

Florence, New Jersey 08518-2323  
 October 23, 2012

A 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 7:30 p.m. followed by a salute to the flag.

Secretary Bott 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	Larry Lutz
William Bott	B. Michael Zekas
Keith Crowell	Lou Sovak
John Groze	Anant Patel
Candida Taylor (7:42)	

ABSENT: None

ALSO PRESENT: Solicitor David Frank  
 Engineer Anthony LaRosa  
 Planner Barbara Fegley

Chairman Zekas said the first application is ZB 2012-15 for Barry Reichert. The applicant is requesting use variance to permit continued use of an office converted into an apartment on property owned by Phyllis Glassmire and located at 2079 Burlington-Columbus Road, Block 169-01, Lot 5.01.

Mr. Reichert and Ms. Glassmire were sworn in by Solicitor Frank. Mr. Reichert said that Ms. Glassmire's youngest daughter was without housing and there was a building on the property that used to be the business TCM Sweeping. The business moved to another location and the building was vacant. The office space is being occupied as a residence by Ms. Glassmire's daughter and her three children. There is a kitchenette in the building. The building housed a family business and there had been cooking done in there at times throughout the years. It was converted to an apartment with some paint and flooring. The applicant did not know they needed to seek Board approval for the conversion. He said it is not going to be a permanent rental structure. He would like to maintain the property as an apartment because they have a large family and it would be a place for those visiting from college to stay while they are home. Chairman Zekas confirmed that the structure is presently being used as housing. He asked what the dimensions or square footage of the area is. Mr. Reichert said the area is pretty close to the area of the Court Room, about 75 percent as big as the Court Room. Mr. Zekas confirmed that the area is basically a three bedroom dwelling. Mr. Reichert said that

previously one bedroom was a conference room, the others were offices and there was a common area. It a single story building. Chairman Zekas said there might be a minimum square footage requirement. For similar applications dimensions were included. The applicant offered to provide them if needed. Engineer LaRosa said that for the exterior no improvements are needed. As far as requiring a minimal square footage requirement, he is not aware of any. He said it could be a code issue. Member Crowell asked if there were any other properties with apartments nearby. The applicant said he is not sure if there are other apartments in the area. Chairman Zekas said the property is agricultural and there is a residence there now. This apartment is a second residence. Member Crowell asked if the applicant would be willing to consider an approval that would stipulate that Ms. Glassmire and her children could stay there, but when they vacate the building would revert back to office space. The applicant said he is willing to negotiate. The situation is not intended to be long term. He said the only future use would be a transient situation with the grandchildren staying there when home from college. Member Crowell said if the use goes away it cannot be used as living space. He said it is an option the Board can look at. The applicant said it does have a well and septic system, the family holds a trash hauler's license and there is a dumpster at the site. Chairman Zekas requested the Board professionals to review their findings.

Engineer LaRosa said he and Planner Fegley discussed the application. He saw no exterior improvements. He said there is no additional drainage. He said there is nothing in the way of engineering that affects the application. He said the dwelling would be subject to inspection by the Building Code Official. Planner Fegley said the application met all bulk requirements. It is a large site and it sits back from the road. She said when it was a business there were 7 or 8 employees so this has a smaller impact. She agreed that the waste is being taken care of and there is adequate parking. She said it is possible to limit the time that the building can be used as living space and then convert it back to its original use. She confirmed that there is not a big visual impact because the nearest structure is a good distance away. The applicant said that the property is suited for this use. He said there is no interest in renting in the future for occupants or industrial uses. He said he would agree to revert it back to its original use after the current occupant vacates, he is hesitant to put a time limit on how long she and her children can stay. He does not want to add to the stress she is currently under. Chairman Zekas said there were previous applications where certain conditions were considered. Solicitor Frank said that there have been circumstances in other applications that impacted decision. He also feels that the apartment use is more compatible with the agricultural/residential zoning. He asked the applicant if the business was established pursuant to a use variance or was it a permitted use there at the time. The applicant did not know. Solicitor Frank asked the Board to think about an abatement of the commercial use and permission to institute this residential use. He said it is fundamentally more compatible with the zoning. Planner Fegley said she tried to find out if the current use had been approved in the past but could not confirm it. Solicitor Frank asked if there was still some business uses occurring on the property. The applicant said his brother-in-law uses the larger mechanical shop to work on cars. It is a hobby shop. The dumpster is only for personal use. There is no material brought from off site. Chairman Zekas said in another application he remembers speaking about conditions and the Board danced around the word family member.

Solicitor Frank said that was a different circumstance. He said that was a situation where the concern was the institution of an apartment. The Board was able to distinguish that use as a genuine apartment because there was a common interest, meals were cooked, and that sort of thing. He does not think that will work in this situation even though there is a familiar relationship because there are two separate buildings. This was not the case with the other similar applications. He asked if there will be any way to know if the college kids are relatives. He said when the Board grants a variance it runs with the land. It is hard to create conditions that are personal to anyone. The applicant said he does not even know for sure if any of the grandchildren will use it, it was just an idea he had for possible use in the future. Member Bott asked if there was a way to just approve for this person and not future occupants. Solicitor Frank said it is hard to make a variance personal. There are cases where there are time limits, but not personal to any individual. Planner Fegley said home occupation is permitted but not a business. Business is incompatible in the zone. Engineer LaRosa said there is not an existing business at the site so this does not apply. Member Crowell said assuming it meets code issues, if the Board wishes it could consider issuing a conditional approval. He suggested a time period or just for the current occupant. Solicitor Frank suggested focusing on time, not a person. The applicant said his only concern with a time limit is creating pressure on the occupant. He said he would be comfortable with a 5 to 10 year limit. Member Crowell said he does not really consider that a temporary need. His reservation is that if this approved it would set a precedent. Solicitor Frank said the Board could be held to some kind of consistency of interpretation, but he would like the Board to again to think about the property and not the circumstances.

Motion of Bott, seconded by Lutz to open the meeting to the public for comments regarding application ZB 2012-15.

Seeing no one wishing to be heard, it was the motion of Buddenbaum, seconded by Groze to close the public portion.

Solicitor Frank said the Board needs to look for neutral and objective criteria. He said there are two different ways to go. Member Lutz asked if the variance granted for a church use was similar to this. Solicitor Frank said the objective of the church is to outgrow the space and they were attempting to limit their use there. Solicitor Frank said what was requested by the applicant is a temporary use variance to permit a second dwelling, which is a second principal use. The previous use was a nonconforming use that predated the current zoning. He thinks the Board can grant this. It can also have a clear time limit. He said he is not comfortable legally with a use variance that is personal to anyone or that lies only on a familial relationship. The other alternative is to say that there is an improvement of the current use and move the property closer to the current zoning by allowing a second residential dwelling. Chairman Zekas asked if the second residential use was permitted would it allow the second resident to knock down the building and build a house. Solicitor Frank said no, the variance only applies to the building that is there. He also suggested as condition of approval a dimension drawing be submitted. Members questioned the abatement of commercial and if it was desired later would the applicant need to appear again. Solicitor Frank said yes, if the applicant

wanted to have commercial after abatement they would need to apply for it. The business is not considered abandoned because everything is still in place and nothing changed, so it is not abandoned. Member Crowell said he understands the social issue but he does not feel 5 to 10 years is temporary. Member Bott agreed. He said it is a commercial site. He asked if there are objections to taking away the commercial. Mr. Reichert said his concern is that the value of the property could be less without the commercial. He said he is willing to abate the commercial if the variance can be permanent. Member Bott asked if the change becomes permanent would the applicant need to appear before the board if the tenants change. Solicitor Frank explained that zoning law does not look at personal hardship; it deals with the land, the uses, and the structures that are lawfully on the land. He said in this instance the Board is not really talking about a hardship, they are looking at a case where there is an opportunity to make the zoning more compatible with the zone, whether temporary or permanent it is still a residential use. Chairman Zekas said that if commercial goes away and at some future point it is desirable to have a commercial use, the applicant could reapply for it.

It was on the motion of Bott, seconded by Lutz, to approve the request for a use variance for a second residence on the property including the condition that the commercial use will be abated and the use applies to the existing structure as is and dimension drawings of the building are provided.

Member Taylor asked if the variance prohibits improvements to the building. It was stated that anything can be done that is approved by the Construction Office. Planner Fegley would like the resolution to be amended to include a limit of three bedrooms. Member Bott amended his motion.

Upon roll call the Board voted as follows:

YEAS: Buddenbaum, Bott, Crowell, Groze, Lutz, Taylor, Zekas

NOES: None

ABSENT: None

Chairman Zekas called application ZB 2012-16. The applicant is requesting side yard setback variance for a garage placed without zoning approval or permits on property located at 70 Norman Avenue, Roebling, Block 119, Lot 9.

Solicitor Frank swore in Angela Lancos and Kevin Lancos. Mr. Lancos said he had an old rusted 20' X 20' garage that he removed and replaced with a new prefab garage that was the same size. He then learned he needed a permit and the garage was not far enough from the property line. Chairman Zekas confirmed that the garage was placed on the old footprint. Ms. Lancos said it is, but there was a concrete floor added. He confirmed that the applicant needs a side yard setback and asked if there were any issues in the back of the garage. The Certificate of Appropriateness from the Historic Preservation Commission was entered into evidence as A-1. Member Crowell asked if there are any drainage issues on this property or adjacent property. The applicant said the adjacent property had issues but the applicant is working to fix them. He is going to install a side drain to run down in between the properties away from the properties. He

said there are channels on the roof to direct water away and to the rear. Member Crowell asked if there have been complaints from neighbors since construction. The applicant confirmed that there were. There is a concrete apron that is angled to direct water to between the two properties where it drains. He said he is going to make the channel greater and fixing the problem with a drainage system. Chairman Zekas asked if the problem was there before the new garage was built. The applicant said the old garage had bad gutters. The problem was fixed with new gutters. Ms. Lancos confirmed that an engineer signed off on the drainage plan.

It was the motion of Bott, seconded by Buddenbaum to open the meeting to the public regarding application ZB 2012-16.

Raymond Higgins, 52 Norman Avenue, said his property adjoins the applicant's house. He said the applicant claims the new garage is 20' wide but it is really 22' wide with the overhang and the old garage was actually smaller. He said the plan showing the new garage is the same as the original plot plan and it does not show that the new garage is bigger than the old one. He said with the overhang on the garage it is encroaching on his property. The concrete in front of the garage is directing the water onto his property. He does not believe the proposed drainage will prevent flooding. He said there is room on the other side of the garage but the applicant is putting it on his side. He said because of the overhang the garage is bigger than 20' X 20'. Member Crowell wanted to confirm that the issues are water run off concerns. Mr. Higgins said the issue is also the encroachment. He said the applicant had plenty of room to move the garage toward the other side of the yard. Member Crowell said the concerns seem to be the water run-off and the side setback. Mr. Higgins said he is also concerned about the parking area near the garage, a deck that he said is bigger than what is stated on the plot plan. He said all of these things are causing run off problems. He said originally there were only two concrete tire pads going back to the old garage and then they poured this large parking area. Engineer LaRosa said the report he issued earlier last week was not from a site visit, it was from the submitted plans and aerials. He agrees that the driveway was reconstructed since the plot plan was created in 2005. He said there is a large mass of concrete that grades toward the rear of the property. It is impervious coverage now and it is draining toward the metal garage and the "V" in the concrete is directed toward the property line. He said there is a drainage issue that needs to be dealt with. He said if you look at the survey it shows a chain link fence. The fence is on the western side of the property line. Technically the property line is on the other side of the fence. He said there is no encroachment. He referred to pictures provided showing that the fence meets up with the corner of the garage. Mr. Higgins said he believes it is encroaching on his property. Engineer LaRosa does not believe it does. Mr. Higgins said if the applicant had come before the Board the garage would not have been allowed. He said there is plenty of room on the other side of the garage and he does not believe they needed to put the garage right on the property line and they drain their property into his. Engineer LaRosa agrees that something needs to be done about drainage, but he said he saw the remnants of the old garage foundation so he knows something was there. Mr. Higgins said the old garage was there but was not as large. Engineer LaRosa said he does not have old pictures and is going by what the applicant said and submitted. Mr. Higgins

said the old garage was 20' X 17' and the new one is 20' X 20' on the ground. Engineer LaRosa said there are two sketches, one with items drawn on and one without. Mr. Higgins said the picture does not show the new garage, it shows the old garage. Member Crowell wanted to know if resolving the water issue would solve the problem. Mr. Higgins said it would not, he wants the garage moved. Mr. Higgins said he does not live at the house he owns, it is a rental property. Chairman Zekas asked if the old garage was where the new one is. Mr. Higgins provided pictures for evidence labeled 0-1 through 0-4. The first is a photo of the drainage problem, the second is a photo of the roof of the garage, the third is survey showing the concrete pad and the last shows what Mr. Higgins believes is the increase of covered area. Member Buddenbaum asked if the new garage is closer to Mr. Higgins' property. Mr. Higgins said only the overhang is closer. He believes the physical building is in the same spot. He said the problem is with the overhang. He requested that sandbags be placed against the fence to prevent run off from the new pad. Mr. Lancos said he does not believe there would be major flooding in his neighbor's back yard because Mr. Higgins does not have any impervious coverage there. He explained that he did not come before the Board for the garage because he thought since it was on the same footprint he would not need a permit. Chairman Zekas said there are copies of the two surveys. He said it looks like there were two concrete strips but it appears that when the deck was built that concrete was eliminated. Mr. Lancos said there was concrete removed and there was a skin coat put over the existing driveway. It covers existing concrete. Chairman Zekas inquired if the applicant increased the amount of concrete in front of the garage. He said he did not. Mr. Lancos said the garage and concrete are not on the property line, and he did not move the location of the garage because he was using the existing foundation and the existing driveway runs straight to the garage. Mr. Higgins maintained his position that the drainage plan will not correct the problem. Engineer LaRosa said there needs to be a bigger trench or something to stop the water. He said the amount of water that is going to fall on the apron itself will be minimal. He said there are options to direct the water away from Mr. Higgins yard. He said the direction the water runs needs to be mitigated and a larger pipe will need to be used in the drainage plan. Member Crowell said that a mitigation process that would meet the expectations of the engineer needs to take place. All parties are in agreement. The applicant will also agree to put sandbags against the fence until action is taken. Member Taylor requested that the drainage plan be approved by the Township Engineer before the work is done. Engineer LaRosa said if the property line is accurately shown on the survey that was done by a professional land surveyor, he does not believe there is any encroachment by the garage overhang. Mr. Higgins does not agree that the survey is correct. Engineer LaRosa said he has to go by the professional survey that was presented. Solicitor Frank said the applicant has the burden of providing the proofs necessary for the variance they requested and the applicant has produced a survey done by a professional surveyor that purports to show where the property line is in relation to where the fence is. He said if Mr. Higgins wants to impeach that evidence you can't just say it is wrong, you need to produce a survey that presents what you are saying and it must be done by a licensed surveyor. It is not the applicant's burden, it is his.

It was the motion of Bott, seconded by Taylor to close the public comment on application ZB 2012-35.

Engineer LaRosa said he looked at only the issue at hand, which is the garage. He said it is a permitted accessory use, there is no variance required for the garage height, he said a variance is required for lot coverage, a side yard setback variance required. He said there is a drainage issue that needs to be addressed. The Historic Preservation Commission gave its approval. Solicitor Frank said the applicant will take temporary measures to stop the drainage problems until it is fixed.

It was on the motion of Bott, seconded by Crowell, to approve application ZB 2012-35.

Upon roll call, the Board voted as follows:

YEAS: Buddenbaum, Bott, Crowell, Groze, Lutz, Taylor, Zekas  
 NOES: None  
 ABSENT: None

## RESOLUTIONS

**Resolution ZB 2012-35**  
**Continuing the application of Florence PV, LLC**  
**Until a special meeting to be held on Tuesday, October 30, 2012**

It was on the MOTION of Taylor, seconded by Lutz to approve Resolution ZB 2012-35.

Upon roll call the Board voted as follows:

YEAS: Buddenbaum, Bott, Groze, Lutz, Taylor, Zekas  
 NOES: None  
 ABSENT: None

Solicitor Frank said he received a letter dated October 13, 2012 from Patrick McAndrew, attorney representing Florence PV, LLC, requesting an adjournment from the October 30, 2012 meeting for about 30 days. Given the level of awareness of this application and the fact that most of the objectors are represented by counsel and the existence of websites about the application, the Board can take action this evening on the letter to adjourn the hearing to the November meeting of the Board. He has prepared a resolution that can be memorialized this evening stating there would not be a meeting next week. The notice will be published in the newspaper and a note will be posted on the door the night the meeting was scheduled for. Solicitor Frank said it will be on the agenda for the regular meeting. He said if a significant application comes in before then they could possibly be pushed off a month. The chair decides the order in which applications are heard, and the solar application would be first on the agenda.

It was the motion of Taylor, seconded by Buddenbaum, to approve Resolution 2012-36, adjourning the application to the regular meeting of November 27, 2012.

Upon roll call, the Board voted as follows:

YEAS: Buddenbaum, Bott, Crowell, Groze, Lutz, Taylor, Zekas

NOES: None  
ABSENT: None

CORRESPONDENCE

- A. 2013 Meeting Schedule of Boards/Commission
- B. Letter dated October 13, 2012 from Patrick McAndrew regarding the adjournment of Florence PV, LLC

Motion of Groze, seconded by Lutz to receive and file the correspondence. All ayes.

PUBLIC COMMENTS

None at this time

There being no further business, it was on the motion of Taylor, seconded by Groze to adjourn the meeting at 9:26 pm.

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William E. Bott, Secretary

WEB/aek