

5. Any development, except for development permitted in wetlands pursuant to N.J.A.C. 7:50-6, Part I, which will be located on any wetland unless that wetland is an impaired wetland;

6. Any development, except for development permitted in wetlands buffers pursuant to N.J.A.C. 7:50-6, Part I, which will be located within 50 feet of any wetland unless the wetland is either an impaired wetland or located in a Regional Growth Area, Pinelands Town or Pinelands Village;

7. Any development which will violate the threatened and endangered species protection requirements contained in N.J.A.C. 7:50-6.27 and 6.33;

8. Any development which will require the location of a waste water disposal field in an area where the seasonal high water table is within two feet of the natural ground surface or within 50 feet of any surface water body;

9. Any development which will result in a new direct discharge of storm water into any fresh water wetlands which are not impaired wetlands; or

10. In addition to the criteria specified above, the existence of special or unusual circumstances will be evaluated in determining whether a particular development complies with (a) above.

(c) If an application meets the criteria for establishing a compelling public need pursuant to N.J.A.C. 7:50-4.64, but one or more of the circumstances in (b) above exist, then the application does not meet the criteria of (a) above unless the applicant demonstrates, based on particular facts, that the development, when evaluated in its entirety, including any special measures that are part of the development proposal, will result in an overall improvement of the resources of the Pinelands Area.

(d) Even if an applicant does not violate any of the criteria contained in (b) above, the waiver may only grant the minimum relief necessary to relieve the extraordinary hardship or satisfy the compelling public need.

New Rule, R.1992 d.91, effective March 2, 1992.

See: 23 N.J.R. 2458(b), 24 N.J.R. 832(b).

Amended by R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Amended by R.1996 d.225, effective May 20, 1996.

See: 27 N.J.R. 3878(a), 28 N.J.R. 2596(a).

In (b)7 substituted 7:50-6.27 for 7:50-6.24.

Case Notes

Cited as example of situation in which Executive Director could designate a representative to have final decision making power (citing former N.J.A.C. 7:50-4.54). In re Application of John Madin/Lordland Development International, 201 N.J.Super. 105, 492 A.2d 1034 (App. Div.1985), certification granted 102 N.J. 380, 508 A.2d 243, 244, certification vacated 103 N.J. 689, 512 A.2d 490 (1986).

7:50-4.66 Application

(a) An application for a waiver shall be submitted to the Commission in accordance with the requirements of

N.J.A.C. 7:50-4.2(b). An application for waiver may be filed prior to filing an application for development. If during review of an application for development it appears necessary to obtain a waiver, the applicant may apply for a waiver. Any application for a waiver shall stay the time period for review set forth in Parts II, III or IV of this subchapter as the case may be while the application for the waiver is pending.

(b) In addition to the requirements in (a) above, an applicant requesting a Waiver of Strict Compliance which involves a specific parcel shall provide notice of the application for a Waiver of Strict Compliance as follows:

1. Notice shall be given to owners of real property within 200 feet of the subject parcel as provided for in N.J.S.A. 40:55D-12(b). The administrative officer of the municipality shall provide a certified list of said property owners as provided for in N.J.S.A. 40:55D-12(c). The applicant shall be entitled to rely upon the information contained in said certified list as provided in N.J.S.A. 40:55D-12(c).

2. Notice shall be given by publication in the official newspaper of the municipality in which the parcel is located, if there is one, or in a newspaper of general circulation in the municipality as provided for in N.J.S.A. 40:55D-12(a).

(c) In addition to the requirements in (a) and (b) above, an applicant requesting a Waiver of Strict Compliance which will not be located on a specific parcel, shall provide notice of the application for a Waiver of Strict Compliance as follows:

1. Notice shall be given by publication in any official newspaper of the Pinelands Commission having general circulation in any municipality in which the proposed Waiver of Strict Compliance shall apply; and

2. Notice shall be given by publication in the official newspaper, if any, of all municipalities in which the proposed Waiver of Strict Compliance shall apply or, if there is no official newspaper in any such municipality, then in a newspaper of general circulation in that municipality.

(d) The notice in (b) and (c) above shall state:

1. The nature of the application pending before the Pinelands Commission, including a description of the proposed development and a statement of all Waivers sought;

2. That action may be taken on the application after 10 days from the date the notice is published and mailed;

3. That written comments on the application may be submitted to the Pinelands Commission and that all such comments received within 10 days of the mailing or publication of the notice will be considered in the review of the application;

4. That the application is available for inspection at the office of the Pinelands Commission;

5. The address and phone number of the Pinelands Commission; and

6. That any person who provides comments or requests a copy of the Executive Director's findings and conclusion shall be provided a copy of said findings and conclusion and that any interested person who is aggrieved by said determination is entitled to a hearing by appealing the determination.

(e) If the applicant significantly modifies either the proposed development or the requested Waivers from that described in the most recent notice given pursuant to (b), (c) and (d) above, then the applicant shall again provide the notice mandated by said subsections so that the notice accurately describes the proposed development and the requested Waivers.

(f) No application for a Waiver of Strict Compliance shall be deemed complete until proof that the requisite notice has been given is received.

(g) The Executive Director's action on any application for which the above notice is required, shall not be taken until five days after the 10 day comment period set forth herein has expired. If any public comments have been received concerning the application, the Executive Director shall inform the applicant that public comments have been submitted prior to making a recommendation on the application for a Waiver of Strict Compliance.

(h) For an application submitted pursuant to N.J.A.C. 7:50-4.63(a) for which a municipal use, lot area or density variance is required pursuant to N.J.A.C. 7:50-4.63(a)4, the notice required pursuant to (b) above shall not be separately required by the Pinelands Commission provided that the notice for the municipal variance is submitted to the Pinelands Commission and contains at least the information specified in (d) above and the application to the Pinelands Commission is completed within one year of the municipal approval of the variance.

(i) For an application submitted pursuant to N.J.A.C. 7:50-4.64(a)1, the Executive Director shall set the date, time and place for a public hearing for consideration of the application. The public hearing shall be noticed and held by the Executive Director in accordance with the provisions of N.J.A.C. 7:50-4.3. The applicant shall give notice of the hearing in accordance with N.J.A.C. 7:50-4.3(b)2ii and the notice required pursuant to (b) or (c) above may be incorporated therein.

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).

See: 17 N.J.R. 1918(a).

Amended by R.1985 d.494, effective September 12, 1985.

See: 17 N.J.R. 1918(a), 17 N.J.R. 2394(a).

Amended by R.1988 d.405, effective September 19, 1988.

See: 20 N.J.R. 716(a), 20 N.J.R. 2384(a).

Amended by R.1990 d.170, effective March 19, 1990.

See: 21 N.J.R. 3381(a), 22 N.J.R. 948(a).

Clarified text in (a)1.

Amended by R.1992 d.91, effective March 2, 1992.

See: 23 N.J.R. 2458(b), 24 N.J.R. 832(b).

Recodified from 7:50-6.2; new (h) added.

Amended by R.1994 d.590, effective December 5, 1994.

See: 26 N.J.R. 165(a), 26 N.J.R. 4795(a).

Amended by R.1995 d.449, effective August 21, 1995.

See: 27 N.J.R. 1557(a), 27 N.J.R. 1927(a), 27 N.J.R. 3158(a).

Law Review and Journal Commentaries

Environmental Law—Solid Waste. P.R. Chenoweth, 137 N.J.L.J. No. 16, 51 (1994).

Case Notes

Waiver to subdivide a parcel of land denied by Pinelands Commission; petitioner failed to establish ownership of the land in compliance with N.J.A.C. 7:50-5.32(a)3i. *Gerber v. Pinelands Commission*, 11 N.J.A.R. 12 (1988).

Development application denied to petitioners for failure to meet minimum standards for seasonal high water table and wetlands buffer; waiver of strict compliance denied for failure to offer information to establish an extraordinary hardship citing N.J.A.C. 1:1-11.2 (recodified as N.J.A.C. 1:11-8.3)—(Final Decision by the Pinelands Commission). *Lavecchia v. Pinelands Commission*, 10 N.J.A.R. 63 (1987).

Application for waiver denied to petitioners based on doctrine of res judicata where, in circumstances substantially similar, their predecessors in title to the property, were denied both the initial right to develop the property and a waiver of strict compliance (Final Decision by Pinelands Commission). *Pagnotti v. Pinelands Commission*, 10 N.J.A.R. 24 (1987).

Application to resubdivide two existing lots denied for failure to meet minimum standards for seasonal high water table and wetlands buffer; waiver of strict compliance denied for failure to establish extraordinary hardship (Final Decision by Pinelands Commission). *Colon v. Pinelands Commission*, 10 N.J.A.R. 14 (1987).

Absent evidence of unique or unusual nature of property, or inability of owner-applicant to obtain a reasonable rate of return on property under permitted uses, no extraordinary hardship found to permit waiver of strict compliance (citing former N.J.A.C. 7:50-4.55). *Hanoverland Industries v. Pinelands Commission*, 8 N.J.A.R. 529 (1985).

Denial of waiver of strict compliance with waterless toilet requirement found reasonable in light of adverse effects of continuing approval of conventional systems (citing former N.J.A.C. 7:50-4.55). *Riggins v. Pinelands Commission*, 8 N.J.A.R. 441 (1985).

Location of property between two single family dwellings in a subdivision does not qualify as an extraordinary hardship under N.J.A.C. 7:50-4.66(a)1 criteria (citing former N.J.A.C. 7:50-4.55). *Pfeiffer v. Pinelands Commission*, 8 N.J.A.R. 317 (1985).

7:50-4.67 Action by Executive Director on application

Within 90 days following the receipt of a complete application for waiver, the Executive Director shall review the application and all information submitted by the applicant and any other person relating to the application and upon completion of such review make a determination whether the application should be approved, approved with conditions or disapproved. The application may be recommended for approval or approval with conditions only if the applicant, subject to any conditions which may be imposed, meets the standards for a Waiver of Strict Compliance established in N.J.A.C. 7:50-4.62. The Executive Director shall give written notification of his findings and conclusion to the applicant, the Commission, interested persons, including all persons who have submitted information concerning the application as well as all persons who have requested a copy of said determination, and any person, organization or agency which has registered under N.J.A.C. 7:50-4.3(b)2i(2).

Emergency Amendment, R.1985 d.399, effective July 15, 1985 (expired September 13, 1985).

See: 17 N.J.R. 1918(a).