

7:50-4.57 Standards for public development

(a) The Commission shall approve or conditionally approve an application filed pursuant to this Part only if the development as proposed, or with any conditions which are imposed:

1. Satisfies all of the standards established by N.J.A.C. 7:50-5 and 6 or a certified local plan and if a local agency of a certified municipality or certified county is seeking approval, the provisions of the certified ordinances and master plan of that jurisdiction; and

2. If the proposed development includes any public roads, the applicant demonstrates that: alternative locations or transportation modes including mass transit and non-motorized methods cannot be employed to satisfy transportation needs; and public fishing, crabbing or canoe access facilities in association with bridge crossings will be provided as appropriate.

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

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

Recodified from 4.46.

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

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

Recodified from 4.56.

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

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

7:50-4.58 Limits on public agency actions

No public agency shall carry out any development which has been disapproved by the Commission pursuant to this Part, nor shall any public agency initiate any proposed development which has been approved with conditions by the Commission pursuant to this Part unless the conditions imposed are incorporated into the proposed development.

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

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

Recodified from 4.47 and substantially amended.

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

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

Recodified from 4.57.

7:50-4.59 through 7:50-4.60 (Reserved)

**PART V—WAIVER OF STRICT COMPLIANCE
WITH PROVISIONS OF THE COMPRE-
HENSIVE MANAGEMENT PLAN**

7:50-4.61 Purpose

This Part establishes procedures and standards pursuant to which the Commission may waive strict compliance with the Plan. Waivers from the standards of N.J.A.C. 7:50-5 or 6 may be granted in limited circumstances. Waivers granted pursuant to this Part are intended to provide relief where strict compliance with this Plan will create an extraordinary hardship or where the waiver is necessary to serve a compelling public need. The relief provided will be consistent with

the protection of the resources of the Pinelands. The relief granted will only be the minimum necessary to alleviate the extraordinary hardship or the compelling public need. For some extraordinary hardship cases, the minimum relief granted will allow the development of the parcel in question; in others the minimum relief will include an allocation of Pinelands Development Credits. These provisions are designed to provide all property owners with at least a minimum beneficial use of their parcels consistent with constitutional requirements. For some compelling public need cases, special measures may need to be taken so there will be an overall improvement to the resources of the Pinelands.

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

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

Recodified from 4.51.

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

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

Additional rationale for granting of relief explained.

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).

Substituted "parcel" for "property" throughout the section.

Case Notes

Pinelands Commission may consider application for waiver of strict compliance with Comprehensive Management Plan. Riorano, Inc. v. Weymouth Twp., 209 N.J.Super. 280, 507 A.2d 311 (App.Div.1986).

Petitioner denied waiver of strict compliance with provisions of Comprehensive Management Plan for the Pinelands which establish minimum standards for septic wastewater treatment systems for failure to prove extraordinary hardship. Kruckner v. New Jersey Pinelands Commission, 10 N.J.A.R. 237 (1988).

Regulation provides for waiver of strict compliance with restrictions upon application where proposed use is not a permitted use in the zone (citing former N.J.A.C. 7:50-4.51). Hanoverland Industries v. Pinelands Commission, 8 N.J.A.R. 529 (1985).

Strict compliance with Pinelands restrictions may be waived in certain cases (citing former N.J.A.C. 7:50-4.51). Pfeiffer v. Pinelands Commission, 8 N.J.A.R. 317 (1985).

7:50-4.62 General standards

(a) Waivers may only be granted when either:

1. An extraordinary hardship has been established pursuant to N.J.A.C. 7:50-4.63(a) or (b); or

2. A compelling public need has been established pursuant to N.J.A.C. 7:50-4.64.

(b) Notwithstanding (a)1 above, the requested relief may not be granted if it will either result in a substantial impairment of the resources of the Pinelands or be inconsistent with the purposes and provisions of the Pinelands Protection Act, the Federal Act or this Plan pursuant to the criteria set forth in N.J.A.C. 7:50-4.65.

(c) Notwithstanding (a) and (b) above, the requested relief may not be granted if it will involve trespass or create a public or private nuisance by being materially detrimental or injurious to other property or improvements in the area in which the subject parcel is located, increase the danger of fire or endanger public safety.

(d) When approved, the waiver may only grant the minimum relief necessary to relieve the extraordinary hardship or satisfy the compelling public need.

1. Any waiver which grants relief from the standards of this Plan to permit development of the parcel in question shall require:

i. The reduction as set forth in N.J.A.C. 7:50-5.43(b)3 of any Pinelands Development Credits which are allocated to the parcel pursuant to N.J.A.C. 7:50-5.43(b);

ii. The acquisition and redemption of any Pinelands Development Credits that are otherwise required pursuant to N.J.A.C. 7:50-5.27, 5.28 or 5.32;

iii. The acquisition and redemption of 0.25 Pinelands Development Credits for each standard in N.J.A.C. 7:50-6 from which the waiver provides relief, up to a maximum of 0.50 Pinelands Development Credits. Nothing in this subparagraph shall be construed as relieving an applicant of the requirement to reduce a Pinelands Development Credit allocation or acquire and redeem Pinelands Development Credits pursuant to (d)1i and ii above. The requirements of this subparagraph shall not apply to the following:

(1) State projects located on and directly related to the management and use of State conservation lands;

(2) Projects essential for the remediation of a site contaminated with wastes or hazardous or toxic substances; and

(3) Projects which qualify for a Waiver of Strict Compliance based on compelling public need pursuant to N.J.A.C. 7:50-4.64 and which involve one or more of the criteria set forth in N.J.A.C. 7:50-4.65(b); and

iv. The development meets the criteria set forth in N.J.A.C. 7:50-4.65(c) if the waiver is based on compelling public need pursuant to N.J.A.C. 7:50-4.64 and involves one or more of the criteria set forth in N.J.A.C. 7:50-4.65(b).

2. Any parcel for which an extraordinary hardship otherwise exists pursuant to N.J.A.C. 7:50-4.63(b) but which is precluded from on-site development pursuant to N.J.A.C. 7:50-4.63(b)4 and 4.65(b) shall receive an additional use right of an allocation of Pinelands Development Credits based on the fair market value of the parcel. The allocation shall be based on the market value of the Pinelands Development Credits at the time the application for a waiver is completed, provided that the applicant shall be entitled to a minimum allocation of 0.25 Pinelands Development Credits. Unless severed from the parcel pursuant to N.J.A.C. 7:50-5.47, any conveyance, sale or transfer of the parcel shall include the Pinelands Development Credits allocated herein. The applicant shall be entitled to demonstrate that the allocation of Pinelands Development Credits based on fair market value in conjunction with the permitted uses on the parcel does not give the parcel a beneficial use. If the applicant believes that even considering this allocation of Credits the parcel does not have a beneficial use, the applicant is entitled to appeal the allocation pursuant to N.J.A.C. 7:50-4.68.

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.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).

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

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

Amended by R.1996 d.465, effective October 7, 1996.

See: 28 N.J.R. 2454(a), 28 N.J.R. 4478(a).

Case Notes

Waiver of strict compliance with the Pinelands Comprehensive Management Plan, allowing development of a single-family dwelling within 300 feet of wetlands, granted. Hansen v. Pinelands Commission, 94 N.J.A.R.2d (EPC) 1.

7:50-4.63 Standards for establishing extraordinary hardship

(a) An extraordinary hardship is deemed to exist when the applicant demonstrates based on specific facts and the Pinelands Commission verifies that all of the following conditions exist:

1. Except as provided in (a)1v below, the only relief sought is from one or more of the standards contained in N.J.A.C. 7:50-6 for one of the following:

i. Cultural housing pursuant to N.J.A.C. 7:50-5.32 on a parcel at least 1.0 acres in size;

ii. A single family dwelling or a permitted commercial use within an infill area designated pursuant to N.J.A.C. 7:50-5.22(b)7 and located on a parcel at least 1.0 acres in size;

iii. A single family dwelling on a substandard parcel containing at least 1.0 acres pursuant to N.J.A.C. 7:50-5.31;

iv. 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;

v. A single family dwelling on a parcel within a Regional Growth Area, Pinelands Town or Pinelands Village which is at least 20,000 square feet, excluding road rights of way, in size and is not served by a centralized waste water treatment system;

vi. A single family dwelling on a parcel within a Forest Area that complies with the density and lot area standards set forth in N.J.A.C. 7:50-5.23(a)2 and (c);

vii. A single family dwelling on a parcel within a Rural Development Area that complies with the density and lot area standards set forth in N.J.A.C. 7:50-5.26(a) and (c);

viii. A single family dwelling on combined properties in either the Forest Area or Rural Development Area which meets the density transfer standards of N.J.A.C. 7:50-5.30;

ix. A single family dwelling accessory to an active agricultural operation in an Agricultural Production Area pursuant to the criteria contained in N.J.A.C. 7:50-5.24(a)2;

x. A single family dwelling accessory to an active agricultural operation in a Special Agricultural Production Area pursuant to the criteria contained in N.J.A.C. 7:50-5.25(b)1;

xi. An agricultural commercial establishment with a gross floor area no greater than 500 square feet which is located on a parcel which otherwise qualifies for a single family dwelling accessory to an active agricultural operation pursuant to either N.J.A.C. 7:50-5.24(a)2 or 5.25(b)1; or

xii. Agricultural employee housing which is located on a parcel which otherwise qualifies for a single family dwelling accessory to an active agricultural operation pursuant to either N.J.A.C. 7:50-5.24(a)2 or 5.25(b)1;

2. 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;

3. Except as expressly provided in N.J.A.C. 7:50-5.1(c), the proposed use will be either the sole principal use or an accessory use to the sole principal use as permitted in (a)lix, (a)lx, (a)lxi or (a)lxii above on the entire contiguous parcel, as established in (a)2 above;

4. All necessary municipal use, lot area and density variances have been obtained if the parcel is located in a municipality whose master plan and land use ordinances have been fully certified by the Pinelands Commission pursuant to N.J.A.C. 7:50-3; and

5. The development of the parcel will not violate any of the criteria contained in N.J.A.C. 7:50-4.65(b).

(b) An extraordinary hardship as distinguished from a mere inconvenience also exists when the applicant demonstrates and the Pinelands Commission verifies that all of the following conditions exist:

1. The parcel includes all contiguous lands in common ownership on or after January 14, 1981, including lands which are contiguous as a result of ownership of other contiguous lands;

2. The parcel includes all contiguous land with no substantial improvements which is available in whole or in part for purchase at fair market value, including lands which become contiguous as a result of the acquisition of other contiguous lands;

3. The parcel, including all contiguous lands which are available pursuant to (b)1 and 2 above, may not have a beneficial use considering the following factors:

i. The value of any existing development or use of the parcel, including any allocation of Pinelands Development Credits to the parcel pursuant to N.J.A.C. 7:50-5.43(b);

ii. The value of any use or development of the parcel that is authorized by the provisions of this Plan;

iii. The ability of the property owner to sell the subject parcel to the owner of a contiguous parcel, any governmental agency or to a nonprofit conservation group for its fair market value;

iv. The ability of the property owner to either buy non-contiguous land or sell the subject parcel to a non-contiguous property owner under a transfer of density provision contained in a certified municipal land use ordinance or pursuant to N.J.A.C. 7:50-5.30 in an uncertified municipality; and

v. Any inability to have a beneficial use relates to or arises out of the characteristics of subject parcel and results from unique circumstances peculiar to the subject parcel which:

(1) Are not the result of any personal situation of the applicant including the necessity of purchasing additional land to attempt to either meet the minimum lot size, density or management standards of the Plan or to increase the parcel size so it is capable of having a beneficial use; and

(2) Are not the result of any action or inaction by the applicant, the owner or any predecessor in title including any transfer of any contiguous lands which were in common ownership on or after January 14, 1981 or the refusal on or after January 14, 1981 of the applicant, the owner or any predecessor-in-title to either sell the subject parcel for its fair market value at the time the offer was made or to buy a contiguous parcel for its fair market value at the time the offer was made; and

4. The development of the parcel will not violate any of the criteria contained in N.J.A.C. 7:50-4.65(b).

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.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).

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

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

In (a)1 added exception for (a)1v.

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. 7:50-4.53). 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).

No waiver of strict compliance with Pinelands Comprehensive Management Plan. Zaorski v. Pinelands Commission, 93 N.J.A.R.2d (EPC) 17.

No extraordinary hardship existed entitling property owner to waiver of strict compliance with seasonal high water table requirement. Pappas v. Pinelands Commission, 93 N.J.A.R.2d (EPC) 13.

Parcel not have beneficial use; extraordinary hardship existed entitling property owner to waiver of Pinelands Comprehensive Manage-

ment Plan requirements; conditions imposed. *Christensen v. New Jersey Pinelands Commission*, 93 N.J.A.R.2d (EPC) 5.

Purchase of lot after commonly owned land was subdivided; no extraordinary hardship allowing waiver of wetlands requirements. *Harris v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 45.

Hardship waiver of strict compliance with lot size and buffer-to-wetlands requirements expired. *Sonessa v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 39.

Plotted but unbuilt street did not render non-contiguous commonly owned adjoining parcels of land; no hardship waiver from wetlands requirement. *Bisignano v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 36.

Sale of adjoining lot precluded existence of extraordinary hardship, even though property owner was elderly individual suffering from heart problems and diabetes and sought to sell or develop property in order to help support herself and two handicapped sons residing with her. *Stark v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 34.

Extraordinary hardship; waiver of lot size requirement, seasonal high water table requirement, and ground water nitrate-nitrogen requirement. *Eni v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 31.

Compelling health need; hardship waiver of nitrate-nitrogen discharge limitations; town permitted to build wastewater treatment facility. *Adamucci, et al. v. Pinelands Commission and Town of Hammon-ton*, 92 N.J.A.R.2d (EPC) 21.

Developer seeking to build residences on or near wetlands not entitled to hardship waiver; developer permitted to build one single family dwelling. *Martino v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 15.

No extraordinary hardship existed entitling property owner to waiver of strict compliance with density requirements, seasonal high water table requirement, and wetlands protection requirements. *Summonte v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 9.

No extraordinary hardship existed entitling property owner to waiver of strict compliance with lot size requirements. *Egenstaffer v. Pinelands Commission*, 92 N.J.A.R.2d (EPC) 3.

Residents living in former gun club were entitled to waiver of strict compliance from minimum lot size and water quality requirements. *Swezeny v. Fulford*, 92 N.J.A.R.2d (EPC) 1.

Development application approved based on extraordinary hardship (citing former N.J.A.C. 7:1G) (decision vacated by Pinelands Commission). *Mayer v. Pinelands Commission*, 4 N.J.A.R. 458 (1980).

Proposed project found to qualify for approval under extraordinary hardship exception: application denied due to petitioner's failure to establish that the project would not substantially impair a potentially essential habitat for a specific endangered species (citing former N.J.A.C. 7:1G). In Re: *Berkeley Twp.*, 4 N.J.A.R. 319 (1980).

7:50-4.64 Standards for establishing compelling public need

(a) An applicant shall be deemed to have established compelling public need if the applicant demonstrates based on specific facts and the Pinelands Commission verifies that one of the following conditions exist:

1. The proposed development will serve an essential health or safety need of the municipality or, in the case of an application serving more than one Pinelands municipality, the county in which the proposed development is located, and:

i. The public health and safety require the requested waiver;

ii. The public benefits from the proposed use are of a character that override the importance of the protection of the Pinelands as established in the Pinelands Protection Act or the Federal Act;

iii. The proposed use is required to serve existing needs of the residents of the Pinelands; and

iv. No feasible alternatives exist outside the Pinelands Area to meet the established public need and that no better alternatives exist within the Pinelands Area; or

2. The proposed development constitutes an adaptive reuse of a historic resource designated pursuant to N.J.A.C. 7:50-6.154, and:

i. The reuse is the minimum relief necessary to ensure the integrity and continued protection of the designated historic resource; and

ii. The designated historic resource's integrity and continued protection cannot be maintained without the granting of a Waiver of Strict Compliance.

(b) The applicant shall also demonstrate either that the development of the parcel will not violate any of the criteria contained in N.J.A.C. 7:50-4.65(b) or that if one or more of the criteria are violated that the development meets the requirements of N.J.A.C. 7:50-4.65(c).

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.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).

7:50-4.65 Substantial impairment and consistency

(a) No Waiver of Strict Compliance which permits a parcel to be developed shall be approved unless such development will be consistent with the purposes and provisions of the Pinelands Protection Act, the Federal Act and this Plan and will not result in a substantial impairment of the resources of the Pinelands Area.

(b) Unless alleviating measures are taken pursuant to (c) below for waivers based on compelling public need, the following circumstances do not comply with (a) above:

1. Development of any non-permitted use in the Preservation Area District, any Special Agricultural Production Area, any Forest Area or any Agricultural Production Area;

2. Any residential use in the Preservation Area District, any Special Agricultural Production Area or any Agricultural Production Area which does not meet the requirements set forth in N.J.A.C. 7:50-5.22(b)7, 5.24(a)2, (a)3 or (c), 5.25(b)1 or (c), 5.31 or 5.32;

3. Any residential use to be served by an on-site sewage disposal system where the overall density is greater than one dwelling unit per 20,000 square feet, excluding road rights of way, or where any dwelling will be located on a lot smaller than 20,000 square feet, excluding road rights of way;

4. Any non-residential use to be served by an on-site sewage disposal system where the nitrate-nitrogen level exceeds five parts per million at the parcel line;