

7:01:24 PM - - WalshCONSOLIDATED LAND USE BOARD - TOWNSHIP OF DENNIS
Regular Meeting - December 22, 2022 - 7:00 p.m.

Attendance: Turner, McEvoy, Penrose, VanArtsdalen, Cowan,
Chambers, Martucci, Walsh, Watson,

Applications:

WALTERS, RON - Block 257, Lot 4: Located on Kings Highway in a Rural Density Residential (R3) Zone. Applicant seeking a use variance to construct an apartment use on the same lot a a single-family dwelling.

PIERSON-PLEASANTVILLE, LLC - Block 224, Lots 68.01, 73, 74.02, 75.03 and 78.04: Located on Woodbine-Ocean View Road in a Business District (b). Applicant seeking preliminary and final site plan approval, a use variance, bulk variances, waivers from subdivision and/or site plan standards and any and all waivers and/or approvals necessary to add ready mix concrete as an additional use associated with an existing gravel pit.
(Continued from November 17, 2022.)

Other Business:

Correspondence:

Discussion:

Resolutions:

Mooers -
Wawa -

Minutes:

November 17, 2022
December 1, 2022 (Special Meeting)

Bills.

Adjourn.

Wal

7:01:24 PM - - Start Recording
7:01:31 PM - - Walsh - call to order
7:01:40 PM - - Roll call
7:02:37 PM - - Walsh - first application - Ron Walters
7:03:09 PM - - Joe Maffei - for applicant
7:03:28 PM - - Batastini - administer oath to Maffei, Fralinger, Jack Gibson and Ron Walters
7:03:53 PM - - Maffei - applicant would like to build pole barn on property with apartment to be occupied by his daughter, another principle building exists on property, property is about 16 acres. Meets all bulk standards and needs use variance. Explain application. Will be 3 bedroom home, addressed positive and negative criteria. Proposed apartment will have 1

bedroom. The existing home could have 5 or 6 bedrooms. Willing to provide deed restriction to limit occupancy of apartment to family members. Applicant also intends to return portion of the property to a farm use. Responded to certain items in Fralinger's report.

- 7:09:05 PM - - Walsh - questions to applicant
- 7:09:31 PM - - Walters - has 3 daughters and one will be residing in proposed apartment; apartment will be approximately 900 - 1,000 square feet.
- 7:10:07 PM - - Walsh - his concern is starting a precedent with apartment
- 7:10:48 PM - - Walters - apartment will not be on second floor
- 7:11:14 PM - - Walters - has been his dream to farm and hopes that his children will continue
- 7:11:36 PM - - Walsh -
- 7:11:46 PM - - Maffei - deed restriction will be for family members only
- 7:12:06 PM - - Walsh - ask Board for questions
- 7:12:14 PM - - Watson - this apartment doesn't exist now and why doesn't applicant want to subdivide, afraid it will become a mess
- 7:12:54 PM - - Walsh - agrees - feels precedent is being set
- 7:13:07 PM - - Caprioni - how is this different from previous application for mother-in-law on Hagan Road
- 7:13:41 PM - - Walsh - that was an already existing building and this is currently a vacant lot
- 7:14:04 PM - - Batastini - ask Fralinger for his engineer's report
- 7:14:21 PM - - Fralinger - engineer's report
- 7:16:07 PM - - Batastini - is applicant willing to adhere to engineer's recommendations
- 7:16:30 PM - - Maffei - yes
- 7:16:34 PM - - Batastini - ask Board for further questions/comments - none; open to public - none; close public comment
- 7:17:39 PM - - Maffei - summation - if apartment is not approved, would like to get height variance for the pole barn. Apartment is not for real estate money, but for Mr. Walter's daughter.
- 7:19:11 PM - - Walsh - no problem with height variance for pole barn
- 7:19:28 PM - - Watson - deed restrictions are hard to enforce
- 7:19:58 PM - - Batastini - will first take vote on use variance and if use variance is denied will take vote on height variance
- 7:20:25 PM - - Maffei - maximum height would be 19 feet
- 7:20:36 PM - - Batastini -
- 7:21:41 PM - - Maffei - ask for couple of minutes to discuss with his client
- 7:21:54 PM - - Batastini - ask Maffei for some background on property
- 7:22:07 PM - - Maffei - property previously owned by Sweeney; reviewed property history; still zoned and regulated as it was back in 2006
- 7:22:49 PM - - Walsh - is lot able to be subdivided
- 7:23:01 PM - - Batastini - there is nothing from stopping Mr. Walters to come in and subdivide the property at a future time
- 7:23:26 PM - - Walters - feels like he is being forced to subdivide; knows there is nothing to stop him from subdividing; but he doesn't want to subdivide; if his children want to subdivide at some time in the future, they can. Wants to do things the right way, keeps properties clean.
- 7:25:04 PM - - Walsh - knows he keeps properties clean; but doesn't want to set precedents for other applications in the future; he could decide to change his mind about what he wants to do with the property tomorrow
- 7:26:12 PM - - Walters - feels projects he does are nice jobs and he speaks to everyone with honesty; needs place for his daughter and that is why he is here before Board.
- 7:27:06 PM - - Penrose - in addition to deed restriction for only family use, would he restrict the property to giving up the apartment if he decided to subdivide
- 7:27:59 PM - - Walters - yes, would be willing to do that

7:28:11 PM - - Penrose -
 7:28:19 PM - - Watson - if will to restrict the property from being subdivided at all would be even better
 7:28:49 PM - - Walters - know what property is worth at this time if subdivided, but doesn't want to prevent his children from doing so in the future
 7:29:30 PM - - Batastini - confirm that is ultimately decide to subdivide, apartment use will be demolished
 7:29:59 PM - - Walters - yes
 7:30:06 PM - - Batastini - form of motion to approve with deed restriction regarding apartment for family use only and to be demolished if property is subdivided
 7:30:49 PM - - Walsh - good with that
 7:31:05 PM - - Penrose - motion to approve
 7:31:12 PM - - Cowan - second
 7:31:57 PM - - Vote passes with 2 members voting no.
 7:32:14 PM - - Walsh - next application - Pierson
 7:33:05 PM - - Balistreri -
 7:33:25 PM - - Walsh - ask Balistreri if he will be having an LLC member present for testimony
 7:33:54 PM - - Balistreri - will consider for next meeting
 7:34:19 PM - - Batastini - advise Board members that they have the power to subpoena witnesses if they so choose and can request that a principle appear and answer questions
 7:35:11 PM - - Balistreri - he thinks it unusual to subpoena under the circumstances since they are represented by an attorney, but will speak with his client
 7:35:58 PM - - Batastini - administer oath
 7:36:30 PM - - Paul Baldini, Esquire - attorney for applicant
 7:37:07 PM - - Kerlinger - having problem with video and will log off and log back on
 7:38:56 PM - - Turner - still waiting for Kerlinger - hasn't logged back in yet; advise that Kerlinger is back and advise Mr. Baldini that he can now share the screen
 7:41:14 PM - - Walsh - was Kerlinger sworn in
 7:41:22 PM - - Batastini - believes he was, but will do again - administer oath to Dr. Kerlinger
 7:41:45 PM - - Kerlinger - take oath
 7:41:57 PM - - Baldini - questions to Kerlinger -
 7:42:19 PM - - Kerlinger - stated fields that he is an expert in; not an expert in wildlife management and other fields; respond to questions from Baldini regarding wildlife and related issues with respect to same in general and with respect to the property which is the subject of this application.
 7:48:05 PM - - Baldini - is the property in question in a conservation zone or not
 7:49:00 PM - - Kerlinger - would like to see map, but believes it may be on the edge of a conservation zone
 7:49:29 PM - - Baldini - confirm lots in question by referring to a map and re-asking question
 7:50:04 PM - - Kerlinger - looks like it may be in a conservation zone except for a small portion in the lower right hand corner
 7:50:32 PM - - Baldini - refer to business zone and ask Kerlinger
 7:50:54 PM - - Kerlinger - respond to Baldini about business zone in relationship to this property; his understanding is that the trucks would be moving outside of these areas
 7:52:03 PM - - Baldini -
 7:52:18 PM - - Kerlinger - based last answer on some of the maps he has seen of site; under the impression that roads were in a different location for truck movement
 7:53:21 PM - - Baldini - continue with questions to Kerlinger
 7:53:45 PM - - Kerlinger - respond to Baldini's questions. Indicate that he is not sure if what Baldini has indicated changes his opinion;

doesn't see how trucks could move on property following what Baldini has described.

7:55:44 PM - - Baldini - continue with quesitons to Kerlinger.

7:56:04 PM - - Kerlinger - responses to Baldini. Conservation district is also along Route 550; trucks will be moving along that road. Acknowledges there is a County landfill in the area that use the same route.

7:58:48 PM - - Baldini - question regarding traffic counts

7:58:59 PM - - Balistreri - object to questions regarding traffic count

7:59:18 PM - - Baldini - continue with questions to Kerlinger, asked question about Shropshire's testimony

7:59:57 PM - - Kerlinger - not present for Shropshire's testimony

8:00:07 PM - - Baldini - withdraw that question; continue with additional questions to Kerlinger

8:00:29 PM - - Kerlinger - responses to Baldini regarding natural heritage sites in vicinity and distances from subject site; habitat in those sites - same but different; referring to Exhibit A-14 - doesn't have personal knowledge of creek; Magnolia Lake site - description read by Baldini is somewhat accurate but has roads through it; referring to Exhibit A-12 - where the new infrastructure will be is dissimilar.

8:07:55 PM - - Baldini - continue with questions

8:08:20 PM - - Kerlinger - responses to Baldini who is now referring to the Master Plan - can't answer based on reading of one sentence, read from that portion of Master Plan and responded to Baldini - thinks Baldini being limited as to what he has said about edge areas and Kerlinger expanded on what he believes he said previously regarding edge areas - taking away vegetation that was there previously used by wildlife and resulting implications; habitat is being degraded. Doesn't believe that structure being created will be affecting the zone, but it will be affected by the trucks traveling on the site and the noise levels created, which will be a chronic noise level.

8:17:23 PM - - Baldini - referring to Exhibit O-5 of the Master Plan

8:18:07 PM - - Kerlinger - remembers something about this, but not much

8:18:32 PM - - Baldini - continue with questions to Kerlinger

8:19:20 PM - - Kerlinger - responses to Baldini - advise that he is not a lawyer and cannot interpret Baldini's question; believes traffic on Route 550 is adjacent to the conservation zone; having difficulty believing that the area being referred to is the only area on the site where vehicles will be moving and can't make judgment from looking at dots on a map

8:23:32 PM - - Baldini -

8:23:43 PM - - Kerlinger - believes that environmental impact assessment would be helpful

8:24:06 PM - - Baldini -

8:24:13 PM - - Kerlinger - there is County and Federal land designated for wildlife and open space and he believes that traffic with respect to the site in question will have impact.

8:24:55 PM - - Baldini - is it his opinion that the commercial area on this site is adjacent to the conservation zone

8:25:37 PM - - Kerlinger - believes that they will, can't comment on residential districts in the area

8:26:12 PM - - Baldini - is it opinion that an environmental impact statement is needed

8:26:35 PM - - Kerlinger - hard to interpret from the map because items, such the tower, are not shown

8:27:19 PM - - Baldini - ask Kerlinger if his client uses Route 550 to access their site

8:27:49 PM - - Kerlinger - assumes that they do

8:27:57 PM - - Baldini - continue with questions to Kerlinger

8:28:16 PM - - Kerlinger - responses to Baldini - believes that there is proposed widening of the roadway, but for the most part there

will be limited or no additional clearing of the site

8:30:11 PM - - Baldini - continue with questions to Kerlinger

8:30:25 PM - - Kerlinger - responses to Baldini - not familiar with statement read by Baldini, but disagrees with it

8:31:43 PM - - Baldini - continue with questions to Kerlinger

8:32:05 PM - - Kerlinger - believes that noise and dust will cause fragmentation on the property, especially along the edges which has a lot of bird life

8:34:15 PM - - Baldini - continue with questions to Kerlinger

8:34:29 PM - - Kerlinger - confirm that he did not hear testimony regarding noise or traffic with respect to this application; in his opinion watering down for dust once a week may not be enough, but he is not an expert, but has worked on construction sites

8:36:00 PM - - Baldini - continue with questions to Kerlinger

8:36:17 PM - - Kerlinger - wildlife in many of the stages of the pits is lousy; fish life is slow to take hold in those ponds and doesn't attract birds or other wildlife; ponds are nutrient poor and there's not much vegetation for birds or other wildlife. He has never been to the ponds on this site and feels an environmental impact study would be helpful.

8:40:16 PM - - Baldini - continue with questions to Kerlinger

8:40:41 PM - - Kerlinger - can't say with certainty that if the ponds had more nutrients or vegetation that more animals would be drawn there

8:41:57 PM - - Baldini - continue with questions to Kerlinger

8:42:09 PM - - Kerlinger - responses to Baldini - confirm that he did review much of the site plan; discussion on rare and endangered species within the refuge and nearby areas; referring to because of the road and the sand pit area that is already there and degraded; the refuge wraps around the property being proposed; not sure what other property abuts the refuge (referring to overhead photo view of the area) but they also impact on the wildlife and vegetation.

8:49:32 PM - - Baldini - continue with questions to Kerlinger

8:49:46 PM - - Kerlinger - responses to Baldini

8:50:23 PM - - Baldini - no further questions

8:50:30 PM - - Walsh - ask for short recess

8:50:41 PM - - Batastini - call for 10 minute recess - all come back at 9:00 p.m.

8:51:08 PM - -

8:51:12 PM - - Pause

9:02:34 PM - - Resume

9:02:44 PM - - Call back to order

9:03:18 PM - - Roll call - all present

9:03:53 PM - - Walsh - continue with questioning?

9:04:10 PM - - Balistreri - yes

9:04:21 PM - - Batastini - before that, does the Board have any questions for Dr. Kerlinger

9:04:41 PM - - Cowan - question to Berlinger - is he familiar with the County landfill

9:05:13 PM - - Kerlinger - yes

9:05:18 PM - - Cowan - should go see - many different types of birds, sees many eagles, turtles, ducks - not an expert, but sees much in these type of areas

9:06:09 PM - - Kerlinger - landfills do attract many types of birds, sand pits are much different and without much vegetation; eagles are scavengers and are coming back nicely and are adaptable and why they are seen in landfills.

9:07:42 PM - - Cowan - use to work with a drag line and saw many birds, fish, turtles, toads, etc.

9:08:40 PM - - Kerlinger - if ponds are left alone they better attract wildlife; while sand pits have too much activity; it depends (discussion of pond in Cape May); doesn't know how many fresh water ponds there are in Cape May County.

9:11:12 PM - - Cowan - no further questions for Kerlinger
 9:11:39 PM - - Balistreri - ready to proceed if no further questions for Dr. Kerlinger
 9:12:01 PM - - Balistreri - re-direct questions to Kerlinger
 9:12:27 PM - - Kerlinger - respond to Balistreri
 9:12:50 PM - - Batastini - ask for a very short break
 9:13:19 PM - - Batastini - ok to proceed
 9:13:31 PM - - Turner - ask for minute to get some one back on who was kicked off
 9:15:27 PM - - Turner - ready to go
 9:15:34 PM - - Balistreri - questions to Kerlinger
 9:15:50 PM - - Kerlinger - respond to Balistreri regarding pits/ponds and wildlife and vegetation; conservation zone and distances to various areas; environmental impact study; clearing of area; delay in reclamation of sandplant if concrete plant approved; confirm not present for certain testimony, but did read minutes of the testimony
 9:20:42 PM - - Baldini - claim that counsel is leading the witness
 9:20:58 PM - - Balistreri - withdraw question; continue with additional questions to Kerlinger
 9:21:19 PM - - Kerlinger - sound will have impact on-site on wildlife, as well as dust; cannot recall if Great Cedar Swamp was discussed previously, but is included; Master Plans try to eliminate edge areas, most species want to be in a more pure habitat.
 9:25:03 PM - - Balistreri - no further questions for Kerlinger; should he call next witness
 9:25:32 PM - - Batastini - ask if there are any questions from the Board for Kerlinger - none - continue with next expert
 9:25:56 PM - - Balistreri - call Al Litwornia
 9:26:21 PM - - Batastini - Mr. Litwornia - ask for credentials
 9:26:40 PM - - Batastini - administer oath to Al Litwornia
 9:27:03 PM - - Litwornia - advise of his credentials - traffic and air quality studies; is familiar with Dennis Township and has appeared before this Board on a previous Pierson application; listed others that he has represented in New Jersey and other states.
 9:30:04 PM - - Balistreri - ask that Litwornia be accepted as an expert
 9:30:25 PM - - Walsh - Litwornia is accepted as an expert
 9:30:38 PM - - Balistreri - questions to Litwornia
 9:30:49 PM - - Litwornia - familiar with the area; drives by regularly; familiar with Shropshire's report - it is his opinion that traffic impact will not be minimal, more likely medium; will be noise; trucks are slow and need longer acceleration and de-acceleration lanes and wider turning lanes to make turns into and out of the property - especially when fully loaded; other vehicles moving on the roadway may not realize the trucks are moving so slowly and problems may result.
 9:37:13 PM - - Balistreri - question as to level of service of driveways
 9:37:33 PM - - Litwornia - believes the level of service of the driveways was inaccurately calculated as well as the road traffic in general; counts were taken in October and those counts did not include summer traffic which backs up. Explained seasonal adjustment count and how it is calculated to account for slow months and busy months. The counts submitted for this application did not include any seasonality. Shropshire's report also did not take into account the traffic on the site itself and the times and types of same - office workers, other employees, trucks entering, trucks leaving, customer traffic, etc.
 9:47:52 PM - - Balistreri - Shropshire puts the level of service for the driveway at D.
 9:48:27 PM - - Litwornia - Level D service means minimal delay of about 15 seconds.
 9:49:12 PM - - Balistreri - asked about level of air quality
 9:49:48 PM - - Litwornia - discussed air flow/quality in the area and beyond;

major flow from this site is to the campgrounds; discussed emissions from vehicles and difference in emissions from cold start and hot start; Shropshire also did not address emissions from idling vehicles. Also dust that is created from the concrete plant wasn't dealt with - dust from cement is corrosive and carcinogenic. Addressed noise levels - does not agree with Shropshire's report. Explained various analysis situations that need to be considered - impact noises - such as something being dropped; octoban analysis - noises from machines on site; residential zone; commercial zone; noise on other side of street; noise from the trucks themselves. Noise readings were taken in February at 6:00 a.m. and 7:00 a.m. are all in violation, but they were averaged in with other readings taken at different times of the day. Additionally, those noise counts would vary during other months and busy times for the business; and the counts were taken on site circulation, not the circulation of vehicles, loading, unloading, etc. It is his opinion that the noise levels at the residential and commercial property lines will be in violation and cause a shut down.

- 10:07:04 PM - - Balistreri - additional questions to Litwornia
- 10:07:17 PM - - Litwornia - if he was getting noise levels, he would want to get readings at comparable locations and make calculations
- 10:08:37 PM - - Balestreri - no further questions
- 10:08:47 PM - - Walsh - ask Board for questions
- 10:08:57 PM - - Cowan - how much does a normal concrete truck weigh
- 10:09:19 PM - - Litwornia - not sure, but went to look at an accident and while he was doing that another accident occurred due to slow movement
- 10:10:19 PM - - Cowan - believes they hold no more than 10 yards and move at different speeds depending on how much they are carrying
- 10:11:06 PM - - Litwornia - can check into; but acceleration and make turn is important because it affects other vehicles on the road
- 10:12:00 PM - - Walsh - ask if he is familiar with the concrete plant across the street
- 10:12:20 PM - - Litwornia - yes he is familiar; almost backs up to this; trucks from that site turn directly onto the road. Once trucks are on road the noise no longer counts per the law. The noise from the trucks on the Pierson site has to be counted on site to the roadway.
- 10:15:31 PM - - Walsh - believes there was testimony as to there being 10 or 15 trucks at the Pierson site
- 10:16:17 PM - - Litwornia - the trucks moving, loading, unloading and the dust are all problems
- 10:16:53 PM - - Walsh - any other questions
- 10:17:02 PM - - Batastini - it is now 10:17 p.m. and this Board has other work to be done this evening; will end testimony at 10:30 p.m. or adjourn the application until the next meeting
- 10:18:11 PM - - Baldini - in favor of ending this evening and continuing at January 2023 meeting
- 10:18:38 PM - - Batastini - believes the January meeting will be January 26, 2023
- 10:19:08 PM - - Turner - confirms date
- 10:19:14 PM - - Batastini - will continue to 1/26/23, no additional noticing required
- 10:19:52 PM - - Walsh - Mooers Resolution
- 10:20:03 PM - - Batastini - Mooers Resolution - review with Board
- 10:21:24 PM - - Turner - motion to approve
- 10:21:31 PM - - Walsh - second
- 10:22:22 PM - - All in favor
- 10:22:26 PM - - Batastini - Wawa Resolution -
- 10:23:20 PM - - Cowan - motion to approve
- 10:23:28 PM - - Martucci - second

10:24:10 PM - - Motion passed.
 10:24:25 PM - - Walsh - minutes of 11/17/22 and 12/1/22 - approved by voice vote
 10:24:55 PM - - Walsh - bills - approved by voice vote with all in favor
 10:26:44 PM - - Batastini -
 10:26:50 PM - - Martucci - how long can Pierson keep going
 10:27:08 PM - - Batastini - there really is no time limit for the applicant or the opposition, the Board is the trier of facts and it's difficult to tell them that if you've heard enough, especially in the event of any appeal. Doesn't want a remand and have to hear it all over again. Wants to be careful. Also, Dan wants to hear testimony from a principal. The Board has the right to subpoena individuals. Had discussion with Dan about wanting to hear from the actual objector. If the objector is a competitor and objecting for that reason, it is not being objected to in good faith. Does the Board want him to subpoena this person and be able to determine their reason for objecting.
 10:32:02 PM - - Various Board members - general discussion - have not heard from anyone else in the area; feel objector is objecting due to the business competition; suggested that Board wait to see if objector appears on their own as seed was planted with their attorney.
 10:34:29 PM - - Batastini - what if the objector has a good reason for objecting; would be nice to hear from Stoney 7. What he will do is send an email from Balistreri to see what he says and go from there.
 10:36:52 PM - - VanArtsdalen - asked if he thought it might be better to have an in-person meeting
 10:37:30 PM - - Batastini - may be a mutiny because the Board likes doing it by Zoom; may be a problem doing an in-person in this case as may think why do you want us to come in
 10:38:35 PM - - Turner - he thinks Zoom is better for Board attendance; if he was the applicant, he would want to be in person so he can see people in person and their facial expressions and reactions
 10:39:31 PM - - Walsh -
 10:39:34 PM - - Batastini - if Balistreri doesn't give an answer, he will subpoena because Board wants answers to their questions
 10:40:27 PM - - Walsh -
 10:41:01 PM - - Batastini - will do more research
 10:41:19 PM - - Turner - ask Batastini for a list of questions that the Board can't ask the objector
 10:41:53 PM - - Batastini - can basically ask anything
 10:42:29 PM - - General discussion among Board members regarding situation
 10:42:57 PM - - Batastini - wish all Merry Christmas
 10:43:32 PM - - Meeting adjourned.
 10:43:46 PM - - Stop Recording