

Borough of Pine Hill
Meeting
Planning and Zoning Board of Adjustments
June 13th, 2019

- Call to order:** **Call to Order by Mr. James 7.45 pm**
- Pledge of the Flag:** **Led by Mr. James**
- Sunshine Law:** This is a regularly scheduled meeting of the Pine Hill Planning and Zoning Board. This meeting has been duly advertised and is in full compliance with the Sunshine Law.
- Roll Call:** **Present:** Mr. James, Mr. Waddington, Mr. Ford, Mr. Hagy, Mayor Green, Councilman Robb, Mr. Hagarty, Mrs. Jones and Mrs. Gilson
Absent: Mr. Castor and Mrs. Ciotto
Professionals: Solicitor: Mr. Sitzler, Engineer: Mr. Maddonni,
- Approval of Minutes:** **Mr. James:** I will entertain a motion to accept the May 9th 2019 minutes if everyone has had a chance to read them
- Motion made by Mr. Ford; seconded by Mrs. Gilson**
- Roll call: Abstained: Mr. James, Mr. Waddington and Mr. Hagy**
All others present "aye": Motion Carried
- Correspondence:** **Mr. James:** You have before you correspondence New Jersey Planner Vol. 80, No. 2

Resolution 2019-11:

Mr. James: You have before you Resolution 2019-11; Carl Pursell 248 New Freedom Road Block 131 Lots 26 & 28 Minor Site Plan

Mayor Green: I make a motion to adopt; seconded by Mr. Ford

**Roll Call: Abstained Mr. James, Mr. Waddington and Mr. Hagy
All others present "aye": Resolution Passed**

Application 2019-2:

Mr. James: Okay; next we have Application 2019-2
The Lakes at Pine Hill; Berlin Cross Keys Road
Block 131.01 Lots 37.04, 37.02 -37 & 51
Block 131.02 Lots 1-6; Amended Final Major Subdivision

Mr. Skinner: Mr. Chairman: my name is Bill Skinner with the Law Firm of Flaster Greenberg. I'm here representing AB, Woodcrest Peoples; LLC with respect to The Lakes at Pine Hill. We are here to present to you a revised plan which is very similar to the one in 2016. With changes in the DEP Storm Water Regulations we needed to expand the size of the storm water basin and with the increase in size of the storm water basin we had to eliminate one of the residential buildings. We want to change the number of units from 90 to 85 and other than the elimination of that building we are increasing the size of the storm water basin and one other minor change to the improvements along the County road at the request by the County Planning Department. The Application presented will be exactly what was approved in 2016. But before we get to that your professionals and I had some conversation today about the possible application of your ordinance which provides that variances will expire two (2) years after the judgement awarding those variances unless construction is completed. The Municipal Land Use Law provides that if; your Solicitor can advise you but under Section 21 of the Municipal Land Use Law under certain circumstances if our progress with the development is prevented due to State Agency Action and in this case the DEP had approved our Storm Water came back and said no longer approved we changed our ruling we had to go back drawing board literally and redesign. There is a totaling of that 2 year period so you don't start counting until the delay that we incurred working with the DEP has expired; but that is just my story. The issue has come under discussion with your Solicitor and me only this evening so I will leave it to him to suggest where we are with this application.

Mr. Sitzler: What Mr. Skinner has said is accurate. I only became aware yesterday that there may be an issue. We have in our Local Zoning Ordinance a section that I was unfamiliar with; it provides that variances expire if within a 2 year period if construction is not started on the last building "I'm paraphrasing since I don't have the ordinance in front of me". The variance granted here looks like it was a conversion from what was originally Senior Citizen Assisted housing to the standard housing back in 2011. Just for the boards reference I have 2 Resolutions before me one was from 2016 which you would think I would remember because I was on the Board then but I don't remember all the details but on 2011 when I was not the Board Attorney and that is the more paramount one we are discussing that is when the use variances were issued. So the issue becomes if he is correct; I'm told there are provisions available thru statutory case law. Since I was just apprised of this yesterday so I was not able to look into this and really articulate what the factual positions are. If we were not tolled I would be telling the Board you do not have jurisdiction to hear this because they don't have the use variance anymore. If it's tolled and they convince us they are entitled to provision of tolled and they are still under time then they would have the opportunity to go forward; but until that question is answered it is hard for us to go forward when there is a question of whether we have jurisdiction. My suggestion is two fold; 1) we don't have any record Mr. Skinner of your client for any asking for any extensions; at least on my approvals on the site plan. We are not talking about the use variance now. There is permission to ask for extensions, there is nothing in the Statutes that I'm aware of that requires you to do a formal motion; it's a request; you have to request an extension. If they are saying they are still within their time limits by tolled today I believe Mr. Skinner may want to make the application to toll; put an extension before this Board today. I'm not going to ask the Board to vote on that today until we get the Legal Issues and factual issues ironed out however if they are entitled to tolling and an extension if we decide that we are granting that lets say a month or even two months from now it will relate back to today when he is making a motion this will be the time frame. I hope the Board understands what I'm saying. I want to be fair for either side because this application extends back to at least before 2011. Your client became I guess the interested property owner around 2011.

Mr. Skinner: I think that is right

Mr. Sitzler: This is going on eight (8) years ago. So there is a lot of water under that bridge and we have to make sure we are doing everything correctly.

Mr. Sitzler: The best process in my view and it is up to the Chair I can't tell him how to represent his process. The best point of view would be for them to ask for an extension if they are within the time limit because it may be dead anyway; if they are still in the drop dead they may gain a year or less additional to perfect anything and we would just put a hold on that extension until we figure out the law and the facts. To summarize they have to be tolled within the statutory period to be granted an extension they can't be outside the time so you overrun precaution which is what I expect them to do tonight and then we will reserve the decision on that until we glean all the facts and we will adopt once we are sure of an application. Having said that does any member of the board have any questions or comments?

Mr. Skinner: I do request that the board recognize that the time for expiration of our variances have been tolled by the fact that we have been working with outside agency approvals. Certainly since the last time we were here in 2016 the bulk variances were reauthorized and the use variance was I think at a minimum recognized at that point in time. If your desire is to have your Solicitor and me work on a record on the facts we can do that. I would not object if you decided to vote tonight, you don't know enough about the case but that is certainly your decision.

Mr. Sitzler: Are you making a motion?

Mr. Skinner: A request; I'm not a member of the board

Mr. Sitzler: The motion before the board is; assuming they were tolled and they are within the time limits they are asking for an extension. Are you asking for a year?

Mr. Skinner: Two (2) years

Mr. Sitzler: Two (2) years is the maximum right

Mr. Skinner: Right

Mr. Sitzler: Anything the board decides on this is not granting this today but if you were to grant it how much time are you willing to give them? You can give them anything but two (2) years is the maximum they can ask for

Mr. James: Any comments?

Mayor Green: At this point in time we don't know how many days they spent on this project that delayed them; so until we get that information how do we know

Mr. Sitzler: if they are entitled to an extension

Mayor Green: Well they are entitled to the extension to the use variance

Mr. Sitzler: Isn't that the question

Mayor Green: If the use variance is expired you can't take action on the site plan for something

Mr. Sitzler: True

Mayor Green: So isn't the first question; has in fact the use variance expired? The only possible way that can be determined is to get information from them that ways out exactly the steps; because though they say they went before the DEP does not mean in the last 9 years they have been tied up by the DEP and they may have been I don't know the answer to that question. Obvious the boar knows I don't know everything they have done in the last 9 years. So I don't know how we can do anything until we know whether or not their use variance is valid.

Mr. Sitzler: Mayor your motion is for the board to decide today if they are entitled to an extension or maybe even how long. They have a right to ask for two (2) years which is the maximum it is just putting it on the record so if they are entitled to it would relate back to today.

Mayor Green: What are we voting on today? The extension

Mr. Sitzler: No; we are not voting on that. We are just allowing them to make a motion so that it is before us for a future decision. So they would be entitled to today's date as the date that they filed. It would be as if they came in today and said we are filing for an extension and that is part of our correspondence using today's date; not signing it today but the date that it relates back to

Mayor Green: Okay

Mr. Skinner: Based on that does anyone else from the board have anymore questions?

Mr. Hagarty: I guess my understanding is what remains is to put together a chronology

Mr. Sitzler: Yes I think that is what is important; I don't want to speak for the board but I hear what you are saying. With all the due diligence that whatever caused your delays. I don't even know if there would have been litigation that caused the delay.

Mayor Green: You just can't write it down on a piece of paper there has to be some form correspondence stating as of this date we were delayed

Mr. Ford: How long will it take for investigation to be done; is it like a 30 day thing

Mr. Skinner: Well less than 30 days; we are not looking to delay this anymore then we were looking to delay the project all along we would like to move quickly. So unless there are some surprises I think it will be done in a week.

Mr. Sitzler: So technically all the documentation and accompaniment we could be done in a week and we could put it on next meeting

Mr. Skinner: That is our goal

Mr. Sitzler: If something comes up where you have a problem you can contact. Mr. Gallagher I know we have

Mr. Gallagher: We have two other applicants right now for the July 11th Meeting

Mr. Sitzler: The one is probably going to be a lengthy one

Mr. Gallagher: The other is 400 Erial the old St Edwards School that a Church has purchased that could also be a lengthy one

Mr. Sitzler: We have one that we know will be lengthy because we already had it listed a couple of times and the other one could also be lengthy; but I will leave it to you. As soon as you can get it together we can disseminate it to the rest of the board for them to read. If it possible if we can take you first, I don't know if we can review your full application but at least get this out of the way. I don't know how the board all feels about that; those two applications could be long

Mayor Green: The first one is not about to let anybody get ahead of them

Mr. Sitzler: I know the first applicant is going to be lengthy it has already been adjourned on two occasions so I'm sure they are not going to be anxious to let anyone go above them probably

Mr. Skinner: Well then we have requested the extension and we request an adjournment until the next meeting

Mr. Sitzler: Obviously if you would copy me with anything you submit and if you send to Mr. Gallagher our board secretary he can make sure that gets disseminated to the all of the board members

Mr. Skinner: Absolutely

Mr. Sitzler: So that will be prepared by the July 11th meeting. Anything further you want to put on the record?

Mr. Skinner: No thank you

Old Business:

None

New Business:

Mr. James: The next meeting is July 11th at 7:30 PM

Open Floor to Public:

Mr. James: At this time I will entertain a motion to open the floor to the public.

Mr. Waddington: So moved; seconded by Mr. Ford

All "aye" Meeting opened to the public

Close Floor to Public:

Mr. James: Seeing none motion to close the floor to the public

Mr. Ford: So moved; seconded by Mr. Hagy

All "aye" floor closed

Motion to Adjourn:

Mr. James: Do I have a motion to adjourn this meeting

Mr. Waddington: Motion to adjourn: seconded by Mr. Hagy

All in favor of adjournment