site operated by the applicant to observe its operation.

b. Applicant presented conflicting testimony as to how many employees would be working at the plant.

c. The Board finds that only two of the applicant's witnesses testified with sufficient authority for the Board to accept them credible, that being Mr. Mitchell and Mr. Halbigg.

d. The testimony of the sound engineer and the testimony of the traffic engineer as presented by the applicant were specifically found to lack credibility. This was in part based upon their evasiveness of these individuals to direct questions placed either by members of the Board or by counsel for an objector.

e. A certified survey of the property which is the subject matter of this application and presented to the Board had not been updated since 1994.

f. The applicant's traffic engineer did not present testimony as to the impact of the project on truck traffic West of the property, or at the intersection of County Road 550 and County Road 610. The questions directed to this expert by the Board Members or objectors from the audience were not adequately addressed.

g. The Applicant's experts did not explain the physical facility with any specificity except by the height of the concrete plant, this being stated to be sixty five (65) feet.

h. The applicant's expert did not explain the amount of trucks which would be entering and leaving the facility; the noise (frequency) which would be generated by the same or how many days they would be entering or exiting the facility.

i. The applicant would not address the issue of the toxicity of the 4,000 gallons of add mixtures to be used in the preparation of concrete.



j. During the course of the presentation the Board had asked of the applicant that he produce additional noise, environmental, and vibrations experts. The applicant's attorney declined to present further testimony on the requested issues. The Board was not convinced by the testimony of the applicant's expert that the sound being emanated from the site would not have an adverse impact upon the surrounding community.

k. The Board found the testimony of Ms. Barbara Wooley-Dillon as a Planner for the objectors to be particularly credible as to her analysis of the positive and negative criteria.

l. The Board feels that the applicant failed to adequately address the negative criteria.

m. The Board finds that applicant has not presented creditable testimony that the dust generated by the proposed use as well as the environmental impact will not adversely effect the surrounding community.

n. The Board finds that the applicant has not presented credible testimony of the impact of the truck traffic on the roadways leading to and from the project site as well as the surrounding properties.

o. The Board also finds that the project in question is not, as argued by the applicant, a light industrial use. The applicant did not successfully address the negative criteria which the Board finds significantly outweighs any applicable testimony the applicant presented in support of the positive criteria.

p. The Board finds that there is no basis to believe that the applicant's promise to voluntarily control the ingress and egress of truck traffic to his site so that it will not impact County Road 610 and Corson Tavern Road to be elusory and unenforceable. Should traffic begin to back up on the proposed ingress and egress routes proposed by the applicant, traffic will necessarily find its way out and overflow and impact into other roadways; the impact of which the applicant has not addressed.

q. The applicant's expert never addressed to the Board's satisfaction the amount of airborne particulates which would be generated by this use.

r. The Board found that if Lot 37, a forty (40) acre tract is removed from development that this would constitute an inefficient use of this property in the Zone

as per the master plan. This area in question would provide a space for five businesses which will not be available should the project be approved.

s. As requested by the Board for an airborne vibration study was never provided.

3. A copy of this Resolution shall be supplied to the Applicant and filed with the Township Clerk.

4. A notice of this decision shall be published in the official newspaper of the municipality by the Secretary of the Board.

5. This Resolution shall take effect immediately subject to Applicant's compliance with the conditions noted above.

Presented by: Sutton

Seconded by: Dennis

The foregoing applicant Resolution was denied by the Zoning Board of the Township of Dennis at a meeting on **October 22, 2008**. This memorializing Resolution confirms that **denial** by the Zoning Board at its **December 16, 2008** meeting.

Carla A. Coffey  
**Carla Coffey, Secretary**  
**Dennis Township Zoning Board of Adjustment**

## **PIERSON EXHIBITS**

- A-1 Sheet 3 of the site plan
- A-2 3 Pages of site plan
- A-3 July 25, 2003 DEP letter of interpretation for wetlands
- A-4 Aerial photograph
- A-5 Asphalt plant components booklet
- A-6 April 2, 2007 letter from Logan Township Mayor (For identification only)
- A-7 April 23, 2007 letter from Wilmington, Delaware Commissioner (For identification only)
- A-8 NJDEP violations report dated 5/8/07
- A-9 DEP Conference attendance sheet for May 20, 2003 meeting
- A-10 Material safety data sheets dated March 9, 2007 and September 30, 2005
- A-11 (sic) Controlled Fugitive Emissions 7/23/07
- A-12 Rutgers Community Noise Enforcement Booklet
- A-13 Shropshire Associates Traffic Report (For identification only)
- A-14 Helvig 4 page packet of aerial photographs
- A-15 Concept Site Plan – Warehouse distribution center
- A-16 Ready Mix plants in South Jersey
- A-17 Shropshire Associates Sound Level Assessment Report (For identification only)
- A-18 Craig Test Boring Co., Inc. Vibration Monitoring Report (For identification only)
- A-19 Guidelines for conducting an Octave Band Analysis

RESOLUTION NO. 10- 17

DENNIS TOWNSHIP ZONING BOARD OF ADJUSTMENT

A RESOLUTION OF THE TOWNSHIP OF DENNIS  
ZONING BOARD OF ADJUSTMENT, COUNTY OF CAPE  
MAY, STATE OF NEW JERSEY AUTHORIZING  
RESOLUTION OF THE LITIGATION ENTITLED  
R.E. PIERSON CONSTRUCTION, INC. v.  
TOWNSHIP OF DENNIS ZONING BOARD OF  
ADJUSTMENT, and TOWNSHIP OF DENNIS, JOHN  
DOE, Municipal Officials 1-10, JANE DOE  
Municipal Officials 1-10, j/s/a,  
UNDER DOCKET NO. CPM-77-09

**WHEREAS**, The Dennis Township Zoning Board of Adjustment and R.E. Pierson Construction, Inc. desire to amicably resolve the law suit filed under the caption of R.E. Pierson Construction, Inc. v. Township of Dennis Zoning Board of Adjustment, and Township of Dennis, et als, under Docket No. CPM-77-09, and;

**WHEREAS**, the Township of Dennis Zoning Board of Adjustment is represented by Anthony J. Harvatt, II, Esquire, and whereby William Zeigler, Esquire represents the Defendant, R.E. Pierson Construction, Inc. under the above law suit, and whereby Donald A. Powell, Esquire, represents the Township of Dennis on the Civil Rights Claim, and whereby Robert S. Sandman, Esquire represents Resort Campground, and;

**WHEREAS**, R.E. Pierson Construction, Inc. and the Township of Dennis Zoning Board of Adjustment are agreeable to an amicable resolution, and;

**NOW THEREFORE BE IT RESOLVED** that the Dennis Township Zoning Board of Adjustment adopt a Resolution amending prior Resolution No. 08-20, so that said denial

shall have no *res judicata* effect and be *without prejudice*, permitting the Applicant or its successor in title to bring an application which may be the same or similar to the application memorialized above.

**WHEREAS**, R.E. Pierson Construction, Inc. in consideration of the above has agreed to dismiss any and all claims it has against the Township of Dennis Zoning Board of Adjustment which arise under Docket No. CPM-L-77-09.

**WHEREAS**, it is specifically recognized that Resort Campground, being represented by Robert S. Sandman, Esquire, has successfully intervened in this case and as such their claim remains unaffected by this settlement between the Dennis Township Zoning Board of Adjustment, and R.E. Pierson.

1. A copy of this Resolution shall be supplied to the Applicant and filed with the Township Clerk.
2. A notice of this decision shall be published in the official newspaper of the municipality by the Secretary of the Board.

Presented by: Marcia

Seconded by: James

The foregoing Memorializing Resolution was passed by the Zoning Board of the Township of Dennis at a meeting on **December 15, 2010**. It confirms the Approval granted by the Zoning Board at its **November 17, 2010** meeting.

Carla A. Coffey  
Carla Coffey, Secretary  
Dennis Township Zoning Board of Adjustment

## **RESOLUTION NO. 12- 06**

### **DENNIS TOWNSHIP ZONING BOARD OF ADJUSTMENT**

**WHEREAS, R.E. PIERSON CONSTRUCTION, INC.,** owner, has submitted application for a use variance under N.J.S.A. 40:55-D-70(d) and to vary the provisions of Section 400-15A and D of the Municipal Zoning Ordinance as they pertain to permitted uses to construct and operate a ready mix concrete plant and a Class B recycling facility in addition to the existing mining operation. Applicant is also requesting a height variance where 35 feet is permitted and 82 feet is proposed, located on Woodbine – Oceanview Road in Ocean View in both the B (Business) District and C (Conservation) District, known as Block 224, Lots 68.01, 73, 74.02, 75.03 and 78.04 on the Dennis Township Tax Map.

**WHEREAS,** the application and supporting documents were properly filed and all the necessary fees and taxes were paid;

**WHEREAS,** a public hearing was held on **September 28, 2011** and testimony taken and exhibits reviewed; and

**WHEREAS,** a public hearing was held on **November 16, 2011** and testimony taken and exhibits reviewed; and

**WHEREAS,** a public hearing was held on **December 21, 2011** and testimony taken and exhibits reviewed; and

**WHEREAS,** a public hearing was held on **January 25, 2012** and testimony taken and exhibits reviewed; and

**WHEREAS,** a public hearing was held on **February 22, 2012** and testimony taken and exhibits reviewed; and

**WHEREAS,** a public hearing was held on **March 28, 2012** and testimony taken and exhibits reviewed;



**WHEREAS**, the Board votes to deny the Applicant subject to the passage of a memorializing resolution;

**NOW, THEREFORE, BE IT RESOLVED** as follows:

1. The following findings are made:

a. All statements contained in the preamble to this Resolution are hereby incorporated by reference. Based on the forgoing, the Applicant has standing to bring this application and the Board has jurisdiction to act in this matter.

b. The Applicant was represented by James H. Pickering, Jr., Esquire.

c. William Zeigler, Esquire, co-counsel, also represented the Applicant.

d. Board Members Mr. Kelly, Mr. Germanio, and Mr. Turner recused themselves due to conflicts

e. Mr. Pickering gave an introductory statement evidencing the recycling facility which was preempted by the State however the Applicant is here because of the multiple uses and variances requested.

f. Mr. Mark Gibson, a Professional Land Surveyor since 1987 and accepted as such was sworn in and testified that he had been to the site in question many times and had surveyed the property several times.

g. Robert Sandman, Esquire appeared on behalf of a local property owner known as Resorts Campground.

h. A-1 was marked into evidence as a survey, sheet number two of plan of survey.

i. Mr. Gibson addressed the borders of the property in question which defined the lot.

j. Mining operating has existed on the site since the 1950s.

k. The over all set up of the site including buildings constructed thereon was set forth by the surveyor.

l. The site is currently permitted as a mine.

m. Southeast of the property has commercial development.

n. There is a commercial lot to the West and a communications tower to the North. There is a vacant seventy (70) acre wooded lot to the South, and a five to

six unit commercial development to the West. Additionally, there was a boat yard located to the South, and there is a County Public Work yard next door.

o. A letter of interpretation dated 1988 was referenced which delineated the wetlands.

p. There are three zones currently encompassed on the property.

q. Aerial maps (2010) referenced substantially represent the property.

r. A-2 was marked into evidence, which was a letter of interpretation regarding delineated wetlands and an aerial map.

s. The mining facility on site is about 700 feet off of Oceanview Woodbine Road, and there is also a recycling facility located further to the West.

t. The proposed facility would be about 2900 feet from the nearest year round resident.

u. Mr. Sandman, who represented Resorts Campground, cross examined Mr. Gibson on his testimony.

v. The matter was opened to the public.

w. Mr. Matt Blake was sworn and had questions for Mr. Gibson.

x. Mr. Walter Kaczor was sworn and also had questions for Mr. Gibson.

y. The Applicant next presented Mr. Curt Mitchell. He was sworn and gave testimony as a facility director for R.E. Pierson. He testified that the sandwash is a permanent taxable structure and gave testimony as to the overall configuration of the lot including the "finger lot" which he stated the Applicant had no desire to encroach upon.

z. There are currently thirteen (13) employees there now which include a plant manager, a dredge operator, a load operator, an office manager, and truck drivers.

a2. The hours of operation are 6:30 a.m. to 3:00 p.m.

b2. The recycling operation would operate year round, but would shut down six to eight weeks in the winter when operation would be impractical. This would translate to approximately two hundred and thirty (230) days of operation per year.

c2. The Applicant has a temporary Class B Recycling Permit currently, and the Applicant plans to recycle thirty thousand (30,000) tons per year.

d2. If the current application as proposed is approved the Applicant anticipates hiring eight (8) new employees.

e2. As to concrete, the Applicant projects thirty thousand (30,000) yards of concrete per year.

f2. Each truck would carry twenty four (24) tons per load.

g2. The concrete mixer trucks would carry ten (10) cubic yards a piece.

h2. There is one other concrete plant in Cape May County. This plant as proposed is similar to their plant in Winslow Township.

i2. A-3 was marked into evidence, which was a concrete central mix plant plan.

j2. A typical concrete plant is as high as this one, and here eight two (82') feet high is proposed.

k2. A-4 was marked into evidence, which is an aerial photograph of the Winslow Concrete Plant similar of what is proposed here.

l2. A-5 was marked into evidence, which is a photograph of the Winslow facility.

m2. The Applicant seeks to only recycle concrete and asphalt and no other material.

n2. The berm on site as proposed will be permanent and remain as long as the recyclable and concrete operations are on site.

o2. The studies indicate that the dredge and concrete plant can operate together. However the concrete crusher must run alone because of the noise limitations and could not be operated in conjunction with the other two.

p2. The Applicant opined that the site is particularly suited because it has been mined since the 1950s, and it is a one hundred and seventy acre site and is on a County roadway which is designated as a County truck route and that would facilitate the ingress and egress to the site.

q2. Vincent Orlando, P.E., the Board Engineer and Mr. Bruce Klein, P.E., the Board Expert for this application were sworn in and gave testimony. Both had questions for Mr. Mitchell.

r2. Mr. Sandman cross-examined Mr. Mitchell.

s2. O-1 was marked into evidence, which was a Mining Agreement dated October of 2006.

t2. O-2 was marked into evidence, which was a Sand Mining only document.

u2. Applicant testified that all traffic would enter and exit off of County Road 550. Applicant admitted having been cited previously for failure to record and keep records regarding dust omissions.

v2. O-3 was marked into evidence, which was an Inspection Summary Report (R.E. Pierson) dated September of 2011. This document was authorized by the Department of Environmental Protection regarding the Winslow Plant.

w2. O-4 was marked into evidence, which was an Inspection Summary Report of Dennis Township Property dated September 12, 2011.

x2. O-5 was marked into evidence, which was an Inspection Summary Report dated September 2011 of the Logan Township Property being cited as out of compliance.

y2. O-6 was marked into evidence, which was an Inspection Summary Report dated June 22, 2011 of Monroe Township Property. (The truck did not have the required decal.)

z2. The matter was open to the public for the questioning of this witness.

a3. John Thompson was sworn and had questions for the Applicant.

b3. Alma George was sworn and had questions for the Applicant.

c3. Mr. Matt Blake was sworn and had questions for the Applicant.

d3. Board Members, Mr. Turner and Mr. Kelly, recused themselves due to conflict. Board Member Mr. Haig was missing this evening and would have to listen to the tapes. He was subsequently not reappointed to the Board.

e3. Dana Sherwood was sworn and gave testimony and was accepted as a noise specialist. She possesses a Bachelor of Science Degree in Meteorology.

f3. A-6 was marked into evidence, which was the curriculum vitae for Ms. Sherwood.

g3. The witness explained the basic concept of sound and discussed the weighting scale which was adjusted for human hearing. The topics explained and discussed were octave bands, center frequency, and impulsive sound.

h3. A-7 was marked and accepted into evidence, which was Ms. Sherwood's Report of July of 2011.

i3. Ms. Sherwood discussed and explained to the Board the sound which occurs on site regarding this application.

j3. The report concluded that all three proposed operations could not operate at the same time on the site as they would exceed allowable noise limits. The recycling and concrete must be operated alone, while the other two could be operated in conjunction with each other.

k3 The proposed berm was not taken into account.

l3. The matter was open to the public.

m3. Mr. Sandman cross-examined Ms. Sherwood.

n3. Ms. Alma George and Ms. Chris Dumont were also sworn and had questions for the witness.

o3. Ms. Toni Sapio, was retained by the Board and was sworn and testified as a Professional and gave her opinion in review of the Applicant's expert report. She testified that the trucks on site should have been included in the peak activity period.

p3. Mr. David Horner was called by the Applicant and was sworn and gave testimony as a traffic expert.

q3. David Horner's report was submitted with the Application. The report contained information that the plant would operate on a Monday through Friday operation only and he did not consider Saturday at all.

r3. Mr. Horner discussed the heavy vehicle impact and how that factored into his opinion. He also opined that there was not a necessity for an auxiliary turn lane relating to increased traffic.

s3. The matter was open to the public.

t3. Mr. Horner who had testified at the last hearing was still under oath and continued his testimony as to the traffic study.

u3. Mr. Kline was sworn and testified asking for a comment on the increase of traffic and how it was calculated.

v3. Mr. Horner advised that he has indicated that already, previously providing testimony on the vehicle traffic, and the information was in his report.

w3. Several of the individuals had questions about the traffic expert, including Alma George and Donna Bower, who were sworn and gave testimony.

x3. William Walters was sworn and gave testimony on behalf of the Applicant as a local property owner whose property abuts the Applicants in favor of the application. Mr. Walters saw no detriment to the relief being granted which was requested by the Applicant.

y3. Scott Boyer was sworn in and had questions for Mr. Walters.

z3. Mr. Sandman had questions for Mr. Walters about his business.

a4. Mr. John Helbig was sworn and gave testimony on behalf of the Applicant. Mr. Helbig has been a licensed Professional Planner in the State of New Jersey since 1995 and was accepted by the Board and testified as to the two variances which were the subject of this application. The D-1 variance for multiple uses on the site as well as the second variance for the Class B recycling facility and a ready mix concrete plant. Mr. Helbig opined that the special conditions which exist on site would further the purposes of Zoning because (1) there would be several uses on one property which is already denuded (2) the general welfare would be advanced because the site can contain multiple uses and is particularly well suited for that purpose (3) that the recycling and combination of these uses would promote open space. Further, the property in question is already disturbed. He presented his opinion as to the appropriateness of this particular location, and locating a new industry out on an existing industrial site when the current site uses only nine (9%) percent of its entire site. The additional impact will be minimal.

b4. Mr. Helbig felt that the fact the garage and office which were already on site would further minimize any impact. He further opined that the operation would be located on a truck route designated by Cape May County.

c4. A-8 was marked into evidence, being a proposed Zoning Map of Dennis Township dated June of 2010.

d4. A-9 was marked into evidence, which was a map of Southern New Jersey dated December 21, 2011 of Ready Mix Concrete Plants.

e4. A-10 was marked into evidence, which is conceptual site plan of Gibson & Associates page four submitted on September 24, 2011.

f4. As to the negative criteria Mr. Helbig opined there would be no substantial detriment to the public good because to the operation as proposed would be six-hundred (650) feet off of the Woodbine Ocean View Road and because a sixteen foot proposed high berm behind the property which would mitigate the impact.

g4. Multiple agencies have oversight and authority over this operation not only during the design phase but operationally.

h4. A-11 was marked in evidence as R.E. Pierson Logan Township facility aerial view and it was opined that such a facility if located here would not impair the purposes of the zone plan or the local zoning ordinances.

i4. Pertinent ordinance sections were read into the record and testimony was given as to the eighty-two (82) foot height of the proposed structure, with thirty-five (35) feet is allowed. The applicants witness reiterated that there is an Atlantic City electric substation close by which is much more intrusive as well as a two-hundred (200) foot high cell tower and a one-hundred seventy (170) foot radio antennae operated by the County of Cape May.

j4. A-13 was marked in evidence which was graphic B from Vision Analysis and was opened to the public.

k4. Various members of the public were sworn and asked questions or gave testimony and they included James Owen, Walter Kaczor, James Waltz, and Alma George. Mr. Sandman also questioned the applicant. The issue of ground water monitoring was discussed. Resorts Campground through its attorney Mr. Sandman presented testimony of James Owens. He testified as to complaints at a local campground which adjoins the property. Mr. Sandman then called Barbara

Allen Woolley-Dillon a licensed professional planner since 1998. She was accepted by the Board as a professional planner and gave testimony.

14. Ms. Woolley-Dillon reviewed and discussed at length all relevant documents reports and plans which had previously been submitted. Ms. Woolley-Dillon reviewed at length her analysis of the positive criteria as there is set forth in the statute and their relevance to this application. She emphasized that the application if approved would disturb the natural aesthetics of the area as well as disturb the existing character of the neighborhood both which are desirable goals as set forth in the statute for the purposes of zoning and variance relief. Ms. Woolley-Dillon set forth at length her opinion as to why the applicant failed to meet the positive criteria as well as the negative criteria of the statute. She opinioned that all the other height variances in the area are for inherently beneficial (i.e. cell towers and County communications equipment).

m4. Ms. Woolley-Dillon further discussed the existing capacity for recycling as well as the issue of noise and confirmed her opinion that the Applicant had not met its burden regarding the requested variance relief.

n4. Mr. Salvatore Perrillo, Esquire appeared on behalf of Outdoor World, a neighbor. He spoke regarding the Applicant's technically requiring a three D variances, (1) for height, (2) for three uses on the site, and (3) for the use variance for the Class B recycling and the other use on site.

o4. Ms. Woolley-Dillon was cross-examined by Mr. Perrillo as well as Mr. Pickering. The Board had various questions for this witness.

p4. Ms. Honey Pron was called and gave testimony as a County Environmental Health Specialist for the Cape May County Health Department. She placed her curriculum vitae upon the record including testimony that she had worked for five and half years and was a registered Environmental Health Specialist. She testified as to her use of decibel meters and the testing of this site in January of this year which was generated by a complaint regarding the Pierson site.

q4. O-8 was marked into evidence, which was Ms. Pron's Investigative Report of January 10, 2012.



r4. O-9 was marked into evidence, which was a noise measurement report. No violation was issued because the adjoining campground which was the closest property was not open at that time. No other complaints have ever been logged with the County against this property.

s4. Mr. Jones, a sitting Board Member arrived at approximately 8:05 p.m. that evening. His certification was to follow.

t4. Ms. Pron was cross-examined by Mr. Pickering and Mr. Perrillo. Mr. Perrillo presented testimony for his client.

u4. Mr. James Owen was sworn and gave testimony as a facilities manager, and has been employed for four years by Outdoor World.

v4. OW-1 was marked into evidence, which is a site map showing 480 plus sites.

w4. OW-2 was marked into evidence, which were photographs of the property line.

x4. The matter was open to the public.

y4. Ms. Alma George was sworn and had questions for that witness.

z4. Mr. Norman Dotti was sworn and set forth his credentials as an acoustical engineer. His curriculum vitae was placed upon the record and he was accepted as an expert in acoustics. He gave testimony as to his visit to the site on February 22, 2012. He did not see a berm. He gave testimony that any earth and structure need to be high enough to block the line of site from the sound source. He also discussed the effect of sound over water as well as the effect temperature and humidity would have on sound over a short distance. He also reviewed and opined the County Investigator's report.

a5. Mr. Dotti was cross-examined by Mr. Pickering and the Board had questions regarding his testimony.

b5. Mr. Matthew Blake was sworn and had questions. Thereafter Alma George was recognized and gave testimony as to the recommendations of the "Environmental Commission of Dennis Township" of which she is a member.

c5. DC-1 was marked into evidence, which was the Environmental Commission's Report of January 12, 2012. Over objection by Mr. Pickering the report was read into the record and admitted into evidence.

d5. Mr. Walter Kaczor was sworn and gave testimony. He was cross-examined by Mr. Perrillo.

e5. The matter was then open to the public regarding the entire application.

f5. Ms. Eileen Turner was sworn and spoke against the application.

g5. Mr. Jim Owen was sworn and spoke against the application.

h5. Mr. Matthew Blake already sworn spoke against the application.

i5. Ms. Alma George already sworn spoke against the application.

j5. The part of the hearing which was then open to the public was then closed and that meeting was adjourned at 11:05 p.m.

k5. The Board reconvened on March 28, 2012 at 7:00 p.m. and entertained summations by the Applicant and the representative of the objectors and the public.

l5. Mr. Perrillo appeared and asked the Board to adjourn the meeting so that he could re-present his expert who was not available that night to present additional testimony, volunteering to contribute to any costs if the Board expert needed to be recalled. This request was denied by the Board.

m5. Mr. Sandman, Mr. Perrillo, and Mr. Pickering presented their summations.

n5. The matter was open for discussion by the Board and discussion was had and the findings of facts were made and following the same the matter was brought to a vote.

o5. Four D variances were to be considered. (1) for multiple uses on one site, (2) for a concrete plant, (3) for Class B recycling facility for concrete and asphalt, and (4) for a height variance in a prior existing non-conforming use where 82 feet was proposed and 35 feet was permitted.

p5. The first vote was to approve the construction of concrete plant on site, which vote was no.

q5. The second vote was to approve Class B recycling facility for concrete and asphalt, which vote was no.

r5. By consent the other two variances were considered moot and the application was denied in toto.

2. The following conclusions and findings of facts are made:

The Board having found that the Applicant failed to meet his burden the application was denied. The Applicant did not successfully address the negative criteria which the Board finds significantly outweighs any applicable testimony the Applicant presented in support of the positive criteria.

3. A copy of this Resolution shall be supplied to the Applicant and filed with the Township Clerk.

4. A notice of this decision shall be published in the official newspaper of the municipality by the Secretary of the Board.

Presented by: James

Seconded by: Daniel

The foregoing Memorializing Resolution was passed by the Zoning Board of the Township of Dennis at a meeting on April 25, 2012. It confirms the Approval granted by the Zoning Board at its March 28, 2012 meeting.

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**Carla Coffey, Secretary**  
**Dennis Township Zoning Board of Adjustment**

