RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSION

NO. PC4-16- 06

TITLE: **Approving** With Conditions an Application for a **Waiver of Strict Compliance** (Application Number 1987-1185.001)

Commissioner Galletta **moves and Commissioner** Lohbauer **seconds the motion that:**

WHEREAS, the Pinelands Commission has reviewed each of the Findings of Fact, Conclusion and the recommendation of the Executive Director that the following application for Waiver of Strict Compliance be approved with conditions:

1987-1185.001	
Applicant:	**Ernest Darpino**
Municipality:	Borough of Medford Lakes
Management Area:	Pinelands Regional Growth Area
Date of Report:	January 25, 2016
Proposed Development:	Single family dwelling.

WHEREAS, no request for a hearing before the Office of Administrative Law concerning the Executive Director's recommendation has been received for this application; and

WHEREAS, the Pinelands Commission hereby adopts the Findings of Fact and Conclusion of the Executive Director for the requested Waiver of Strict Compliance; and

WHEREAS, the Pinelands Commission hereby determines that the requested Waiver conforms to the standards for approving an application for a Waiver of Strict Compliance based on extraordinary hardship as set forth in N.J.A.C 7:50-4.62, N.J.A.C. 7:50-4.63 and N.J.A.C. 7:50-4.65 if the conditions recommended by the Executive Director are imposed; and

WHEREAS, pursuant to N.J.S.A. 13A-5h, no action authorized by the Commission shall have force or effect until ten (10) days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the meeting of the Commission has been delivered to the Governor for review, unless prior to expiration of the review period and Governor shall approve same, in which case the action shall become effective upon such approval.

NOW, THEREFORE BE IT RESOLVED that Application Number 1987-1185.001 for a Waiver of Strict Compliance is hereby **approved** subject to the conditions recommended by the Executive Director.

Record of Commission Votes

	AYE	NAY	NP	A/R*		AYE	NAY	NP	A/R*		AYE	NAY	NP	A/R*
Ashmun	X				DiBello			X		McGlinchey	X			
Avery	X				Galletta	X				Prickett	X			
Barr	X				Jannarone			X		Quinn	X			
Brown	X				Lloyd	X				Rohan Green	X			
Chila	X				Lohbauer	X				Earlen	X			

* A = Abstained / R = Recused

Adopted at a meeting of the Pinelands Commission

Date: 2/12/16

Nancy Wittenberg
Executive Director

Sean W. Earlen
Chairman

State of New Jersey
THE PINELANDS COMMISSION
PO Box 359
NEW LISBON, NJ 08064
(609) 894-7300
www.nj.gov/pinelands

Chris Christie
Governor

Kim Guadagno
Lt. Governor

General Information: Info@njpines.state.nj.us
Application Specific Information: AppInfo@njpines.state.nj.us

Mark S. Lohbauer
Chairman

Nancy Wittenberg
Executive Director

REPORT ON AN APPLICATION FOR A WAIVER OF STRICT COMPLIANCE

January 25, 2016

Ernest Darpino
137 Stokes Road
Medford Lakes, NJ 08055

Re: Application # 1987-1185.001
Block 20014, Lot 344 (formerly Lots 344-347)
Borough of Medford Lakes

Dear Mr. Darpino:

The Commission staff has completed its review of this application for a Waiver of Strict Compliance ("Waiver") proposing the development of a single family dwelling on the above referenced parcel. Based upon the facts and conclusions contained in this Report, on behalf of the Commission's Executive Director, I am recommending that the Pinelands Commission approve the application with conditions at its February 12, 2016 meeting.

FINDINGS OF FACT

This application is for the development of a single family dwelling served by public sanitary sewer on the above referenced 9,122 square foot parcel in Medford Lakes Borough. The parcel is located in a Pinelands Regional Growth Area and in Medford Lakes Borough's LR zoning district. In this zoning district, Medford Lakes Borough's certified land use ordinances establish a minimum lot size of 10,000 square feet for a single family dwelling served by public sanitary sewer.

An application for the development of the proposed dwelling was previously completed with the Commission and an Inconsistent Certificate of Filing was issued on February 16, 1993. The Certificate of Filing noted the need for a Waiver from the minimum buffer to wetlands standard. A municipal lot size variance was issued by the Medford Lakes Borough Planning Board on May 6, 1993. On November 5, 1993, a Waiver for the development of a single family dwelling served by public sanitary sewer on this parcel was approved by the Pinelands Commission. That Waiver expired on November 5, 1998 because all necessary municipal construction permits were not issued by that date.

On March 16, 2006, the Medford Lakes Borough Planning Board approved a second municipal lot size variance for the proposed dwelling. On April 11, 2008, a second Waiver for the development of a single family dwelling served by public sanitary sewer on this parcel was approved by the Commission. As required by the Waiver, the applicant consolidated Block 20014, former Lots 344-347 into one lot, now

known as Block 20014, Lot 344. The Waiver also required the applicant to acquire and redeem 0.25 Pinelands Development Credits (PDCs). That Waiver expired April 11, 2013, because all necessary construction permits were not issued by that date.

Information was provided to the Commission staff in December of 2015 that a single family dwelling was under construction on the parcel. A subsequent site inspection by Commission staff verified that the single family dwelling was under construction on the parcel.

On December 3, 2015, a copy of the municipal construction permit for the proposed single family dwelling was submitted to the Commission. The municipal construction permit for the proposed dwelling was issued on August 19, 2015. By letter dated December 4, 2015, the Commission staff notified the owner of the parcel that the April 11, 2008 Waiver expired on April 11, 2013 and that construction of the dwelling prior to completing an application for a new Waiver constituted a violation of the Medford Lakes Borough land use ordinances and the Pinelands Comprehensive Management Plan (CMP). On January 5, 2016, an application for a new Waiver was completed with the Commission.

The parcel has been site inspected by two members of the Commission's staff. In addition, the appropriate resource capability maps and data available to the staff have been reviewed.

A portion of the parcel is a pitch pine lowland which is considered wetlands as defined in the CMP (N.J.A.C. 7:50-6.5(a)3). This wetland is not an impaired wetland as defined in the CMP (N.J.A.C. 7:50-2.11). Any development of the parcel would be located within 300 feet of this wetland. The applicant has submitted no information to demonstrate that the proposed development would not cause a significant adverse impact on the wetland. Based on the quality and location of the wetlands, the proposed development will cause a significant adverse impact on the wetland. The applicant has demonstrated that no development, except certain proposed linear improvements (driveway and sanitary sewer lateral), will be located in wetlands. The applicant demonstrated that the proposed linear improvements were permitted in wetlands as the improvements meet the criteria set forth in the CMP (N.J.A.C. 7:50-6.13). As the dwelling will result in a significant adverse impact on wetlands located within 300 feet of the proposed development, the applicant is requesting a Waiver from the buffer to wetlands requirements contained in the CMP (N.J.A.C. 7:50-6.14).

PUBLIC COMMENT

The applicant has provided the requisite public notice. Public notice to all property owners within 200 feet of the parcel was completed on December 29, 2015. Newspaper public notice was completed on December 30, 2015. The application was designated as complete on the Commission's website on January 5, 2016. The Commission's public comment period closed on January 15, 2016. The Pinelands Commission has received one written public comment regarding the Waiver application.

Written Public Comment #1: The commenter expressed concern regarding the dwelling's effect on the character of the neighborhood, drainage issues and the wildlife in the area.

Staff Response to Written Public Comment #1: The Commission staff appreciates the commenter's interest in the Pinelands. The applicant has demonstrated that the proposed dwelling meets the minimum CMP requirements to qualify for a Waiver. The Commission's Waiver regulations are designed to provide all property owners with at least a minimum beneficial use of their parcel consistent with constitutional requirements. To minimize impacts to wetlands, two of the recommended conditions of the Waiver require that dry wells be installed to control stormwater runoff from the dwelling and that the

driveway must be constructed of permeable material. The Commission's regulations do not require that an application for one dwelling address the CMP stormwater management standards. The commenter may wish to discuss their stormwater concerns with an appropriate municipal official.

CONCLUSION

The CMP (N.J.A.C. 7:50-4.62) sets forth the standards that must be met before a Waiver can be approved. N.J.A.C. 7:50-4.62(a) requires that to approve an application for a Waiver based on extraordinary hardship, an applicant must demonstrate that the conditions of either N.J.A.C. 7:50-4.63(a) or (b) have been met.

N.J.A.C. 7:50-4.63(a) sets forth five conditions which must be met for an applicant to qualify for a Waiver based on an extraordinary hardship pursuant to that subsection.

The first condition is that the only relief sought is from one or more of the standards contained in N.J.A.C. 7:50-6 for certain specified development. One of the specified types of development is a single family dwelling on a parcel within a Regional Growth Area, Pinelands Town or Pinelands Village which will be served by a centralized waste water treatment system.

The parcel is located in a Pinelands Regional Growth Area. The applicant is proposing to develop a single family dwelling served by public sanitary sewer on the parcel. As a result, the application meets the condition set forth in N.J.A.C. 7:50-4.63(a)1.iv.

The second condition is that the parcel includes all contiguous land in common ownership on or after January 14, 1981, including lands which are contiguous as a result of ownership of other contiguous lands. Since the parcel includes all such contiguous land, the application meets the condition set forth in N.J.A.C. 7:50-4.63(a)2.

The third condition is that the proposed use will be the sole principal use on the entire contiguous parcel, except as expressly provided in N.J.A.C. 7:50-5.1(c). As the proposed single family dwelling will be the sole principal use on the parcel, the application meets the condition set forth in N.J.A.C. 7:50-4.63(a)3.

The fourth condition is that all necessary municipal lot area and residential density variances have been obtained if the parcel is located in a municipality whose master plan and land use ordinances have been certified by the Pinelands Commission. Medford Lakes Borough's master plan and land use ordinances have been certified by the Pinelands Commission. On March 16, 2006, the applicant received the required municipal lot area variance. The application meets the condition set forth in N.J.A.C. 7:50-4.63(a)4.

The fifth condition is that the development of the parcel will not violate any of the criteria contained in N.J.A.C. 7:50-4.65(b). N.J.A.C. 7:50-4.65(a) precludes the granting of a Waiver which permits a parcel to be developed unless such development will be consistent with the purposes and provisions of the Pinelands Protection Act, the Federal Act and the CMP and will not result in a substantial impairment of the resources of the Pinelands Area. N.J.A.C. 7:50-4.65(b) sets forth the circumstances which do not comply with N.J.A.C. 7:50-4.65(a). With the conditions recommended below, the proposed development will not violate any of the circumstances contained in N.J.A.C. 7:50-4.65(b) as required by N.J.A.C. 7:50-4.63(a)5. The application meets the conditions set forth in N.J.A.C. 7:50-4.63(a)5.

Since the applicant meets all the conditions set forth in N.J.A.C. 7:50-4.63(a), the applicant has demonstrated that an extraordinary hardship exists pursuant to N.J.A.C. 7:50-4.62(a).

N.J.A.C. 7:50-4.62(d)1.ii requires the acquisition and redemption of any Pinelands Development Credits (PDCs) that are required pursuant to N.J.A.C. 7:50-5.27, 5.28, or 5.32. N.J.A.C. 7:50-5.28(a)4 requires that any local approval, including variances, which grants relief from density or lot area requirements shall require that PDCs be used for all dwelling units or lots in excess of that otherwise permitted, unless a Waiver for the dwelling has been approved by the Commission.

N.J.A.C. 7:50-4.62(d)1.iii requires the acquisition and redemption of 0.25 PDCs whenever a Waiver provides relief from one or more of the standards of N.J.A.C. 7:50-6.

The CMP requires that for any application which requires a variance from the minimum lot size requirement and a Waiver, a total of only 0.25 PDCs must be purchased and redeemed. Pursuant to N.J.A.C. 7:50-4.62(d)1ii and N.J.A.C. 7:50-4.62(d)1iii, a condition is included to require the purchase and redemption of a total of 0.25 PDC's.

With the conditions recommended below, the applicant meets the PDC requirements contained in N.J.A.C. 7:50-4.62(d).

To meet the requirements of N.J.A.C. 7:50-4.62, N.J.A.C. 7:50-4.63(a) and N.J.A.C. 7:50-4.65, the Pinelands Commission staff has determined that the parcel must be developed in accordance with the following conditions:

1. Except as modified by the below conditions, the proposed development shall adhere to the plot plan prepared by HAKS Engineers, dated October 8, 2004 and last revised January 2, 2008.

2. The proposed dwelling shall be served by public sanitary sewer.

3. Except as provided in N.J.A.C. 7:50-5.1(c), the single family dwelling approved herein shall be the sole principal use of the parcel.

4. No development, including clearing and land disturbance, except the proposed driveway and sanitary sewer lateral, shall extend beyond the "Waiver of Strict Compliance Wetlands Buffer" as depicted on the above referenced plan.

5. The proposed development requires a Freshwater Wetlands General Permit in accordance with the New Jersey Freshwater Wetlands Protection Act Rules. The Pinelands Commission has been authorized by the New Jersey Department of Environmental Protection (NJDEP) to issue Freshwater Wetlands General Permits in the Pinelands Area. The Commission issued a Freshwater Wetlands General Permit for the proposed driveway and sanitary sewer lateral in wetlands on April 25, 2008.

6. Prior to construction, silt fencing, hay bales or other appropriate measures shall be installed to preclude sedimentation from entering wetlands. The proposed sedimentation barrier shall be maintained in place until all development has been completed and the area has been stabilized.

7. Sufficient dry wells or a comparable alternative shall be installed to contain all stormwater runoff from the house.

8. The driveway shall be constructed of crushed stone or other permeable material.

9. Prior to Commission issuance of a letter advising that any municipal or county permit or approval may take effect, proof of acquisition and redemption of the requisite 0.25 PDCs must be submitted to the Pinelands Commission. The 0.25 PDCs were previously acquired and redeemed for this parcel.

10. This Waiver shall expire February 12, 2021 unless all necessary construction permits have been issued by that date. The Waiver shall also expire if any construction permit is allowed to expire or lapse after February 12, 2021 or if any renewal or extension of any permit or approval or issuance of a new construction permit is necessary after that date.

11. A copy of a recorded deed containing all of the above conditions shall be submitted to the Pinelands Commission prior to Commission issuance of a letter advising that any submitted municipal or county permit or approval may take effect. The deed shall specify that the conditions are being imposed pursuant to a January 25, 2016 Pinelands Commission Report on an Application for a Waiver of Strict Compliance ("Waiver Report") for App. No. 1987-1185.001. The deed shall indicate that the conditions previously required by the March 24, 2008 Waiver Report for App. No. 1987-1185.001, approved by the Pinelands Commission on April 11, 2008, have since expired and are superseded by the conditions required by the January 25, 2016 Waiver Report approved by the Pinelands Commission on February 12, 2016. The deed shall also indicate that the conditions are enforceable by the Pinelands Commission, Medford Lakes Borough and any other party of interest.

With the above conditions, the applicant qualifies for a Waiver from the requirements of N.J.A.C. 7:50-6.14.

Since the applicant meets the provisions of N.J.A.C. 7:50-4.62, N.J.A.C. 7:50-4.63(a) and N.J.A.C. 7:50-4.65 for the development of one single family dwelling on the parcel, it is recommended that the Pinelands Commission **APPROVE** the requested Waiver of Strict Compliance subject to the above conditions.

APPEAL

The CMP (N.J.A.C. 7:50-4.91) provides an interested party the right to appeal this recommendation in accordance with N.J.A.C. 7:50-4.91. An interested party is someone who has a specific property interest sufficient to require a hearing on constitutional or statutory grounds. Only appeal requests submitted by someone meeting the definition of an interested party will be transmitted to the New Jersey Office of Administrative Law for a hearing. Any such appeal must be made in writing to the Commission within eighteen days of the date of this Report and must include the following information:

1. the name and address of the person requesting the appeal;

2. the application number;

3. a brief statement of the basis for the appeal; and

4. a certificate of service (a notarized statement) indicating that service of the notice has been made, by certified mail, on the clerk of the county, municipal planning board and

environmental commission with jurisdiction over the property which is subject of this decision.

If no appeal is received, the Pinelands Commission may either approve the determination of the Executive Director or refer the application to the New Jersey Office of Administrative Law for a hearing.

Recommended for Approval by: _____
Charles M. Horner, P.P., Director of Regulatory Programs

Encl: 1/4/2016 Public Comment Email

c: Secretary, Borough of Medford Lakes Planning Board (via email)
Borough of Medford Lakes Construction Code Official (via email)
Borough of Medford Lakes Environmental Commission (via email)
Secretary, Burlington County Planning Board (via email)
Patrick McAndrew, Esq. (via email)
Kathryn J. Hoover (via email)

From: k hoover <hooverkj@msn.com>
To: <AppInfo@njpines.state.nj.us>
CC: k hoover <hooverkj@msn.com>, <pfxmlanduse@aol.com>
Date: 1/4/2016 10:35 AM
Subject: Re: application 1987-1185.001

Regarding the request for waiver for development on property at 270 Ojibway Trail, Medford Lakes NJ, Lot 344, Block 20014.

I do not approve of the development on this lot.

The neighboring houses were mostly built before The New Jersey Pinelands Commission was granted the authority to preserve this area of New Jersey through the passage of the National Parks and Recreation Act of 1978 and the New Jersey Pinelands Protection Act in 1979.

I assume that this neighborhood would look quite different if the Commission had provided guidance and the Borough of Medford Lakes and County of Burlington had been strict about compliance during development.

This lot is the last empty one in the vicinity. I have observed the standing water and abundant wildlife there during frequent walks.

The new construction has unfortunately obliterated the natural landscape and probably created drainage problems yet to be determined. This will affect any unsuspecting buyer as well as the nearby residences and users of Ojibway Trail, including trash collection, utility crews and other essentials.

The house is oversized for the lot and leaves no hope that any wildlife will call it a permanent home again.

Over many years, this lot was not developed for a number of good reasons. I don't think a fine or waiver fee paid by the developer or the small increase to Borough tax rolls can justify this construction.

Kathryn J. Hoover
homeowner
27 Shawnee Trail
Medford Lakes, NJ 08055