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Florence, New Jersey 08518-2323  
January 25, 2011

The Reorganization/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. Solicitor David Frank called the meeting to order at 7:30 p.m. followed by a salute to the flag.

Solicitor Frank 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:

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

ABSENT: none

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

Solicitor Frank administered the oath of office to Mr. Crowell, Mr. Adams, Mr. Zekas and Mr. Bott.

Solicitor Frank called for nominations for Chairman of the Board for the year of 2010.

Motion of Zekas, seconded by Taylor to nominate John Fratinardo as Chairman. Hearing no further nominations motion was made by Groze, seconded by Montgomery to close the nominations. The Board voted unanimously to elect John Fratinardo as Chairman. Member Fratinardo accepted the nomination, thanked the Board and was seated as Chairman.

Chairman Fratinardo called for nominations for Vice Chairman. Member Taylor nominated Michael Zekas. The motion was seconded by Montgomery. Hearing no further nominations motion was made by Groze, seconded by Buddenbaum to close the nominations. The Board voted unanimously to elect Michael Zekas as Vice Chairman. Member Zekas accepted the nomination and thanked the Board.

Chairman Fratinardo called for nominations for Board Secretary. Vice Chairman Zekas nominated Ray Montgomery as Board Secretary. The motion was seconded by Member

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Adams. Hearing no further nominations motion was made by Groze, seconded by Zekas to close the nominations. The Board voted unanimously to elect Ray Montgomery as Board Secretary. Member Montgomery accepted the nomination and thanked the Board.

Chairman Fratinardo called for nominations for Board Clerk. Motion of Taylor, seconded by Crowell to nominate Nancy Erlston as Board Clerk. Motion unanimously approved by all members present.

Motion of Groze, seconded by Zekas to appoint David Frank as Board Solicitor, Dante Guzzi as Board Engineer and Robert Perry as Board Planner and to approve **Resolution ZB-2011-01 authorizing the appointments of the professional staff.**

Upon roll call the Board voted as follows:

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

**Resolution ZB-2011-02**

**Establishing the Annual Schedules of regular meetings and other policies relating to the New Jersey Open Public Meetings Act.**

Motion of Zekas, seconded by Taylor to approve Resolution ZB-2011-02.

Upon roll call the Board voted as follows:

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

**Resolution ZB-2011-03**

**Adopting rules and regulations for submission and review of applications before the Florence Township Zoning Board of Adjustment.**

Motion of Zekas, seconded by Groze to approve Resolution ZB-2011-03.

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

3.

**Resolution ZB-2011-04**

**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 Zekas, seconded by Taylor to approve Resolution ZB-2011-04.

Upon roll call the Board voted as follows:

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

**Resolution ZB-2011-05**

**Deeming incomplete and continuing the application of T-Mobile Northeast, LLC for minor site plan with use and bulk variances to permit the co-location of (9) telecommunications antennae at a centerline height of 109' on an existing 120' lattice tower on property located at 2022 Route 130, Florence Township. Block 160.01, Lot 10.01.**

Motion of Zekas, seconded by Taylor to approve Resolution ZB-2011-05.

Upon roll call the Board votes as follows:

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

**Resolution ZB-2011-06 for Brian and Susan Petuch. The Board made the Interpretation of the Zoning Code that the proposal brought forth by the applicants to add an apartment over the garage with access via the home's front door and common utilities does not change the single family nature of the home for property located at 6 Fountain Boulevard, Florence Township. Block 171.10, Lot 3.**

Motion of Taylor, seconded by Buddenbaum to approve Resolution ZB-2011-06.

Upon roll call the Board voted as follows:

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

APPLICATIONS

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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.

Solicitor Frank stated that the Board had received a letter dated January 14, 2011 requesting a continuance of the application until the February 22, 2011 meeting and agreeing to extend the time for decision through the end of March.

Motion of Zekas, seconded by Crowell to continue the application per the applicant's request. Upon roll call the Board voted as follows:

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

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

Solicitor Frank stated that the applicant did re-notice for this hearing so jurisdiction is proper.

Chairman Zekas asked if this application was complete? Engineer Guzzi stated that the Board still had to act on the matter of completeness. He referred the Board to pages 2 and 3 of his January 12, 2011 report for the outstanding completeness items. He stated that he would support waivers for the majority of the items. The one outstanding item is Item A, which is a survey of the property by a licensed land surveyor. He stated that he had recommended that the applicant provide a plan reflecting what the existing conditions are on the site. He stated that his office had provided the applicant with a copy of the previously approved site plan for their use as well as a copy of the site plan for the NFI development, which has received Planning Board approval and includes this property and neighboring properties. The applicant made copies of these and submitted them to the board along with their last submission, but still have not submitted a plan reflecting what the existing conditions are on the site.

Michael Murray, Esq., representing the applicant, stated that what the applicant's engineer did was to take the survey from 1996 when the site was originally approved and went out and took a site visit of the property and then updated the site plan with what was existing today in relation to what was being shown on this plan, which effectively is nothing. Everything that is shown on the plan that was existing in 1996 except for the telecommunication facility and some gravel and asphalt areas have been removed by the property owner. He stated that when they received Engineer Guzzi's letter he had their engineer contact Mr. Guzzi again and it was suggested that they take the 1996 survey and highlight it for the Board so they could see what existed back in 1996 when this was

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approved. You can see that there were several buildings that have now been removed. Solicitor Frank asked if this survey was going to be marked as an exhibit. Attorney Murray stated that it would be along with other exhibits.

Attorney Murray stated that this survey had been submitted to the Board but they had since then highlighted it up in yellow and red everything that was existing on this site and has since been removed. The only things remaining are the block building where the telecommunication facility is located and existing stone/gravel parking area and an asphalt paved area. All the other buildings that were shown on the 1996 survey have been removed.

Vice Chairman Zekas asked if the tower was shown on the 1996 drawing? Attorney Murray stated that the 1996 drawing was the plan that was approved for AAT by this Board. He pointed out where the tower was shown on the plan. Vice Chairman Zekas asked if there was a survey of the property that had been submitted for this meeting? Attorney Murray stated that this was a survey of the site. He stated that all they are requesting to do is putting antennae on an existing tower and putting equipment in the building. He stated that they were trying to save the cost of a new survey. What they did was pull the survey from before and marked it up to show all the things that had been removed and then updated their site plans that had been submitted to the board to show that there was nothing left on the property.

Attorney Murray stated that the Board has all this information in front of them at this point. He said that they had been given the impression that this was going to be satisfactory to mark up the previous survey to show existing conditions as they are today.

Member Crowell asked if anyone was certifying that the plan that was shown was true and accurate. Attorney Murray stated that their site plans that had been submitted were certified that they are true and accurate and they are indicating what is on the property, which is nothing. The plan that is marked up is the plan that was approved in '96. The applicant has not obtained the services of the engineers who prepared that plan. This plan is just being used to show what existed when the plan was approved and what has been removed from the site. This goes to the comments from the Board's planner regarding some buffer planting because there were buildings that screened the compound that have been removed and the planner is suggesting that some additional plantings be put on the plan. Attorney Murray again stated that all they are proposing is to put some antennae on an existing tower and putting equipment in a building so you won't see it.

Vice Chairman Zekas stated that he is going back to a conversation that they had at the November meeting and he thought that it was clear and it is reflected in the Minutes from the meeting that the Board's engineer indicated that there was an outstanding item and his recommendation was that the applicant provide a current survey of the property.

Attorney Murray said that he didn't think it was ever said that they needed a current survey. It was their understanding from the discussion between the Board's engineer and the applicant's engineer that a mark up of the previous survey should suffice due to the

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minor nature of this. He stated that if a survey ultimately is required and as a condition of approval the Board wants surveyed information on the ultimate site plan this could be done, but the Board is asking for a survey to show that there is nothing there.

Engineer Guzzi stated that what he had requested was a plan reflecting the existing conditions of the site. Not just the tower and the building there, but the access to the site, the driveway and the parking. He stated that they had provided to the applicant's engineer a copy of the original site plan and the NFI plan, which is the future development of that for the Applicant's use in developing that plan. He stated that what he is looking for is that the Board knows exactly what is on the site and that they are comfortable that the access to the site remains. That if an emergency vehicle needs to get back there that there is good access.

Attorney Murray stated that their site plan reflects that. Engineer Guzzi asked which site plan he was referring to. Attorney Murray stated that they haven't submitted that plan yet but they do have it to give to the Board tonight. He stated that this shows replacement for the 6 white pine trees that have been removed. It also shows the existing asphalt drive, the existing gravel area and as the asphalt extends back it shows that there are no longer any buildings located on the property.

Member Taylor said that given that 1996 was the last time that any real survey was done and there had been buildings there and now you don't have buildings there has the topography changed are there new drainage patterns. Attorney Murray stated not that he is aware of. He stated that this is the most difficulty that he has ever encountered in trying to put an antenna on an existing tower. Engineer Guzzi stated that this application is a little bit unique because the conditions of the site as it was originally approved are completely different now. This is why he wants the Board to have a clear representation as to what is out there now.

Engineer Guzzi stated that if the Board feels like they have enough information to move forward with the hearing they could act favorably on the submission waivers or if you don't feel that you have enough information you have the option to deem the application still incomplete.

Member Taylor asked Engineer Guzzi if he feels that the plan that was submitted was adequate. Engineer Guzzi stated that the plan that was just shown to the Board was what he was trying to get the applicant to submit. If the Board is comfortable to move forward then we could move forward and if at any point during the hearing you think that you need additional information you can request it.

Member Crowell suggested proceeding and if the Board needs additional information they can ask for it. Member Montgomery stated that he agrees that we need to move on but the Board had requested specific information at the last meeting and it has not been provided. Attorney Murray stated that they believed that they had provided the necessary information. They had their engineer contact Mr. Guzzi and through discussions believed that they were providing the Board what was needed for this meeting. He stated that due

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to the minor nature of the application that the information they have already provided was sufficient.

Member Bott asked if the applicant had been asked to supply a current survey. Attorney Murray stated that it had been in the letter but they had requested that they not be required to submit a current survey and that was when it was suggested that they get the prior plan and use that as a base to work from. When they submitted this to the township and the survey came up as an item again they had their engineer contact Mr. Guzzi as they felt that they had complied with what the thought was because they had taken a site visit and revised the plans to show the gravel area and the asphalt area and they thought this was sufficient. They received the review letter that still showed that the comment was not satisfied and it was then suggested that they take the old survey and mark it up to show what has been removed in relation to what had been approved in 1996.

Vice Chairman Zekas moved that the application be deemed incomplete. He stated that he thinks that it was very clear that the Board was looking for a survey at the November meeting. He stated that he was quite surprised that they didn't have one for this meeting. Vice Chairman Zekas stated that Attorney Murray had mentioned the expense but it is really part of the application process that applies to residential and commercial and all applicants comply. Member Taylor seconded the motion.

Upon roll call the Board voted as follows:

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

Chairman Fratinardo called for Application ZB#2010-18 for Florence Family Dental, P.C. Applicant is requesting a Use variance to permit the expansion of existing non-conforming use for property located at 1001 Hornberger Avenue and a portion of 172 Delaware Avenue, Florence, NJ. Block 96, Lots 1, 2, 3 and a portion of Lot 5.01 (aka Lot 5).

Attorney Denis Germano from the firm of Hulse and Germano stated that he was representing the applicant, Dr. Blum who is in attendance. Also in attendance is the applicant's planner Jim Miller. Dr. Blum and Mr. Miller were sworn in by Solicitor Frank.

Solicitor Frank stated that he had neglected to swear in the Board's professional staff at the start of the meeting and asked Engineer Guzzi and Planner Perry to stand and be sworn at this time. Both professionals swore that all the testimony that they give to the best of their ability throughout this year would be the whole truth.

Attorney Germano stated that this is an application to expand a prior non-conforming use. He said that this is Dr. Dimon's old dentist office. Dr. Blum has been in that office for the last 8 years. Dr. Blum has never used the home part of the office. This was a home

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office when Dr. Dimon ran it and the Dimon family has owned the entire building until very recently. Dr. Blum bought the building from the family just a matter of months ago. He has operated his dental office in the 650 sq. ft. office that Dr. Dimon operated out of for all those years.

Attorney Germano stated that the proposal is to expand the dental office into the whole building. However there is a garage with living space off of it that will be demolished in order to install a parking lot in the back. This parking lot is going to be created out of adjoining property. Dr. Blum owns the lot next door. This lot is 3 times the size of any neighboring lots. So 5,000 sq. ft. of land can be taken from that lot and still have a conforming lot.

Attorney Germano stated that they elected not to come in with both site plan and Use variance. At this stage the only application before the Board is for two different kinds of Use variances. One to expand the non-conforming use within the house to the whole house and a classic Use variance to expand the lot. The 5,000 sq. ft. of the lot next door is zoned residential and to use it for the parking lot they need a classic use variance. Attorney Germano stated that Mr. Miller would provide testimony as to why both of these variances meet the criteria for the grant of the use variances.

Engineer Guzzi stated that he had reviewed the application for the Use variance only and the application is complete. Motion by Zekas, seconded by Groze to deem the application complete. Motion unanimously approved by all members present.

Dr. Scott Blum stated that he has run a family practice from this building for the past 8 years. He stated that not all patients drive cars to his office. In fact during the last snowstorm no one cancelled their appointments they all walked in. Dr. Blum stated that they have a total of 5 employees (this includes Dr. Blum and his wife). He stated that the employees park in the street and in the driveway of 172 Delaware Avenue. The patients park on the street. There has never been off street parking for this office.

Dr. Blum stated that he has hours Monday through Thursday 9:00 a.m. to 7:00 p.m. and occasionally Fridays 9:00 a.m. to 5:00 p.m. There are no Saturday hours. He stated that he has no plans to change the hours of operation. Dr. Blum stated that if this application were granted he would like to hire one other hygienist. There are no plans to bring in another dentist. There would be a maximum of 6 employees on the site.

Dr. Blum stated that the additional space is necessary as there have been many changes in dentistry since Dr. Dimon started his practice in the 1950's. Now offices need to have multiple sterilizing systems, computers for each operator, digital radiography, bleaching lights, ZOOM systems, and laser systems. Hygienists now have their own chairs.

Dr. Blum stated that currently the panoramic x-ray machine is located in the hallway and prevents access to other areas in the office. The number of employees at the desk has also increased.

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Dr. Blum stated that he also makes dental house calls for patients who are bedridden or are otherwise unable to get into the office. He stated that there is quite a bit of equipment in suitcases that travels with him to these visits and this luggage needs to be stored when not in use. Dr. Blum stated that granting of this application is necessary for his practice to continue from this location.

Attorney Germano asked if the Board had any questions for Dr. Blum.

Member Adams stated that based on Dr. Blum's description it appears that Dr. Blum's practice is growing. Dr. Blum stated that his practice has grown immensely. He has to date over 10,000 patients of record in 8 years. There are nearly 4,000 active patients. Having more space will create an efficient area to allow more to be done and still maintain decent hours. Member Adams asked if with the growth of the practice has Dr. Blum given any consideration to the traffic patterns, as this is one of the busiest intersections in the township. He asked if the parking lot could be structured that to limit access to Delaware Avenue. Dr. Blum stated that the intersection is a hazard and access to Delaware Avenue would be near impossible. The plan is to have the parking lot ingress and egress on Hornberger Avenue. He said that the existing driveway on Hornberger Avenue is approximately 160' from the corner and the proposal is to widen the existing driveway from a single lane to a two-lane driveway.

Member Bott asked if Dr. Blum would accept a condition to have no parking on Delaware Avenue. Dr. Blum stated that he would have no problem with this. Attorney Germano asked what the standards were as to how many parking spaces are required based on the number of chairs in the office. Dr. Blum said that the objective is that they have 1½ spaces times the number of operatories plus parking for each employee.

Attorney Germano asked if 13 or 14 spaces would be enough based on that standard. Dr. Blum stated that the required number of spaces would be 12 with the current standard. Member Crowell asked how many spaces Dr. Blum was asking for. Attorney Germano stated that the concept plan showed 13 but the applicant's engineer indicated that there could be another parking space if the Board required it.

Vice Chairman Zekas asked if Dr. Blum had looked at any other properties to suit his expanding business? Dr. Blum answered that he had looked at the place being built on Hornberger, the old firehouse, the Shoppes at Mallard Creek and there really isn't anything to meet the size standard and none were suitable to the concept of family dentistry. A dentist did recently go into the old firehouse with a two chair office. It isn't wise to build something exactly the same as what you already have. He stated that if his office stayed the way that it currently is he would be fine. He said that the only reason that this proposal makes any sense is to get the parking off the street as a convenience to his patients.

Dr. Blum stated that kids sometimes stop by for their appointments on their way home from school. He stated that sometimes he or one of his assistants drive elderly patients home that don't have transportation. Dr Blum stated that he had considered relocating to

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a suite in Mallard Creek, but the move would have increased his overhead costs which in turn would have increased the costs to the patients.

Vice Chairman Zekas said that he was surprised when Dr. Blum characterized the business as “family” and that patients walked to the site because today there were 7 cars including the 2 parked in the adjoining lot and on a typical day there are usually 6 cars. There are 3 employees plus himself so there would be 4 cars. Dr. Blum stated that his wife drove her car today as he was coming to this meeting. Vice Chairman Zekas said that the proposal was to add another chair and that would add 3 to 4 more cars. Dr. Blum said potentially yes. They are looking at the estimate being 12 cars, which is why they are looking at 13 or 14 spots. Vice Chairman Zekas asked for an estimate of people who walk versus people who drive? Dr. Blum stated that he was surprised on the snow day that people walked in to the office. He said that he has patients who are a block away and they drive and then there are patients that are many blocks away who walk so he can't really give an estimate of any given day plus the time of the year plays into it too.

Member Montgomery asked for an estimate of how many people were in the office at one time under current conditions. Dr. Blum said there is usually one person in each of the 3 chairs plus 2 in the waiting room so 5. With the increase one would expect a maximum of 7 or 8 people. Chairman Fratinardo stated that Dr. Blum has testified to his current hourly work schedule and he asked if Dr. Blum would accept a condition that the hours do not change. Dr. Blum stated that he would gladly accept that condition. Chairman Fratinardo asked if Dr. Blum would accept a condition that he maintains a maximum of 6 employees? Dr. Blum stated that he didn't have a problem with that either. Member Taylor stated that she did not agree with limiting the number of employees. Solicitor Frank stated that the number of employees is an indicator of the intensity of use of the site and this goes directly to the parking requirement so there is a correlation between the demand for the site and number of employees as well as the number of chairs which would be the number of patients.

Member Taylor said that it is odd to impose that kind of restriction on a business. Member Adams asked what Dr. Blum thought of the condition. Dr. Blum stated that in his opinion the proposal was completely doable. He stated that you could only fit so much in a space.

Member Bott stated that in his opinion this would be putting an unreasonable restriction on a businessman. Member Crowell stated that it is encouraging that Dr. Blum's business is growing but it seems that if the proposed expansion happens it only builds capacity for the next year or so. Dr. Blum said that if one were to presume that expansion were a never-ending process than this statement would be accurate, but his proposal isn't for expansion to gain more productivity, the proposal is to expand the amount of space that he could use. He said that right now he doesn't have a private office desk, his wife uses the front desk computer to do bookkeeping, there is no privacy in the office to do patient consultation. It is a very small office. He said that he is not proposing to become a Route 130 dentist he is just looking to expand the amount of space that he can move around in and utilize for his equipment and storage. Member Crowell stated that if in 2

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years time if the business grows then the additional cars would have to be parked on the street. Dr. Blum stated that his proposal is that those spots on Delaware Avenue would be eliminated right away so there wouldn't be a place in front of the office for street parking. Member Crowell asked where the additional cars would park. Dr. Blum answered that he had a limited capacity and he would stop scheduling. Member Crowell stated that he had never seen any professional not take more clients because there was a lack of parking. Dr. Blum stated that he would take more people but he would increase his hours.

Member Adams stated that there is available street parking down Delaware Avenue. He said that if Dr. Blum didn't have enough spaces in his parking lot there would still be spaces down the block where people could park legally. Dr. Blum stated that he would not encourage his patients to park down the block, as it would not be a very neighborly thing to do.

Attorney Germano asked Dr. Blum if he saw his practice growing to the point that he would overuse the parking lot. Dr. Blum stated that he would love that but there are only so many hours in a day to work.

Vice Chairman Zekas asked what the prohibition would be against using the whole house to spread out, but not add a chair or expand the business. Dr. Blum answered that this was his original thought. The plan isn't necessarily to grow but to get off-street parking. If he is going to spend a lot of money to put in a parking lot the extra chair covers it. If he doesn't get the parking it doesn't make any sense to do any of this and he would still have his existing practice.

Attorney Germano stated that if there were no further questions from the Board he would call the applicant's planner to testify.

Solicitor Frank stated that James Miller had previously been qualified by this Board as an expert in the field of professional planning.

Mr. Miller stated that to prepare for this evenings meeting he had visited the site and surrounding areas, examined the Florence Township zoning ordinance and was briefed on the case law that is appropriate and applicable to this application.

Mr. Miller stated that this is a site which is zoned RA and it is located on the corner of Hornberger and Delaware Avenue. The surrounding uses include the funeral home which is a little bit to the north on Hornberger, an insurance agency on the east corner of the intersection and the southern corner is occupied by the New Jersey Law Enforcement offices. Other than that the remaining surrounding uses are residential.

The existing use is a 650 sq. ft. dental office and the proposal is to obtain the relief necessary to allow that use to be expanded into other portions of the building and also for the parking. Mr. Miller submitted exhibit A1 dated January 25, 2011. The exhibit is a Google aerial photograph with a date of September 2010. This photograph depicts the

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intersections of Delaware and Hornberger. The aerial documents some of the comments that were made by the Board regarding the traffic conditions. You can easily see the crosswalks and also the striping that is there for traffic control purposes. This tells us that it is a busy intersection and there is a need to get the parking away from the intersection and off the street.

Mr. Miller stated that with the use variance we have to establish first that it will advance the purpose of the Municipal Land Use Law. There are 2 purposes, which would be advanced by this application. Purpose A which states to encourage municipal action to guide the appropriate use or development of all lands in this state in a manner that will promote public health, safety, morals and general welfare and Purpose G to provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space both public and private according to the respective environmental requirements in order to meet all the needs of New Jersey citizens.

Mr. Miller said that first he would like to address the D2 variance criteria for the expansion of the pre-existing non-conforming use and then address the D1 variance which is the straight use variance for the little area that is going to be converted from a residential use to a non-residential use if the subdivision occurs to expand the lot area.

Mr. Miller stated that a pre-existing non-conforming use is viewed with more liberality than a conventional use variance because the use is already established and has less potential to create an additional impairment of the intent or purpose of the zone plan. So the bar isn't as high when you have a pre-existing use, as it would be if there were no use there currently. He stated that Dr. Blum has also gone over a lot of the reasons that he needs to modify the use as requested.

Mr. Miller stated that he knows from personal experience that dentists have an enormous amount of equipment that is used now that wasn't use previously. Mr. Miller said that the reason this is relevant is that there is case law (Alpine Tower, Kessler) which says that if there is a pre-existing non-conforming use and there is a change in the technology or the operation of that use then it is justified to allow an expansion or modification of that use so they can continue to operate and have the advantage of the new technologies and techniques that have arisen during the course of the operation of that use of business. In Alpine Tower it had to do with the fact that radio equipment just became a lot more complicated so they needed a much larger building. In this case it is because a dental practice, even though there is still only one dentist requires a lot more space and a lot more equipment than it had when the use was established back in the 1950's. This expansion of the pre-existing non-conforming use is justified because for the applicant to continue to operate his business he needs to allow that business to adapt to keep it current with current dental practices and to do that he needs the additional space.

Mr. Miller said that the second set of reasons had to do with safety and there is also a case (Koch) relating to a funeral home. This is a parallel case because in that case they allowed the use to expand by the creation of an off-street parking lot and the justification

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for that was public safety. He stated that he thinks that the Board has already elicited all the criteria that justify the expansion of the area to include the off-street parking. Basically there is already an existing traffic condition at that intersection which would benefit by removing the parking from the street and placing it in the off street parking space. Mr. Miller also testified that he believes from a planning perspective that the 13 spaces as proposed on the concept plan is sufficient to service this use.

Mr. Miller stated that the primary item that drives the parking demand for this use is the number of dental practitioners and here there is one dentist. It is common for one dentist to have 1 or 2 hygienists and administrative staff to process insurance information and keep the books. So there is a pretty reliable number in terms of the parking demand generated by the professional side of the equation. The other factor that generates parking demand is the number of chairs and here you have got 4 chairs. He stated that there is no question in his mind that the ratio of 1 ½ spaces per chair is appropriate. That gives a total of 6 spaces. So at the maximum intensity that this use is contemplated to be you would need 12 spaces and there are 13 proposed. This would completely eliminate any off street parking with the exception of an occasional person who would want to park in the neighborhood. Mr. Miller said that he believes that the parking would be adequate and that one of the benefits of this variance would be to eliminate the current parking situation and make the intersection a safer intersection. He said that these are the reasons that he thinks that the expansion of the pre-existing non-conforming use is justified.

Mr. Miller stated that the D1 use variance is to allow that little area to be added to the lot. The justification for that is that the addition of that parcel really is what makes the parking possible. It gives additional land area that allows the 13 off street parking spaces to be added. It will not change the character, pattern or intensity of uses in the area. Basically you are just going to move the lot line over a little bit. You are still going to have 2 structures at the intersection; the dental office and the adjoining residence that is giving the additional acreage to the dental practice. Other than that there isn't any real change. It does allow the ground area necessary to allow the parking to expand. This D1 variance contributes to some of the benefit that the overall use brings to the neighborhood.

Mr. Miller said that under the negative criteria they need to show that there won't be an impairment of the intent or purpose of the zone plan as a result of the relief that they are seeking. It also needs to be demonstrated that the use will advance the health safety and general welfare. Mr. Miller stated that there is a obvious benefit to the public welfare in that there is a health service use that is occupying the structure. It provides an important health service to the surrounding neighborhood. There are also public safety enhancements because of the alleviation of some of the congestion around the intersection and the elimination of the off-street parking. In terms of reconciling this with the failure to include the use in the RA district, first of all it is a pre-existing non-conforming use. Also this use would not in any way compromise the overall residential integrity of the area. The structure itself is going to maintain it's primarily residential appearance. There is no plan to make it look like an office building. It will still have the appearance of a dwelling. The parking will be behind the structure so it will be screened

14.

from the public view by the building and won't have a visual impact on the surrounding community. It will be landscaped appropriately and will have whatever screening it needs to mitigate any potential impact it might have. The use is also a use that is commonly found in older established neighborhoods and in most cases it is a complimentary use to the residential area and Dr. Blum has already given testimony to that effect. A neighborhood dentist is the kind of professional use that is often associated with residential areas.

Mr. Miller stated that this proposal is just an extension of the existing practice and indeed this use has been in this residential area for many years and there is probably significant detriment that would occur if the use was forced to leave because it would break up the continuity of people in the neighborhood being able to avail themselves of a neighborhood dentist. Residential areas can definitely accommodate this kind of use.

He stated that for all these reasons he doesn't see any impairment of the intent or purpose of the zone plan. There is not going to be significant impact on the character of the area. You are dealing with an existing long-term use at this location. Attorney Germano stated that this neighborhood had a number of non-residential uses. Mr. Miller agreed and stated that there is no indication that the other similar non-residential uses have any apparent detriment. The other uses have residential character structures and off street parking similar to what is proposed here and there is no apparent detriment from any of those uses or any apparent detriment to the zone plan or zone ordinance.

In summation Mr. Miller stated that there is no impairment to the intent or purpose of the zone plan when you have a use which is similar in character and scale to the uses which are otherwise permitted; where the characteristics of the use which are inconsistent to the zone can be mitigated. Mr. Miller stated that by this he means the off street parking but the impacts of that are mitigated by the fact that there is screening and it is located behind the structure; where you have a use that which involves a very long term pre-existing use which has been in the community for many years without any apparent detriment and with a number of very appreciable benefits to the neighborhood and to the general health and safety for the area. He stated that for those reasons he believes that it satisfies both the positive and negative criteria and would merit the approval of the Board.

Attorney Germano stated that Mr. Miller is prepared to talk about at least one C variance but they would prefer to put all the C variances and waiver requests off until site plan. He stated that case law tells us that if you see fit to grant a Use variance that the C variances sort of go with it and you can deal with all of the site issues at site plan, but if the Board feels differently the C variances could be discussed.

Mr. Miller stated that the other advantage is that when you do the site plan you are going to be fine tuning some of the parameters of the C variances in terms of the location of the spaces, landscaping etc. Attorney Germano said if a Use variance is granted the site plan doesn't automatically get approved. The applicant still has to prove that the grant of the site plan would not negatively impact the neighborhood.

15.

Vice Chairman Zekas stated that this is the difficulty that you have just considering the use variance, because as the applicant's planner spoke about all the positive criteria and lack of impact to the residential character of the neighborhood you have to consider the parking lot, which is really a site plan issue, but it will be asphalt that covers 44% of the lot that may have impact on the surrounding area.

Solicitor Frank stated that Attorney Germano is correct that the Board cannot grant site plan approval subsequent to Use variance unless it can be shown that the site plan is not substantially detrimental to the public good and doesn't itself impair the zone plan and zoning ordinance. Municipal Land Use Law does set up this system where we can look at the 2 pieces of the puzzle. It is important for the Board to perceive that the site is capable of supporting the use and capable of meeting the hope that the site can be designed that doesn't negatively impact the public good.

Mr. Miller stated that this is one of the benefits of the D1 variance because by adding the ground you mitigate to some extent the increased impervious surface that would occur if you installed the parking area without enlarging the lot. He stated is that this is why they provided the concept site plan, so that you could see that the site has the room to accommodate the uses as proposed. It is on a survey so you can see that the geometry works and the site plan would address things like which way the runoff might go and those sorts of issues.

Solicitor Frank asked Mr. Miller to articulate again how there are special reasons that support the positive criteria. Mr. Miller said that the key is that it has to be particularly suited to the use. The primary reason that this is particularly suited is that it adjoins this property so it is the natural location where they can obtain a little extra acreage to allow the other improvements to occur. The proximity to the use is the reason that it is particularly suited.

Attorney Germano stated that when the governing body passes zoning ordinances they paint with a broad brush. The fact that this 5,000 sq. ft. was zoned residential and not for an office use is because this is a residential zone you wouldn't expect the governing body to create an ordinance that permits non-conforming uses to expand. You can reconcile the grant of this variance with the fact that this 5,000 sq. ft. is zoned as it is. Zoning ordinances aren't written with that degree of specificity. This lot is uniquely situated to solve a public safety issue in this area.

Member Taylor asked for the location of the access to the parking lot. Dr. Blum stated that the access to the parking lot in the proposal is the continued access that exists as the driveway right now for the residence that is attached to the office off of Hornberger Avenue. The proposal is that the separation between the 2 lands moves about 15' onto the yard of the neighboring property but does not impact that driveway. That driveway is on the other side of the house. The buffer between the neighbors would also be the buffering fence, landscaping, etc. as well as a house that would be an additional buffer before you get to the next neighbor.

Member Taylor asked if the house at 172 Delaware was to remain. Dr. Blum stated that there was no proposal for any changes to the exterior of that house. The proposal is just to take 5,000 sq. ft. of the yard. The driveway to the home at 172 Delaware Avenue will not be used in connection with the dental practice. He stated that the removal of the garage would allow 2-way access from the existing driveway on Hornberger Avenue.

Solicitor Frank asked Attorney Germano just to review that if the applicant was only seeking a subdivision of the property to attach the 5,000 sq. ft. of the existing house lot onto the larger lot where the existing dentist's office now is, the application would go to the Planning Board and since both lots meet all the standards of the zone, the applicant would be entitled to that subdivision as a matter of right. Attorney Germano stated that this was correct. It is what they are proposing to do with the 5,000 sq. ft. that brings them to this Board.

Motion was made and seconded to open the hearing to the public.

Daniel Gribbin, 1026 Hornberger Avenue was sworn in by Solicitor Frank. Mr. Gribbin testified that his property is the closest property on Hornberger Avenue to the proposed parking lot. He stated that cars back up on Hornberger Avenue from the intersection at Delaware. He said the people wouldn't be able to get into and out of that parking lot without causing accidents. Hornberger Avenue is one of the busiest streets in the township. Mr. Gribbin stated that he is home most of the day as he was laid off from his job and cars are back up all through the day, not just at the rush hours. Mr. Gribbin said that he is not against Dr. Blum expanding his practice into the house but parking lot access onto Hornberger Avenue is going to create a problem. He stated that Dr. Blum's driveway is catty-corner to his driveway and the previous owners of the house had trouble getting in and out of that driveway all the time.

Member Crowell asked Mr. Gribbin if he had any recommendation for resolving the issue. Mr. Gribbin stated that he thought the parking lot access should be from Delaware Avenue away from the intersection corner. Mr. Gribbin stated that there should be a traffic light at the intersection of Delaware and Hornberger.

Michael Nuzzi, 183 Kinsman Road was sworn in by Solicitor Frank. Mr. Nuzzi stated that his house is the first house on Kinsman directly behind the dentist's office. Mr. Nuzzi said that he does not have an issue with a man trying to expand his business. He asked for a clarification if this was a commercial zoning or a professional zoning? Solicitor Frank stated that this is a residential zoning district. Dr. Blum is seeking a variance from that zoning. He is seeking permission from the Board to do something that the zoning doesn't allow him to do as of right. Solicitor Frank said that the overarching law of Land Use says that the town can designate certain zones but then the law also recognizes that in almost every town in almost every zone there are going to be properties that have some special concern like this one that has a pre-existing non-conforming condition. This Board exists to deal with those situations where it just doesn't fit into the cookie cutter of the broad-brush zone.

17.

Mr. Nuzzi asked how this would impact the value of his property? He stated that there is a 6' retaining wall with a 30" wrought iron fence on top of it between his property and Dr. Blum's property. Dr. Blum's property is 6' higher than Mr. Nuzzi's. Mr. Nuzzi stated that it was his understanding that Dr. Blum wants to remove this wall. He stated that currently there are kids coming from Dr. Blum's property over the wall into his yard.

Mr. Nuzzi stated that he made settlement on his property November 13, 2009 and was informed that the wall was "heaving" and was a dangerous situation. He said that he was told before he made settlement that the wall would be fixed by January 2010. It is now January 2011. Mr. Nuzzi said that he is not able to use his yard right now because of this dangerous situation.

Solicitor Frank said to Mr. Nuzzi that he didn't know who owned the fence and he didn't know if it was agreed to by Dr. Blum at the time of your settlement that the fence would be repaired. Mr. Nuzzi stated that Dr. Blum did not own the property then.

Attorney Germano stated that Dr. Blum would like to address the issue of the wall. Dr. Blum said that at settlement he was handed a letter that was dated November 2009 where one of the inspectors had inspected the property and noticed that a section of a 5' tall retaining wall was leaning on Mr. Nuzzi's fence. Dr. Blum said that he got possession of this letter at closing where the township had notified the previous owner that this was a dangerous situation. He stated that closing occurred on Thursday July 1, 2010. On Friday July 2, 2010 he called the township to meet with everyone regarding this situation. He stated that he met with the engineer, Mr. Brook and Mr. Layou and discussed the letter. Dr. Blum said that he put together his proposal for this application and the township staff agreed that if these variances and the site plan were approved then it would resolve the problem.

Dr. Blum said that Mr. Nuzzi is talking about a 6' elevation and according to the survey what he is referring to is a hump that comes up to about 5' and if the drainage were to be allowed to properly work then that hump would level out and draining would occur in the direction that they intend it to go in. Dr. Blum stated that he thinks that the 5' retaining wall would be replaced by a 3' retaining wall with a 6' fence on top of it.

Solicitor Frank summarized that the wall hasn't been fixed yet because there is this proposal coming before the Board. If the Board approves that proposal the wall would be fixed as part of that proposal. Dr. Blum stated that this was correct. Dr. Blum stated that he understood that it was his responsibility to make sure the wall was repaired.

Mr. Nuzzi said that he can't use his back yard until this is addressed because Dr. Blum will have to come in his yard to do repairs on the wall. Mr. Nuzzi stated that he wants to make improvements on his yard and he can't. How long does he have to wait? Solicitor Frank stated that this Board does not have enforcement authority. He stated that Mr. Nuzzi should go back to Mr. Layou or Mr. Brook about this issue. Mr. Nuzzi stated that he would be satisfied if there is a repaired wall and Dr. Blum does not come into his yard to do any work. Mr. Nuzzi asked if there was a time frame for having this done.

18.

Solicitor Frank stated that this Board does not have the authority to order Dr. Blum to do anything immediately to correct the conditions on your property even if this Board wanted to.

Mr. Nuzzi stated that Dr. Blum knew about this problem for a year and has done nothing. Attorney Germano stated that Dr. Blum settled on this property in July. Mr. Nuzzi said that Dr. Blum got the letter in November of 2009. Dr. Blum stated that he received the letter at his closing in July. Mr. Nuzzi stated that he was very disappointed.

Charlene Marshall, 160 Delaware Avenue was sworn in by Solicitor Frank. She stated that she lived directly next to 172 Delaware which is the property owned by Dr. Blum. Ms. Marshall said that she has no problem with Dr. Blum expanding his business. The parking is the problem. She stated that if the parking lot were off of Hornberger and people come out of that lot and make a left there is going to be an increase in accidents. She stated that she has seen the traffic backed up down to the funeral parlor during the day.

Ms. Marshall stated that she is worried about the lights shining into people's windows if the parking lot has to be lighted. She asked if it would be 24 hour lighting. Engineer Guzzi stated that the Board would most likely require lighting during the hours of operation. There wouldn't necessarily have to be lighting at night except for some low security lighting. He stated that these are all site plan issues and we haven't gotten into that yet. He stated that the Board would require shields on the lights to prevent glare.

Ms. Marshall stated that she was concerned that if Dr. Blum's business increases that he would want to have more parking spaces and would use the property at 172 Delaware Avenue for the additional spaces. Engineer Guzzi stated that Dr. Blum would not be permitted to use that lot under the approval that they are seeking now other than the 15' that they are proposing to subdivide off.

Bill Dixon, 169 Kinsman Road was sworn in by Solicitor Frank. Mr. Dixon stated that about 60% of his back yard is bordered by the dentist's office and the rest of his property is bordered by the back yard of 172 Delaware. He stated that one of the selling points when he bought his house was the back yard, which had the view of the back of Dr. Blum's 2 properties both were nicely landscaped. Mr. Dixon stated that it is upsetting that if he should try to sell his property the back yard would look out on a big wall or a big fence and neither of these options seem particularly attractive to him. He stated that this could have a negative affect on the resale value of his home. Mr. Dixon stated that the traffic is bad now and that is an issue that should be looked into separately.

Member Crowell asked Mr. Dixon if he was uncomfortable looking at Dr. Blum's property from his yard. Mr. Dixon answered that at this point it isn't a problem. It still looks like a house. He said that he understands the parking issue, but that doesn't mean he wants a parking lot in his back yard. Right now it doesn't look bad. Member Crowell asked if Mr. Dixon couldn't see the parking lot would that be better. Mr. Dixon said that his choices are a wall, an alleyway or a fence. Member Bott suggested putting in trees.

19.

Mr. Dixon said that trees would take a lot of space from his yard. He doesn't see anything positive for the neighborhood.

Michael Spadaro, 175 Kinsman Road was sworn in by Solicitor Frank. Mr. Spadaro stated that he understands that the business has been there since the 1950's and the technology is changing and in saying that it stands to reason that the business has outgrown the location. He said that his property is between Mr. Nuzzi and Mr. Dixon and he has a 5' wall along his entire yard. He stated that from his deck he could see into the dentist's office. Mr. Spadaro said that he has lived at his property for 20 years. He stated that he has 2 teenaged daughters and he has a raised deck and a hot tub and he is a little uncomfortable for his daughters to be out in the hot tub with people in the parking lot. He also stated concern over the exhaust fumes from idling cars and lights spilling over into his yard.

Mr. Spadaro stated that his family doesn't go out the Hornberger Avenue way because there are too many accidents. He stated that there are 2 bus stops within about 100' from Kinsman and when the bus stops the traffic really backs up. He stated that he doesn't have any problem with Dr. Blum expanding his office inside the house. He is concerned with the additional traffic and the affect on his property value with the site of the parking lot, which will run the entire length of his back yard.

Glen Dembowski, 161 Kinsman Road was sworn in by Solicitor Frank. Mr. Dembowski said that Dr. Blum had testified that by expanding the dental business to the whole building it would lessen the traffic congestion. He stated that this didn't make any sense. He asked if delivery trucks and customers would park in the parking lot or just continue to park on Delaware Avenue. He stated that this would just make the problem worse. Mr. Dembowski stated that he didn't see how this proposal would be of any benefit for the neighborhood.

Mr. Dembowski stated that there were plenty of commercial properties in Florence Township. There is no reason why the Board should allow a commercial property at this location. He stated that the non-conforming use was granted to Dr. Dimon because he lived on the site, but times have changed. He said that he had no idea that someone was going to turn this into a full-blown dental facility. He again said that he doesn't see how expanding this will relieve any congestion and this was their whole argument.

Mr. Dembowski stated that nobody wants headlights shining in their windows. The grade of the Dimon property is much higher than all the surrounding properties on Kinsman Road. The applicant stated that they would put trees up but once the trees grow they won't shield anything and you will have to put a fence up. Nobody wants to look at a giant stockade fence around their properties. Mr. Dembowksi asked what would happen if Dr. Blum decided to leave that property. Somebody else could go in there and have any kind of medical use they wanted.

Attorney Frank stated that the Board grants a Use variance and that runs with the land. A Use variance only grants a precise use subject to the precise limitations that are in that

grant. If the Board grants a Use variance to permit a dental office with 4 chairs, 6 employees, 13 or 14 parking spaces and X square footage of interior space to be used as dental practice then that is what is there. If someone wants to come in with any other kind of use – even another medical use they would have to come back to this Board and seek site plan.

Mr. Dembowksi stated that other residents have brought up about the idling vehicles in their back yard. Nobody would want that. Then there is the runoff that would be contaminated with the oil and gas from the cars; where would that go? He said that his wife also sunbathes in the back yard and doesn't want people in the parking lot gawking over the fence into his back yard.

Mr. Dembowski said that Dr. Blum said that customers walked into his business. Mr. Dembowski said that he works out of his home and he has never seen any body walk to his business. Dr. Blum could change his hours at any time and will there be time constraints on the hours and when the lights would be on. Solicitor Frank stated that if the Board should grant approval then there would be conditions of the approval. Mr. Dembowski asked whom he would go to if Dr. Blum broke the conditions.

Mr. Dembowski said that Dr. Blum mentioned all this extra equipment that he needs, but then he said that he could take the equipment with him and go and treat people at their houses. Mr. Dembowski said that this doesn't make any sense to him.

Mr. Dembowski said that Dr. Blum stated that he doesn't want to grow the business any bigger but couldn't he come back at some point and say that he has outgrown this site and wants to build another building at 172 Delaware?

Member Bott said that his wife does walk down to Dr. Blum's office, he stated that he was not a patient but his wife is. Solicitor Frank told Member Bott that this is a disqualifying interest and he must no longer participate in the hearing.

John Hofflinger, 114 Sixth Avenue was sworn in by Solicitor Frank. Mr. Hofflinger stated that he wasn't a neighbor to the site but he wants to complain about the traffic problem. He said when you come out to the intersection of Hornberger and Delaware and there are 8 cars there it is scary to try to get through the intersection.

Mr. Hofflinger asked how Dr. Blum intends to keep people from parking on Delaware – will there be a back entrance? Dr. Blum stated that there would be a back entrance. Once the wall of the garage and sunroom is removed the existing door, which goes into the dining room from the sunroom, would then be the entrance from the parking lot. They would still maintain the existing front door for people walking up on the sidewalk.

Mr. Hofflinger said that most people want to park as close to the door as they can. Mr. Hofflinger stated that he has been trying to get the parking off Delaware Avenue for years and hasn't been successful. Dr. Blum would have to go to the county for that.

21.

Mr. Hofflinger says that a lot of times he takes Kinsman to get out to Hornberger because Delaware is always crowded and he had a hard time getting onto Hornberger. Mr. Hofflinger said that his main concern is getting the parking off of Delaware Avenue.

Kristine Zoppina, 169 Delaware Avenue was sworn in by Solicitor Frank. Ms. Zoppina stated that her home is directly across from 172 Delaware Avenue. She stated that she has looked at a mainly vacant house for about 8 years, except for when Dr. Blum had a renter in the house. She asked what the intentions are for this home.

Solicitor Frank stated that this wasn't really germane to this application. Ms. Zoppina stated that her concern is that if Dr. Blum's business expands he may come back and say that he wants to knock down that house and expand onto the other lot. She asked what Dr. Blum's intentions were. Dr. Blum stated that 172 Delaware is a residential home that needs a lot of work. He stated that this house would be fixed up and either sold or rented as a residential home.

Kim Dembowski, 161 Kinsman Road was sworn in by Solicitor Frank. Ms. Dembowski stated that she has been living at this address for 25 years. She stated that she is concerned with the serenity of her back yard. She enjoys spending time in her yard. It is in a residential area and she stated that she expects it to remain residential.

Ms. Dembowski stated that when she first came to Florence 25 years ago she went to Dr. Dimon as her local dentist and at that time the spirit of the office was exactly what was intended. Dr. Dimon didn't have a continuous stream of people coming in every day. At that time there might be 1 or 2 cars parked in front of the building. If Dr. Blum is going to have a larger practice then he should go to an area where a larger practice should be located. She stated that she has a major concern with the student traffic. The kids are told that they have to go down Delaware Avenue to the crossing guard at Hornberger and cross there to go to Roebbling. Now these kids will have to cross a 2 way parking lot with cars coming in and out.

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

Engineer Guzzi stated that he prepared a report dated December 7, 2010 which outlined the preliminary assessment of the bulk variances (C variances) that would be required for the lot but the applicant prefers to not to discuss the site plan issues at this time. Engineer Guzzi said that on page 2 and 3 he did identify some of the additional variances or design waivers including buffers and access drives that probably the Board needs to consider as part of the Use variance because these will be most likely required depending on the final outcome of the site plan.

Item 1 is minimum buffer of 15' wide where 5' was proposed.

Item 2 is that access drives shall be at least 20' from any property line where 13' is proposed.

22.

Item 3 no off street parking is permitted in any front yard, a portion of the parking is proposed within the Hornberger Avenue front yard.

Item 4 no parking spaces shall be located in any required buffer and parking is proposed within the northwestern and northeastern buffer.

Engineer Guzzi stated that these items are based off of the conceptual plan but they are items that need to be addressed.

Item 5 a minimum of 1 loading space is required, no loading space is proposed.

Item 6 19 parking spaces are required based on the square footage, however the Board has heard testimony regarding the actual requirement for parking.

Item 7 a minimum 25' front yard setback is required, there is an existing non-conformity on the house where one corner of the house is setback 22.23'.

Item 8 maximum permitted lot coverage is 20% where 44.7% is proposed.

Engineer Guzzi stated that he didn't get into the details of the site plan because that portion of the application is bifurcated but he wanted to point out some of the other variances and design waivers that would be part of the application.

Planner Perry stated that he had prepared a report dated December 8, 2010 and directed the Board to page 4 regarding the Use variance. Mr. Miller has gone down that list for both the D1 and D2 and under New Jersey Land Use Law he has stated the proofs that are necessary to be provided to the Board and the background information to be provided for the variances. Planner Perry stated that he did not want to go over any of the site issues as this is a bifurcated application.

Attorney Germano said that as Planner Perry has indicated Mr. Miller has testified and having heard the testimony you recognize that the standard for the grant of the use variance has been met. He said that there is a public safety problem at this intersection. He stated that this dental practice, which Dr. Blum has a right to continue, is putting 12 cars in the street 5 days a week. He said in his mind it is very difficult to argue that getting those cars off the street would not improve the situation at that intersection. That improves public safety and serves the general welfare. This proposal meets the criteria for the grant of a Use variance. He stated that they are not looking, contrary to the characterizations, at a request to intensify or really increase in any significant way this operation. The problems generated by this building are not going to get worse if this Use variance is granted. They can only get better. The plan only proposes one additional employee.

Attorney Germano stated that he thinks much of the opposing comments are based on fear of change. The fence is unattractive to a number of neighbors. This is a residential

zone. The fence being proposed here is permitted in residential zones. If Dr. Blum moves out tomorrow and someone moves in the next day a fence can go up with nothing but a building permit. It is not an appropriate objection when people are objecting to something the township zoning ordinance gives Dr. Blum a right to do. Dr. Blum's reasons for doing it are to cut down on the very thing that people are concerned about.

Attorney Germano stated that he believes that the standards for a grant for the Use variance have been met; the concerns about the operation can be addressed in site plan. What is being proposed here can only make the situation better. It cannot make it worse.

Vice Chairman Zekas said that he appreciates the testimony and he is sure that all the Board is thinking hard on this. He said that one of the residents made a comment that we can only guess what the thought process was of the governing body who gave the original approval to operate a dental business out of this facility and my guess is that it was a family practice operated out of a residence where somebody lived full time and unfortunately to expand that use requires a lot of other things that come along with it. Things that will truly have a negative impact on the character of the neighborhood and in particular the neighbors. He said that he knows that a lot of those are site plan issues but the idea of a parking lot won't go away during a site plan discussion.

Vice Chairman Zekas said that as much as he appreciates the applicant's plan to get traffic off of Delaware Avenue he is not really so sure that even if you have a parking lot that people would park in it since the access from Hornberger is almost hidden and access and egress would be difficult. Vice Chairman Zekas made a motion to deny the applicant's request for Use variance. The motion was seconded by Secretary Montgomery.

Chairman Fratinardo asked if there were any questions on the motion. Member Taylor asked if there was a traffic report for the intersection. Engineer Guzzi stated that nothing had been submitted by the applicant and it would be the applicant's responsibility to submit traffic data for the Board.

Vice Chairman Zekas said that the things that would come with the use, which include parking in a front yard which is not really common. Engineer Guzzi stated that 3 parking spaces and part of a 4<sup>th</sup> space are in the secondary (Hornberger Avenue) front yard and this would trigger the variance.

Member Crowell asked Solicitor Frank if he was reasonably satisfied that the proofs had been presented. Solicitor Frank stated that it is not for him to make that determination. It is the applicant's burden to put in the proofs. If there is something glaringly absent from the legal standard that the applicant has put forward it is his responsibility to help expose that for the Board. He said that he doesn't see some glaring omission. The proofs offered were for both the positive and negative criteria. It is for the Board to weigh as members of a quasi-judicial body whether you feel that it is proven that those standards have been met.

Solicitor Frank stated that he would articulate the standards for the Board, "It is the applicant's obligation to show by preponderance of the evidence that special reasons exist for the grant of a Use variance." Solicitor Frank stated that since there are 2 Use variances here there are really 2 different standards. There is the expansion of the pre-existing non-conforming use pushing out to the edges within the house. This is a relatively low threshold. There is a higher threshold for expanding onto another property where that use never existed before. The Board has to decide if the special reasons have been met due to a hardship, where there is something about the site or the existing development that is so difficult to address that it really is a hardship. Another way is to say that the site is peculiarly suited to this use. This needs to be shown by the applicant.

The second part of the Use variance is the proof of the negative criteria. The applicant has to show that the use is not substantially detrimental to the public good. He said that what Attorney Germano was saying about the fence was that it is probably difficult for the Board to see a substantial detriment in something that could be constructed as of right by a residential property owner. So although we may see a fence as a detriment it would be very difficult legally to sustain a claim that it is a substantial detriment. There may be other detriments that the Board feels are substantial, but that is for the Board to weigh.

Solicitor Frank said that the applicant needed to be able to articulate that there is no substantial impairment of the zone plan or the zoning ordinance. You have to say okay it wasn't zoned that way, why does allowing this use in this site not destroy the zone plan. Finally the applicant has the obligation to reconcile the omission of that use from the zone plan or the zoning ordinance. So if it is such a good idea to have that use, why isn't it zoned that way?

Solicitor Frank said to the Board that they needed to be satisfied that the site is peculiarly suited, satisfied that it does not pose a substantial detriment to the public good, that it doesn't substantially impair the zone plan or the zoning ordinance and that you can look at this and say it wasn't zoned that way in the first place because... If this all fits together then you should grant an approval, if you find reasons why it doesn't fit within that framework then you should not.

Member Taylor said that if the variance were denied would Dr. Blum be able to expand his business into that house without putting in a parking lot. Solicitor Frank stated that he would not be able to expand but he could continue the current use.

Secretary Montgomery asked if the business were not growing could the Board grant the expansion of the use without granting the request for the parking lot. Solicitor Frank said that the question for the Board is if they grant the expansion into the house then are there any conditions. How would you address the public safety issue of the on street parking which you would now appear to have endorsed.

Chairman Fratinardo asked if the Board were to grant the one variance for the expansion of the non-conforming use how would that impact the number patients that you would get in a day; which would in turn impact the parking. Dr. Blum stated that if the expansion

of the non-conforming use were granted he would add a chair, which would increase the expected number of patients seen in a day. He stated that his main objective was to try to get the parking off the street and into the parking lot.

Chairman Fratinardo stated that he agreed with Vice Chairman Zekas that people would avoid the parking lot and still park on the street. Dr. Blum stated that he has no problem contacting the county to try to get the area in front of his office designated as no parking.

Member Taylor asked Dr. Blum how many cars cycle through his office every day? Dr. Blum stated that from 9 to 7 there are about 30 cars a day plus the employees. Attorney Germano stated that it appears that there is significant interest in a study of the real traffic situation there and the applicant would be happy to adjourn long enough to get an expert into to talk about it.

Vice Chairman Zekas stated that he was not supportive of this. He said that as a Board one of the functions is to minimize the granting of variances wherever possible. He said that he would like to get back to his original motion to deny the applicant's request for Use variance.

Mr. Miller stated that it was important to get back to the original premise that this application was presented under. You have a pre-existing non-conforming use. It is not a question of whether this use should have been there or not been there. The use is already established and really what this relief comes down to is it better to have this use continue with people parallel parking in the surrounding neighborhood or is it better to allow the use to occupy a little more floor space without a very significant change in the intensity of the use and to transfer that parking from the public right-of-ways to a parking lot that is on premise. There is a significant benefit to having this practice in the neighborhood and the practice will remain in the neighborhood. The issue is whether or not the parking is going to be on street or off street. An applicant with a pre-existing non-conforming use has a right to have a modification or expansion of that use.

Chairman Fratinardo stated there is a motion and a second on the floor to deny the D2 variance for the expansion of the pre-existing non-conforming use and called for a roll call.

Member Groze stated that he was a patient of Dr. Blum's and would be recusing himself from the vote. Solicitor Frank stated that Member Groze should have recused himself before the application was heard. Member Crowell pointed out that Member Groze did not say anything at all. Solicitor Frank stated that there are 2 recusals one from an alternate and one from a member of the Board. Alternate Member Adams will vote

YEAS: Zekas, Montgomery

NOES: Buddenbaum, Crowell, Fratinardo, Taylor, Adams

Solicitor Frank stated that there were 5 No votes and 2 Yes votes so the motion fails.

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Chairman Fratinardo asked if there were any other motions. Member Taylor asked if the Board could just vote on the expansion of the pre-existing non-conforming lot (D2 variance). Solicitor Frank stated that this was permitted.

Motion of Taylor, seconded by Adams to approve the D2 variance for the expansion of the pre-existing non-conforming use subject to site plan review.

On the Question:

Member Crowell said that he thought there should be a traffic engineering study and the question of no parking on Delaware Avenue. These are 2 very important issues that need additional information submitted.

Chairman Fratinardo stated that he would like the condition that the hours of operation be from 9:00 a.m. to 7:00 p.m. 4 days a week and 9:00 a.m. to 5:00 p.m. one day a week and have a maximum of 6 employees.

Solicitor Frank stated that the applicant had agreed to do a traffic study. Engineer Guzzi stated that he would like to see how the stacking on Hornberger affects the driveway to the proposed parking lot, eliminating the parking on Delaware in favor of off street parking should have some sort of positive impact for the site distances, also an idea to the counts and the traffic may lead the Board to the conclusion that it should be right turn only and considering the proximity of Kinsman Road you should look at the traffic coming out of Kinsman Road.

Member Crowell asked for the addition to the study of pedestrian traffic. He also stated that the applicant should contact the county regarding no parking along Delaware Avenue.

Engineer Guzzi stated that the Board is not looking for the traffic engineer to design a solution to this intersection. The Board is looking for an analysis of what we are dealing with and what impact this proposal is going to have on what we are already dealing with.

Solicitor Frank stated that even though the county controls whether or not there is parking in front of Dr. Blum's office it would be appropriate for the Board to say that we think that this is so central to your argument that we are going to require this as a condition of going forward.

Mr. Miller said that the only issue he had with that is that this was a justification for the D1 variance because the D1 is really related to the 13 spaces. If that comes off the table now what the variance is really talking about is modification of the pre-existing non-conforming use by allowing what is essentially a passive addition to the floor space occupied by the use. He stated that he doesn't think that this has the same potential vis-à-vis traffic impact because the whole idea was you were trading an on site impact for an off site impact. Here you are not trading any impact because the impact is going to be consistent before and after the variance.

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Attorney Germano stated that he suspects that the Board was sensitive to the neighbors dislike to living next to a parking lot. Site plan as condition of the grant of this variance is a given. He stated that he was concerned that when the applicant comes back with the site plan, then the Board will require off site parking.

Chairman Fratinardo stated that there is a motion with conditions for site plan review, traffic study, limitations of working hours and the number of employees.

Member Crowell asked about the parking on Delaware Avenue. Engineer Guzzi stated that the parking on Delaware has to be addressed at site plan.

Solicitor Frank reminded the Board what Mr. Miller said regarding the D2 variance. When the Board is only looking at the D2 variance the issue of taking cars off of Delaware Avenue, in his mind, really isn't in play. That really only comes into play, for him, if you are also granting the greater variance of going onto the adjoining parcel where you are having significant expansion of the parking. You are not getting that out of the D2 variance. This takes away your ability to demand that at the time of site plan. You may be able to get a car or 2 removed, but this is no longer a principal motivation for the grant.

Member Taylor asked if anything was known about the parking lot across the street. Is there the possibility of pursuing an agreement for shared parking? Solicitor Frank said that Planner Perry pointed out that this would require the patients from Dr. Blum's office to cross over the busy Hornberger Delaware intersection. Solicitor Frank stated that he doesn't know if that site were analyzed if it meets the parking requirements for that site. Attorney Germano stated that another problem with that approach is that a Use variance runs with land. The ownership of that building across the street could change or the use could change and could nullify any agreement that was made.

Chairman Fratinardo called for a roll call vote.

Solicitor Frank stated that this is a motion to approve only the expansion within the building subject to site plan review, hours, maximum numbers of employee, traffic study and outside agency approvals.

Upon roll call the Board voted as follows:

YEAS: Buddenbaum, Crowell, Fratinardo, Montgomery, Taylor, Adams  
NOES: Zekas

Members Groze and Bott were recused.

Attorney Germano stated that they were going to have to re-notice for site plan. Attorney Germano asked if the Board would carry the D1 variance indefinitely. The applicant will

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consent to whatever extension of time to do that. In the event that they come back for it they would re-notice.

Motion of Adams, seconded by Montgomery to carry the D1 variance application indefinitely. Motion unanimously approved by all members present.

#### MINUTES

Motion of Zekas, seconded by Bott to approve the Minutes from the November 23, 2010 meeting as submitted. Motion unanimously approved by all members present.

#### CORRESPONDENCE

- A. Letter from the Burlington County Planning Board dated November 10, 2010 regarding Fallon Office Building, Delaware Avenue, Florence Township.
- B. Letter from Joy Weiler, Township Clerk regarding Township Council Resolution No. 2010-250 "A Resolution Accepting the Recommendation of Township Planning Board Regarding Boundaries of Proposed Redevelopment Area for Griffin Pipe Properties Pursuant to the Local Redevelopment and Housing Law N.J.S.A. 40A:12A-1 et seq."

Motion of Zekas, seconded by Adams to receive and file Correspondence A and B.

#### OTHER BUSINESS

The Board discussed the NJPO Training Sessions.

Motion was made and seconded to adjourn at 11:12 p.m.

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Ray Montgomery, Secretary

RM/ne