

Florence, New Jersey 08518-2323
November 23, 2010

The regular meeting of the Florence Township Zoning Board of Adjustment was held on the above date at the Municipal Complex, 711 Broad Street, Florence, NJ. Chairman Zekas called the meeting to order at 7:32 p.m. followed by a salute to the flag.

Secretary Montgomery then read the following statement: "I would like to announce that this meeting is being held in accordance with the provisions of the Open Public Meetings Act. Adequate notice has been provided to the official newspapers and posted in the main hall of the Municipal Complex."

Upon roll call the following members were found to be present:

Brett Buddenbaum	Ray Montgomery
Keith Crowell	Candida Taylor
John Fratinardo	B. Michael Zekas
John Groze	Robert Adams

ABSENT: Rebecca Borucki (excused)

ALSO PRESENT: Solicitor David Frank
Engineer Dante Guzzi
Planner Robert Perry

Resolution ZB-2010-20

Continuing the application of Joseph LaRocca for a Use variance and Site plan waiver to permit conversion of a warehouse with one apartment into four apartments on property located at 312 Summer Street, Florence, NJ. Block 43. Lot 8.

Motion of Groze, seconded by Buddenbaum to approve Resolution ZB-2010-20.

Upon roll call the Board voted as follows:

YEAS: Zekas, Taylor, Montgomery, Groze, Fratinardo, Crowell, Buddenbaum
NOES: None
ABSENT: Borucki

OLD BUSINESS

Chairman Zekas called for Application ZB#2010-14 for Joseph LaRocca. Applicant is requesting a Use variance and site plan waiver to permit conversion of a warehouse with one apartment into four apartments on property located at 312 Summer Street, Florence, NJ. Block 43, Lot 8.

Jonas Singer, attorney for the applicant stated that Mr. LaRocca is requesting the approval of a Use variance to convert his existing building, which is now a warehouse with an apartment into a total of 4 apartments. Attorney Singer stated that they have submitted plans and have received the Board's professional's reports, but are proceeding this evening only on the issue of the Use variance. Assuming that an approval is granted then the applicant would proceed with submitting a revised site plan. He stated that they had wanted to have the revised site plan for this evening but their engineer was unable to meet the deadline. Attorney Singer asked that this following the decision on the use variance and the density variance this evening that the application be carried to a future meeting.

Attorney Singer stated that he had 2 witnesses present to offer testimony this evening, Mr. LaRocca (applicant) and James Miller, the applicant's professional planner.

Engineer Guzzi stated that there were 2 outstanding completeness items related to the Use variance, which include a survey of the property by a licensed NJ land surveyor and a certificate from the Zoning Officer. Attorney Singer stated that neither of those items had been submitted so the Board needs to make a determination on these waivers prior to deeming the application complete.

Engineer Guzzi stated that there was a sketch site plan that was submitted which the Board can utilize. Attorney Singer asked that the survey requirement be waived this evening but they would furnish prior to site plan.

Member Crowell asked why the survey wasn't submitted prior to this evening. Attorney Singer stated that his client was looking for the survey. He stated that this property was the subject of a minor subdivision a few years past and a single family home was constructed on the created lot, so the town is in possession of a site plan/survey from then. The applicant just didn't get a copy of it in time to submit.

Motion to grant the waivers and proceed with the application with the provision that a survey be provided at time of site plan by Taylor, seconded by Groze. Motion unanimously approved by all members present.

Joseph LaRocca and James Miller were both sworn in by Solicitor Frank.

Mr. LaRocca said that he is the owner of 312 Summer Street. He stated that the property is currently a mixed use property. It has a one bedroom apartment on the second floor and the first floor is occupied by an office and a small warehouse which Mr. LaRocca had used in conjunction with his previous contractor/builder business.

Mr. LaRocca stated that for the last couple years he has not been working as a contractor and builder and no longer has a need for the building and with only the one bedroom apartment upstairs the expenses of the building are not being covered. He stated that he had considered other possibilities but this proposal seemed to be the best.

Mr. LaRocca stated that he would like to create a 4 unit apartment building, adding 3 on the first floor where the warehouse and office are currently located. The second floor one bedroom apartment would remain unchanged. The first floor would consist of a single one-bedroom apartment and two two-bedroom apartments. This proposal would not require any expansion of the existing footprint. Mr. LaRocca stated that no additional impervious coverage would be added.

Responding to a question from Attorney Singer, Mr. LaRocca stated that his intention is to make the site look as residential as possible. He stated that the exterior would be renovated to match the neighborhood as closely as possible. Exhibit A2 was submitted showing a rendering of the proposed exterior façade of the building.

Engineer Guzzi stated that the plans that were submitted show a proposed patio, sidewalk and trash enclosures. He asked if the intent now was to not install them? Mr. LaRocca stated that the side patio that is shown would be composed of a pervious surface, which the engineer will spec out on the forthcoming drawing. This also applies to the sidewalk and the trash enclosure.

Attorney Singer asked Mr. LaRocca to describe the exterior of the building to the Board. Mr. LaRocca referring to Exhibit A2 pointed to the rendering of the Summer Street side of the building. He stated that the door to the existing 2nd floor apartment is currently located on the alley but will be located to the Summer Street side as shown on the rendering. He stated that the existing storefront windows and commercial door would be removed. The portion of the building that is currently the warehouse will have entrances for the two first floor 2-bedroom apartments. The side elevation on Fourth Street shows the entrance to the downstairs 1-bedroom apartment. He stated that all of the units have direct access to the exterior of the building.

Mr. LaRocca stated that there is currently a fully paved on-site parking lot. He said that 7 parking spaces would fit into the existing parking lot. He stated that one of the spaces would be handicap adaptable.

Chairman Zekas stated that it would be very difficult to hear this application without the site plan. Engineer Guzzi stated that the Board really couldn't explore too much of the site plan details (number of parking stalls, the improvements proposed and a number of other bulk variances) since no site plan was submitted.

Attorney Singer stated that all of the bulk variances are pre-existing conditions – none of which are being created by this application. He stated that at the time of site plan they would need a waiver or variance for one parking space. Computations show that 8 (or 7.6) spaces are required and they are providing for 7. Solicitor Frank stated that the Board couldn't grant this. The applicant would have to apply to DCA for a de minimus waiver.

Engineer Guzzi stated that for clarification certain things like the trash enclosure might kick in other buffer or C variances/setback variances.

Solicitor Frank stated that there was a rudimentary drawing that was submitted. Engineer Guzzi stated that there was a plan of proposed parking prepared by Bill Nicholson and prior to that with the original submission an architectural plan with no title block on it. Engineer Guzzi stated that the Nicholson plan gives a good idea as to what is out there and a concept as to what is proposed.

Solicitor Frank asked if it was the applicant's testimony that the parking area that exists presently has the condition that involves cars backing into the intersection. Attorney Singer stated that does presently exist and the photographs will show that. Vice Chairman Fratinardo stated that even though the 7 spaces is an existing condition now that because there is a variance the closeness to the intersection now comes into consideration. Engineer Guzzi stated that if a barrier free space was added to conform to ADA requirements you would end up with 6 parking spaces.

Mr. LaRocca stated that the parking spaces are not lined. There were some car stops but they don't cover all of the parking spaces. He said that when he acquired the building there were stops up to the end of the building, but the remaining asphalt out to Fourth Street did not have stops.

Mr. LaRocca stated that his understanding according to his engineer is that there would be 7 parking spaces. In regards to the handicap space, Mr. LaRocca stated that this building, by code, would be built as an adaptable building. A residential unit (R2 building) according to uniform construction code would be built as an adaptable. That means there are certain features of the building that could be adapted over if somebody came in to occupy the apartment who was handicap. The code allows this recognizing the fact that there may not be anyone in this building who requires accessibility. He stated that being that the unit is an adaptable building in his opinion the parking space would come under the code that governs that and that would be adaptable too. The sizing, obviously, would have to be there to make it an adaptable space. You wouldn't change the sizing of it, but if someone came into the building that required that then the sign mounting could be inserted into a pipe in the ground and the spot could be changed as an accessible as needed. The code does specify that in an R2 building that those features can be adaptable.

Engineer Guzzi said that the Board has to consider that since a parking lot is required to have a barrier free space then the space has to be there for it. A barrier free space takes up 16'. You can't put a barrier free space in a 9' area. Solicitor Frank stated that this takes the parking spaces down from 7 to 6 and you need 8 based on the bedroom count. So that would be a waiver for 2 or 25% of the parking.

Engineer Guzzi stated that Mr. LaRocca could use this as a conventional parking stall and having the ability to convert to a barrier free but Engineer Guzzi said that in his opinion this is a parking lot and this would require at least 1 barrier free parking stall.

Member Taylor asked Mr. LaRocca if he had considered the possibility of making this a 3-unit building rather than a 4-unit building. Mr. LaRocca stated that when he looked at the expense of converting the building, the minimum units that he could have is 4 in order to cover the construction and overhead costs.

James Miller stated that he is a licensed professional planner in the state of New Jersey. He is also certified as a certified planner by the American Institute of Certified Planners and has been qualified as an expert witness previously by this Board as a professional planner. The Board accepted Mr. Miller as an expert.

Mr. Miller stated that he had toured the site and surrounding area and has toured the interior of the building. He stated that he had taken photographs and submitted them as Exhibit A2. The first photograph shows the elevation of the building as it currently appears. The second photo shows the warehouse area. The third photo shows Summer Street looking to the south and shows how the area adjacent to the building appears. The fourth photograph is from a little further south so you can see the lot and current landscaping on the side yard.

Mr. Miller stated that the subject property was located at the corner of Fourth and Summer Streets and is in the RA zoning district. The primary use in that zoning district are single-family units with minimum lot size of 10,000 sq. ft. The property is located in an area that reflects older development patterns that probably pre-date the existing zoning. He stated that there are some additional units in this area that are either twin or multi-family units. This is predominantly an area with single-family units, but there are some units that are not single family. This is basically a residential area and conforms with the character of the RA district to that extent.

Mr. Miller stated that currently the top floor of the structure is an apartment. The first floor is laid out as a commercial use. There are a couple rooms in the front of the building and the rear of the building is laid out as garage space. This is a pre-existing non-conforming building.

Mr. Miller stated that this is an application that requires 2 Use variances, a D1 variance for converting the commercial use to the multi-family residential use and a D5 density variance because the density once the building houses 4 units would be greater than what the zone permits. For those types of variances there is a series of criteria. The first thing we need to establish is that we would advance the purposes of municipal land use law. He stated that he believes that at least 3 purposes would be advanced by the relief that the applicant is seeking. The first would be Purpose A to encourage municipal action to guide the appropriate use or development of all lands in a manner that will promote the public health safety and general welfare. The second purpose is Purpose I to promote a desirable visual environment through creative development techniques and good civic design and arrangement. He stated that he referenced this one because he thinks that the commercial structure is not in keeping with the residential character of the area and would be upgraded by the plan that they are proposing. Finally Purpose G, which is to provide sufficient space for a variety of uses.

Mr. Miller stated that he believes that this variance would advance the public welfare by taking a building which is non-conforming and currently vacant and providing a productive use for that building, updating the lot that is currently under utilized and has a non-conforming structure.

Mr. Miller stated that for the D1 variance he needed to show that the property is particularly suited for the proposed use. For the D5 the standard is that they have to show that the property can accommodate the impact of the use despite the deviation from the density. He stated that he would argue that if you can satisfy the criteria for the D1 variance then you satisfy the criteria for the D5 as well. Obviously if the lot is particularly suited it is able to also accommodate the greater density.

Mr. Miller said that in general terms the site is particularly suited for the use primarily because the proposed use is residential and the zone in which the lot is situated is residential. All the immediate area that surrounds the property is residential in character. There is a mixture of single family and multi-family units (primarily duplexes not apartments). The street has a residential character. It makes it appropriate for residential uses but it doesn't have the traffic or the character that would support a commercial use within this building. The residential use would therefore be a better fit for this location and for this zone than the current combination of non-residential and residential uses.

He continued saying that the structure is also suited for this use. It already houses a residential use in the apartment on the second floor and it could be readily converted to a residential use on the first floor. There is an issue with the parking and this needs to be addressed as part of the site plan application. There is existing parking as you can see from the photographs. He stated that he agreed with Engineer Guzzi that it is 6 or 7 depending on how it is laid out. There is some other room on the site that might be able to accommodate additional spaces but again that would have to be addressed at site plan.

Mr. Miller stated that the conversion of this structure also advances the planning goal of converting a non-conforming use to a more conforming use. This is a building, which is predominantly non-residential. A residential use would be more in keeping with the current zoning, more akin to what is permitted in the district. It would be more consistent with the existing development patterns and more appropriate for the neighborhood. Finally it also allows for the adaptive reuse and upgrade of this existing structure. In reviewing the relief being sought it is important to keep in mind that the owner of the building has an equitable right to make use of this structure. There is an interest in both the part of the township and the property owner to renovate and reuse the building so that it is more in keeping with the character in the area. The landscaping and the façade improvements that are proposed coupled with the use are going to make this a more conforming structure than it is currently and make it more harmonious with its surroundings. These are the reasons under the positive criteria that the use is particularly suited to this location and would advance the purposes of that zone.

Mr. Miller stated that in terms of the negative criteria they have to show that it would advance the general welfare and that they can reconcile the failure of the community to allow for this use with the use that they are proposing. This advances the public welfare because it reutilizes a structure which is currently vacant and isn't suited for the use that it was originally constructed for. The proposed use will be more appropriate for the residential area. It will eliminate the commercial elements of the building, which are not in keeping with the character of the area. The overall impact would be positive because the building would be renovated. He stated that he doesn't believe that there would be an impairment to the purpose or intent of the zone plan because there would be a use more akin to what is in the neighborhood. It would be a more appropriate use of the structure and it would serve to harmonize the structure with the surrounding residential uses. Mr. Miller stated that he believes that the variance to convert this to a fully residential structure would be appropriate.

Vice Chairman Fratinardo said that Mr. Miller had testified that the change of use would make this structure more conforming but the use is going from a non-conforming use to a non-conforming use since the proposal is for multi-family when the zone only permits single family. This is still a non-conforming use. Attorney Singer said that the non-conformity is less because the proposed use is residential in character. Vice Chairman Fratinardo stated that the Board hasn't been given the site plan and a major concern in changing this to a multi-family use is the idea of the parking. The photographs that you presented showed that there are "No Parking" signs on the opposite side of Summer Street. This makes the parking issue even more complex.

Member Crowell stated that Mr. Miller had mentioned that this neighborhood itself was mostly single family homes with some duplexes. He asked if there were any apartments in this residential community? Mr. Miller said that the applicant's apartment is the only apartment in the neighborhood. Member Crowell asked if converting the subject property to a single-family home wouldn't this be more conforming to the neighborhood and more beneficial? Mr. Miller stated that it would, but it would require the demolition of the building. He said that this is why he made the point about re-adapting the building. The owner has an investment in this structure and it would be overly burdensome for the owner to tear that building down and put a single-family unit in. The economics of that level of reconstruction wouldn't work here.

Member Taylor stated that she thinks that the applicant is proposing a great deal of construction whether he is making a single family home, a 3 unit home or a 4 unit home. She stated that she doesn't think that construction or destruction is really the issue. She said that she thinks what the applicant is trying to do is to put 14 eggs into a dozen carton and it is not going to work. She stated that her concern is that you don't have the parking for the proposal and you don't have street parking. She said that she could see this possibly working as a 3 unit but cannot see it working as a 4 unit. Attorney Singer stated that there is parking on the street. Member Taylor stated that those spaces were in front of other people's properties. She said that you have to offer on site parking.

Member Montgomery asked Mr. Miller how this proposal would advance public welfare? Mr. Miller stated that first of all the existing building is functionally obsolete and in a location that is inappropriate. This proposal would make it more compatible by making it residential. It would also provide a means to renovate the building. It is never desirable to have a building, which is functionally obsolete within a neighborhood. Over time it can have a detrimental impact. The adaptive reuse of the building would be an overall positive for the neighborhood.

Member Crowell said that he thinks that Mr. Miller testified to the fact that this is a residential community with single-family homes and some duplexes but this is the only property that has a rental unit and now the applicant wants to increase the density and make them all rental units. How does this make this property compatible with the present character of the neighborhood? Mr. Miller said that he doesn't think that it is incompatible to have a rental unit within an otherwise owner based neighborhood. There could be rental units in the area that are single family detached units. Rental is really just a form of tenancy; it is still residential in use. The zoning doesn't regulate ownership or tenancy it regulates use and the residential use even though it is apartments versus a single family house is still residential use. There are a lot of planners who advocate mixing residential uses within a neighborhood so you have more diversity and a livelier neighborhood. He stated that he is not saying that creating 3 new units in here is going to have that major an impact on the neighborhood, but he is saying that he thinks that the apartment would be compatible with what is there.

Chairman Zekas asked if Mr. Miller was testifying that 2 apartments would be compatible with what is there or that 4 apartment would be compatible and as far as the positive criteria – the Board is on the business of dealing with variances and we often get them for impervious coverage. This property is currently 67% impervious coverage and the applicant proposes putting 4 apartments in. All of which will try to enjoy the 33% remaining pervious area. As a planner how would you propose that that actually occur and does this in fact meet the positive criteria?

Mr. Miller said that the proposal is to try to maintain the existing level of impervious coverage. Chairman Zekas' first question had to do with how many units were proposed. He stated that in general the residential use is more appropriate but obviously the Board has to weigh the number of units and the impact that more or less units might have on the site improvements. That is definitely a consideration when you weigh the variances. The proposal right now is for the 4 units and given the type of apartments that they are, the number of bedrooms and size of the apartments, this building can accommodate them. There is enough green area to accommodate this use.

Mr. Miller stated that basically what you are looking at is very small households either 1 or 2 persons. Those kinds of units can be accommodated on a property where there is no open space. It is very common to have apartments that don't have a lot of yard. Member Crowell said not on a residential street in Florence. Member Taylor stated that this would not be in character with the neighborhood. Mr. Miller stated that he disagreed with the

Board he said there are places like Florence that have a mixture of single family residential and apartment units of this type.

Member Crowell said that the two 2-bedroom apartments could be rented by single mothers with 2 children each. There would be 4 kids. Where would they play? Mr. Miller said that is true but usually if you have a couple of children you wouldn't be attracted to this type of unit. He stated that when people go out to find a place to live they generally try to find a place that matches their household. Member Buddenbaum stated that people often try to find a place that matched their pocket rather than the size of their household.

Planner Perry said that Mr. Miller had stated that in this neighborhood there were single family homes and duplexes. He asked if Mr. Miller had a map to show where the duplexes were located. Mr. Miller said that there is one that is adjacent just to the north and one that fronts on West Third Street a few lots up. Planner Perry asked if this proposal were for a duplex wouldn't be more compatible to the neighborhood than 4 apartments. Mr. Miller answered that it would. Planner Perry asked if the proposal could be redesigned to include a garage with the duplex, which would alleviate the parking issue. Mr. Miller stated that this would be difficult to do. Hypothetically the duplex might be more compatible but there is an existing structure. You have to balance the 2 and this is how Mr. LaRocca came up with this concept. Planner Perry said that he understands but it seems that the Board may have a concern about the number of units. He stated that he was looking at it from the compatibility of the neighborhood where the majority are single family homes or duplexes and the applicant proposes to introduce 4 units. The duplex concept would make it more compatible in the neighborhood.

Planner Perry stated that Mr. Miller had indicated one of the purposes of zoning was providing sufficient space for a variety of uses. If, in fact, you cannot provide enough parking, it doesn't really meet that purpose. Mr. Miller agreed with this.

Planner Perry stated that from a planning standpoint he understands what Mr. Miller is suggesting about mixing it but this is an older neighborhood and he hears the reluctance of the Board on this.

Engineer Guzzi stated that most of the comments listed on the 2 reports generated refer to site plan issues. The earliest report from September 20th just pointed out that the parking requirements have to be met based on the proposed apartments as well as the trash and recycling requirements which are a mandatory requirement for this development as proposed.

Attorney Singer said that having received some input from the Board, he thinks it would be appropriate for the applicant to come back to the Board with the site plan and at that time to reconsider the number of units that may be accommodated on the site. Rather than ask for a vote this evening, he asked that the matter be carried to allow submittal of the site plan with a possible amendment of the number of units. He consented to extend the time of decision.

Member Crowell asked if the applicant was still considering rental units or perhaps downscaling to 2 townhomes. Attorney Singer stated that they are considering the possibility of downsizing from 4 units to 3 units. He stated that he doesn't think the form of ownership should make a difference. People need places to live and some can't afford to buy so they rent.

Chairman Zekas opened the hearing to public comment.

Jennifer and Mike Britton of 235 West Fourth Street were sworn in by Solicitor Frank.

Mrs. Britton stated that their home is located directly behind the applicant's property and they feel that if the property becomes 4 apartments it would become a quality of life issue for them and for the entire neighborhood. She stated that historically rental properties are known to devalue neighborhood properties because of the transient nature and this will definitely impact the value of their property since they live directly behind the subject property. She stated that the frequent change in occupants could cause problems. She said that there is a home that is rented 2 doors down from their home. They have lived in their home for 3 years and there have been 3 tenants in that rental unit within this timeframe. The police have been called several times for disturbances within the last year since the new tenants move in and out.

Mrs. Britton stated that they do not feel that the parking spaces will be adequate to accommodate the rental units. It is very unlikely that there will only be one car per unit, therefore any other cars will be parked on the streets which are already crowded with cars from the existing houses. They are also concerned that there may be a noise issue with perhaps 4 families living in the building. There is no guarantee that the apartments will be rented to a single occupant per apartment. There is also the issue of an absent landlord. This has them concerned with the upkeep and maintenance of the property. She stated that the property is really not kept up very well right now. The overgrowth of a large tree is over their fence. In the summer the grass grows high before being cut and there is usually garbage in the yard thrown by pedestrians that is never cleaned up. She stated that her family sometimes clean it up.

Mrs. Britton stated that they purchased their home from the applicant himself. They were concerned about the building that was currently there, as they knew that the 1st floor wasn't being use and there was one rental unit on top. They questioned the applicant about that building and were told that the building was being demolished and a single family home was going to be built on the lot. Now that they see the proposal for 4 rental units, they feel very deceived by the applicant. She stated that they strongly oppose the application.

There being no one else wishing to offer comment motion was made by Montgomery, seconded by Crowell to close the public hearing.

103.

Attorney Singer stated that he was requesting to adjourn the hearing until the January 25, 2011 meeting of the Board and he will waive the time limit for Board action.

Motion of Taylor, seconded by Crowell to grant the applicant's request for continuation.

Upon roll call the Board voted as follows:

YEAS: Buddenbaum, Crowell, Fratinardo, Groze, Montgomery, Taylor, Zekas
NOES: None
ABSENT: Borucki

Chairman Zekas called for Application ZB#2010-16 for T-Mobile Northeast, LLC. Applicant is requesting minor Site plan with use and bulk variances to permit the co-location of nine (9) telecommunications antennas at a centerline height of 109 feet on an existing 120' lattice tower on property located at 2022 Route 130. Block 160.01, Lot 10.01.

Mike Murray stated that he was the attorney representing the applicant this evening.

Chairman Zekas asked Engineer Guzzi to go through the completeness waivers. Engineer Guzzi referred the Board to his report dated October 27, 2010. He said that pages 2 and 3 outline Items A through M which are submission waivers for completeness items that have not been submitted. He stated that he is in favor of granting waivers on a majority of these items.

However, there are a couple items that he recommends be required. The first is Item A, which is a survey of the property. This property has undergone some significant changes since the prior approval of this tower back in 1996. Notably that this was a commercial site with multiple buildings; the majority of those buildings have been removed so the site is substantially different that it was when the Board approved the initial tower. Additional, there is an approval in place that was granted by the Planning Board for a large commercial light industrial complex, which incorporates this lot as well as adjacent lots. The Board has been given no information regarding the conditions of the site either existing or proposed and the plans that were submitted don't really give you a sense of what is out there. For that reason a waiver is not recommended for Item A as well as Item F which is for all structures and wooded areas on the site. One other minor item, Item G was the signature blocks for Board Chairperson and Secretary is required.

Attorney Murray said that one of the reasons that they had requested a waiver of the survey requirement, as a matter of fact they asked for a waiver of the minor site plan approval, was the minimum amount of improvements that are being constructed in relation to this site. This is an existing tower. In this particular case there is already an existing equipment building on the site, where all the stuff that would normally go on the ground on other applications is going into an existing building. There really are no ground improvements being constructed in relation to the site. This is just to put an

additional antenna on an existing tower at a lower height than the antenna are located at now and putting the equipment in the existing building.

Attorney Murray stated that as a rule they have not been doing surveys on these co-location applications. When that type of information is required we have been trying to use other information such as aerial photographs. Mr. Murray submitted Exhibit A17, which is an aerial photograph of the site. He stated that this photograph shows how the tower is situated in relation to the existing equipment building. This really isn't a significant improvement at this time.

Chairman Zekas said going back to the survey issue, what Attorney Murray is suggesting that the proposed development is on the tower and in the existing building.

Engineer Guzzi stated that minor site plan is required for this application. Based on the photograph it looks like landscaping and screening that was required, as part of the original approval has been removed. The buildings that used to screen this have been removed. Engineer Guzzi stated that the Board should be able to see what it is that they are acting on.

Solicitor Frank stated that what Engineer Guzzi was saying that in the intervening time between the 1996 approval, which permitted this tower in the first place, and this application there has been significant changes to the site itself that need to be portrayed on a site plan so that the Board can make an informed decision about negative criteria. Engineer Guzzi stated that that would be his recommendation.

Attorney Murray stated there was a Planning Board application as early as last year for the entire site that received approval for 3 warehouse buildings. He said that they would attempt to get a copy of that plan and submit it as a condition of approval. He said that looking at the aerial photograph he doesn't know how much the Board needs to see of the entire site since this antenna is going on an existing tower and the equipment into an existing building.

Chairman Zekas said that the Board's Engineer sent out his review letter on October 27th and the applicant should have received it shortly thereafter. Attorney Murray stated that was correct. He said that the applicant's engineer that prepared the plans contacted Engineer Guzzi to try to come up with an alternative. He said that it was their understanding based on that discussion that if they could get a copy of the plan from the original approval that would be an acceptable alternative. The problem they ran into was that the current owner of the tower was not the owner at the time of the original application and did not have a copy of the original plan. He stated that if they could obtain a copy of that from the township...

Solicitor Frank asked if they had asked the township for a copy? Attorney Murray stated that he did not. Engineer Guzzi stated that no one asked him for a copy of the plan. He stated that he spoke with the applicant's engineer and had suggested that they get a copy

of the old approval and mark it up showing the changes that have been made to the site and what the overall site is going to look like should this application be approved.

Engineer Guzzi said that he would hate to see the Board act in the blind on this application. He said there are some pictures and an aerial photo but he just thought it was important that the Board had a handle on what exactly this is.

Attorney Murray said that this is such a minor application and the equipment is in the building. Chairman Zekas stated that it was a pretty minor task to get a copy of that plan. He said that speaking for himself, he hates going into these applications blind. He said that at this point without having all the proper information when in fact there was sufficient time to get it he is inclined to deem this incomplete and require the plan. He said that he understands that the applicant brought a lot of witnesses tonight and this is a straight forward application but the Board would have to make decisions pretty much in the blind.

Attorney Murray requested that the application be continued until the December 16, 2010 meeting.

Motion of Fratinardo, seconded by Montgomery to approve the applicants request to continue the application until the December 16, 2010 meeting and to extend the Board's time limit for action.

On the question: Planner Perry asked if the Board also wanted to see the recent Planning Board application plan so the Board can see how the site fits together. Chairman Zekas agreed that it was important to see these plans also.

Upon roll call the Board voted as follows:

YEAS: Zekas, Taylor, Montgomery, Groze, Fratinardo, Crowell, Buddenbaum
NOES: None
ABSENT: Borucki

Chairman Zekas called for Application ZB#2010-17 for Brian and Susan Petuch. Applicant is requesting Interpretation of the Zoning Ordinance/Use variance to permit construction of a 750 sq. ft. garage apartment to be accessed via the home's front door and interior staircase on property located at 6 Fountain Boulevard, Florence Township. Block 171.10, Lot 3.

Brian and Susan Petuch were sworn in by Solicitor Frank.

Attorney Denis Germano, representing the applicants, stated that his application was in the alternative. He stated that he is asking the Board to first interpret the ordinance to find that what his client's are proposing actually meets the definition of a single family home and is therefore permitted in the zone. He said that in keeping with that he would elicit from the applicant's, during the first phase, the variance aspect of the application.

Mrs. Petuch stated that she lives in a single family colonial home at 6 Fountain Boulevard with her husband Brian and her oldest son Robert. She stated that her younger son no longer lives there, but is on his own out of the house. Mrs. Petuch stated that Robert is 26 years old. He was born with a developmental disability and is learning disabled and has a communication handicap. He was in special education classes from kindergarten through grade 12. He graduated from Burlington County Special Services School.

Mrs. Petuch stated that his handicap also affects his speech and he is very limited in what he can do in regards to employment. She stated that her son currently has a part time job at the Burlington Acme that he obtained through the Special Services "School to Work Program". The hours and schedule fluctuate from week to week.

Mrs. Petuch said that her son has applied for other positions at the Acme but the only full time positions are for managers and he has not qualified for a management position. She stated that he does not earn enough money to rent an apartment and most likely will never be in the position to obtain a home mortgage.

Mrs. Petuch stated that her son doesn't have a physical handicap and he does drive and owns his own car, but with the communication handicap he needs help in dealing with paperwork and decision-making.

Mrs. Petuch said that the proposed apartment will not really change the situation in their home except that Robert will have more privacy and a measure of independence. He will always need guidance. His disability will never change and can't be improved with medication. He will never be self-sufficient.

Mrs. Petuch stated that Robert contributes to the family expenses as he can, but he does not pay rent and will not pay rent for the apartment. He will eat meals with the family if he is at home at mealtime, but on the evenings that he works late he could prepare a small meal in his own kitchen. There will not be separate bills for the utilities.

Attorney Germano submitted exhibit A1, which is a list of the Florence Township Zoning Ordinance definitions. He stated that the definition of a single-family home is a building containing a dwelling unit. A dwelling unit is defined as one or more rooms containing living, cooking, sleeping and sanitary facilities for one family. He asked the Board to note that the ordinance doesn't specify that there only be one cooking facility. There is nothing in the ordinance that says there can only be one kitchen.

Attorney Germano stated that the definition that he wanted to emphasize is that of a family. A family is defined as one or more people related by blood, marriage or adoption that lives and cooks together as a single housekeeping unit. He stated that this is what his client has described – a single housekeeping unit. This is still a dependent son who needs his parents, not just financially but also needs their guidance. What the Petuch's are proposing is a way to give their son some privacy, not separation.

107.

He stated that renting this apartment would be inconceivable as the only access is through the living room of their home. The Petuch's will remove the kitchen to the addition when they either sell the home or no longer need the apartment for their son and as a way to guarantee to the township that this is never used as a rental record of this can be recorded on the chain of title that this arrangement is only for this family and if someone goes to buy this place they would know that it is a single family home

Member Taylor said that she did not think that the kitchen would have to be removed, but just a stipulation added that this would not be for rent.

Planner Perry said that this meets the test of a true mother-in-law suite. This is clearly not a separate unit as there is only one entrance and no separate utilities.

Chairman Zekas asked if the Board was here to talk about an interpretation of the ordinance? Solicitor Frank stated that this Board does have the power to do this. When the zoning officer denies something the applicant has the right to ask the Zoning Board for an interpretation.

Planner Perry says that this is actually a B variance, an interpretation of the Zoning Ordinance.

Solicitor Frank stated that there is a question with the filing of this in the deed. Does the Board require that the kitchen be removed when the family decides to sell the house? The Board Members indicated that they would not require the removal of the kitchen.

Member Taylor asked about fire safety since there was only one exit. Solicitor Germano stated that he had checked with the architect and a second exit is not required, but there are windows that will be sized to allow escape if necessary.

Engineer Guzzi referring to his November 12, 2010 letter stated that there were 2 minor comments. One was in respect to parking and based on the testimony the parking issue goes away. The second item is related to the adequacy of the existing septic system to handle the additional bathroom and kitchen facilities. Health Department approval would be required.

Attorney Germano asked if the Board would modify his application and delete the offer to remove the kitchen.

Planner Perry stated that his letter of November 12, 2010 outlined everything about the case as the Applicant's attorney has presented. He stated that he agreed with Attorney Germano's interpretation of this and recommends that the Board approve the application with the conditions that were set out in testimony.

Chairman Zekas opened the hearing to public comment.

Thomas Layou, Florence Township Construction Official, stated that the Construction Department does ask that the kitchens be removed from these units or the new owners have to come before the Zoning Board for approval. Member Adams asked why the construction office requires that the kitchen be removed? Mr. Layou stated that when there are 2 kitchens in a house they ask that one be removed if it is a single family home. There was a recent incident on Hamilton Avenue where a gentleman had a in-law suite with a second kitchen and a second entrance. His resolution stated that he needed to remove that when he was selling the property. There was an incident where the owner was trying to sell this property as a two family dwelling.

Solicitor Frank stated that in this case there will be language added to the chain of title that this property will not be allowed to be used as a two family dwelling, but the Board is not thinking of the applicant having to remove the kitchen.

Mr. Layou stated that he was just making sure that the township was protected. Vice Chairman Fratinardo stated that he understood what Mr. Layou was saying but in this case in order to have this as a rental unit they would have to have a separate entrance.

Mr.Layou stated that removing the kitchen deters the apartment being used.

Vice Chairman Fratinardo stated that the chain of title insures that if someone else buys this property they can't turn around and sell it as a two family unit.

Motion of Montgomery, seconded by Crowell to close the public hearing. Motion unanimously approved by all members present.

Attorney Germano asked for a motion to find that the zoning ordinance permits the construction that was shown with the architectural plans and because that extra kitchen, bath and bedroom do not change the nature of this house. Even with this addition this is still a single family home because of the one set of utilities, one entrance and the relationship and dependency between the parties. He said that the applicant accepts the safeguard that the resolution be recorded in the County Clerk's office so that future purchasers understand what they are getting.

Motion of Fratinardo, seconded by Taylor to make the interpretation that this proposal does not change the single family nature of the home with the condition of filing a chain of title, the Board of Health approval for the septic system and that the interpretation is based upon the relationship, the utility systems, the common entrance and the fact that they can't construct a separate entrance.

Upon roll call the Board voted as follows:

YEAS: Buddenbaum, Crowell, Fratinardo, Groze, Montgomery, Taylor, Zekas
NOES: None
ABSENT: Borucki

109.

Attorney Germano stated that he pictures recording the resolution that would be adopted next month. Solicitor Frank stated that there could just be an added notice that points to the resolution but also includes the salient facts of the approval.

MINUTES

Motion of Fratinardo, seconded by Montgomery to approve the Minutes from the October 26, 2010 Minutes as submitted. Motion unanimously approved by all members present.

PUBLIC COMMENT

There was no public in attendance to offer comment.

Member Adams asked a question regarding solar panels in the Legacy at Meadowcroft Development. The Board had a brief discussion and it was determined that the Board does not have jurisdiction over this.

Motion of Fratinardo, seconded by Taylor to adjourn at 9:15 p.m.

, Secretary

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