

Florence, New Jersey 08518-2323
August 1, 2016

The Regular meeting of the Florence Township 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 Lutz 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:

William Bott	Brett Buddenbaum
Joseph Cartier	Larry Lutz
Anant Patel	Lou Sovak
B. Michael Zekas	Anthony Drangula

Absent: Margo Mattis

Also Present:

Solicitor David Frank
Engineer Andrew Banff
Planner Barbara Fegley (Excused)

APPLICATIONS

A. Application ZB#2016-07 for Robert Schoen. Applicant is requesting a bulk variance to permit construction of a 24' X 16' garage located on the property 220 West Front Street, Florence, NJ 08518. Block 45, Lot 3.

Mr. Schoen was sworn in by Solicitor Frank. Chairman Zekas asked him to provide an overview of his proposed construction and explain why a variance is required. Mr. Schoen said the variance is required because he would like to build a garage behind his residence at 220 West Front Street, the old bank. He wanted to build it next to his neighbor's garage and he would like for it to be 3' off the side. Because there is an alley behind him he would like to match his neighbor's garage and be 2' off the rear setback. Entrance to the garage would not be through the front, it would be through the alley. Chairman Zekas said the proposal was to build a single car garage with the dimensions of 16' X 24'. Mr. Schoen concurred. Chairman Zekas asked what the height would be. Mr. Schoen said the total height would be 14'. Chairman Zekas asked what type of construction it would be. Mr. Schoen said it would be wood construction with vinyl siding. There would be a single garage door and a walk in door.

Chairman Zekas said one of the questions in the letter from the board engineer asked about a garage door. He asked where it would be facing. Mr. Schoen said it would be

facing the alley. He said the other garages on the alley are the same way. Chairman Zekas asked if there were many others and if Mr. Schoen had any photographs of them. Mr. Schoen said there were several garages on the alley and he didn't bring any photos. He said there is a large garage next to him and at the other side of the block there is a four car garage. Chairman Zekas asked if the setback he was proposing was similar to the other garages. Mr. Schoen said he measured the other setbacks and his is the same. Chairman Zekas asked what the purpose of the garage was. Mr. Schoen said he would like to keep a car in it. He doesn't really have a back yard, there is just a parking area. He doesn't want to have a shed. He just wants a place to keep the car and a couple of other things such as ladders and maybe a grill.

Chairman Zekas asked if based on the proposed setback did the applicant feel he would have adequate access to enter and leave the garage. Mr. Schoen said he felt that he would. Member Buddenbaum asked if it was behind the former Duffy School. Mr. Schoen said it was.

Member Bott said referring to the engineer's letter, would the requested survey be provided. Mr. Schoen asked if that meant he had to have another survey done. Solicitor Frank asked if he received a copy of the letter from the engineer. Mr. Schoen said he was not familiar with the letter. He was provided with a copy to review. Engineer Banff said the purpose of the comment was to be sure the garage does not project into the public right-of-way.

Member Drangula asked how run off from the building would affect the neighbor. Mr. Schoen said it won't affect the neighbor because there is asphalt there now. Everything runs from the property to the storm drain in the alley. Member Patel asked if the garage was going to sit on the asphalt. Mr. Schoen said he is going to remove the asphalt and put the garage on concrete. Member Patel asked if he meant he was removing just where it sits or the whole back area. Mr. Schoen said he didn't know if he would be doing the whole thing. He wants to clean up the area. When the alley was repaved and the curb was installed it was raised too high and it doesn't allow the water to run off. The water sits on his property on the inside of the curb line. He needs to regrade that area so the water will run off properly. Member Bott asked where the water would run. Mr. Schoen said it would run straight back. Member Bott asked if there are puddles there now when it rains and is there run off from the other property. Mr. Schoen said there is a low spot on the property next to him and there is water sitting there. Member Bott asked if the water from his property would go to that property. Mr. Schoen said it would not because the storm drain is right behind his property.

Chairman Zekas asked the applicant if he thought with approval he could direct the run off from the existing property to the storm drain to improve the drainage. Mr. Schoen concurred. Engineer Banff said generally speaking the alley is improved for the whole length and the drainage does go in either direction to the storm drains that are there. There would be no change in that drainage pattern.

Member Cartier asked if there would be any lighting on the garage. Mr. Schoen said he would like to have an inside light but not an outside one. Member Patel asked if there

would be any plumbing run to the garage. Mr. Schoen said there would not be any plumbing.

It was the Motion of Lutz, seconded by Buddenbaum to open the meeting to the public. All ayes.

Richard Dennison, 214 West Front Street, was sworn in by Solicitor Frank. He said he is the adjoining neighbor. He was measuring yesterday and he isn't clear where the garage is going to sit. He was provided a copy of the drawing that was submitted with the application. Mr. Dennison said there is a wide paved area behind the bank and the proposed building is going to go way over and take up that area. He asked how much room there would be between his garage and the proposed garage. Mr. Schoen said about 5'. Mr. Dennison said he wanted to be able to walk from the alley to Front Street and wanted to know how much room he would have. He said right now there is nothing there and he can walk right through. He asked Mr. Schoen if he could move the garage further away from his. Mr. Schoen said he would not want to do that. Mr. Dennison said he would like to object because it is too close to his garage.

Chairman Zekas said if he understood correctly, Mr. Dennison wanted to be able to walk between his garage and his neighbor's property line. Mr. Dennison said it wasn't just to walk, he might want to get something wider through the area. Mr. Schoen said Mr. Dennison would not be on his own property and would have to walk on his property to do that. Mr. Dennison said he does that and has done that for years. He said he doesn't object to the garage being built but he doesn't like it that close to his garage.

Solicitor Frank said it isn't really an objection that the Board can take recognition of; that Mr. Dennison wanted to have the continued ability to walk through Mr. Schoen's property. He is entitled to exclude other people from his property absent some longstanding right that's proven in the courts that says there is a descriptive right to use an alleyway. He doesn't think that is the case here. He is permitted to exclude people from his property. Mr. Dennison said he understood that. He thinks the area is going to be too cluttered, there is his garage, the Duffy School, the bank property and his property. He said it is true if he walked between the garages he would be walking on Mr. Schoen's property. He has been doing that for years and years. He said he is trying to be a nice guy by saying go ahead and build your garage so Mr. Schoen should be a nice guy and make the area wider so he can get things through there. It is obvious that it is Mr. Schoen's property, it's been part of the bank property for many years. He said he has been there since 1974 and the area was part of the bank property then. He has been there for many years and no one ever complained about him walking through to Front Street.

Chairman Zekas asked Mr. Dennison when he built his garage. Mr. Dennison said it was built by his predecessor. Chairman Zekas said when he located it 1.5' off the property line, he was probably thinking the same thing Mr. Schoen was, to maximize use of the remainder of the property.

Member Sovak asked if the two adjacent buildings being so close would be a fire separation issue. Engineer Banff said he does not believe there is a setback distance

requirement between accessory buildings. Member Sovak thought there could be an issue for fire separation. Solicitor Frank said that is a Construction/Code issue and it doesn't fall in the Board's scope and there is probably a way to build around it if it is an issue.

It was the Motion of Lutz, seconded by Buddenbaum to close the public hearing on Application ZB#2016-07. All ayes.

Member Bott asked Mr. Schoen if he was living upstairs or downstairs in the bank. Mr. Schoen said the upstairs was the conference room and it is now the bedroom. The kitchen is in the back downstairs where it was before. The front is a big open room. Solicitor Frank asked if it was one bedroom. Mr. Schoen said it is one bedroom and one bathroom. The bathroom is downstairs.

Engineer Banff said he wanted to point out that the lot is very impervious so the construction of the garage does not change the footprint of impervious surface. The rooftop run off drain currently drains to the alley anyway so there would not be any drainage issues.

Member Buddenbaum said there wasn't any discussion regarding gutters. He asked if it was going to be directed to the front. Engineer Banff said the gutters would be made to flow toward the alley. Solicitor Frank asked Mr. Schoen if he planned to direct the gutters and downspouts to the alley. Mr. Schoen said he was. Engineer Banff asked which way the gable was going to pitched. Mr. Schoen indicated where the 'A' would be located. Solicitor Frank said the gable will be running perpendicular to the alley. Engineer Banff said that would direct the water to the alley.

He said the zone is Neighborhood Commercial Zone. The ordinance is unique in that it is a permitted use to have a residential use in the zone. It then directs you to the Residential Zoning standards and those standards including accessory uses have been applied. As far as setbacks are concerned, with the accessory structure, the side yard being requested is 3'. The Residential Zone criteria is 5' so a variance would be required. In the alley, a variance would be required because there is a 0' setback to the alley right-of-way line. There is supposed to be 10'. To fit the garage in there would be no way to meet that setback. The applicant provided testimony to the setbacks between structures being 4.5' to the adjoining. He also indicated he would have the garage staked out by the surveyor so that the foundation and the garage itself to be located in the right-of-way. The applicant indicated there was one bedroom. The idea of that thought is that the adjoining property is a funeral home which has services and the frontage of the street would be occupied by funeral services. The garage would have one parking stall and there would be other parking available on the site. In the rear there was sufficient space to accommodate. Mr. Schoen said he always parks in the back. Engineer Banff said that was the end of his recommendations. The survey is what is really important.

Member Drangula said the applicant said the curb at his property was elevated and was causing the water to puddle and he said he was going to bring up the yard there to fix the problem. He wanted to know how much of the yard was being brought up. Mr. Schoen

said he is just going to change the pitch. Before the alley was paved and the curb was put in the water ran very well. Now the curb is just too high. He will build it up and it will drain to the alley and storm water drain.

Solicitor Frank said there is an existing undersized lot. Given that the applicant wants to put something on that lot that seems to be a fairly typical amenity in the neighborhood, the Board could look to the hardship criteria under C1 if it wished to where there is an exceptional practical difficulty or hardship that would be imposed on the developer if they were forced to stick with the strict interpretation of the standards. With regard to the rear yard setback, the engineer testified that if that were required to be maintained, there would be no room to put the garage. With regard to the side yard setback, there is room to slide it over but the applicant testified that it would negatively impact the ability to use the balance of the area. With regard to the impervious coverage variance, it is technically a variance because there is an increase in development, but there is no change to the lot coverage. There will also be an improvement in the drainage pattern because the water will be more closely directed to the alley.

Member Patel asked if the side setback was 4' or 1.5' from the property line. Member Cartier said Mr. Dennison's garage was 1.5' from the property line. Solicitor Frank said Mr. Dennison's garage is 1.5' from the property line. Mr. Schoen proposed to construct his 3' from the property line. There is a little confusion, but there was a statement on the drawing that it was 3'. The total distance between the two buildings is 4.5'. Member Buddenbaum said there would be plenty of space for Mr. Dennison to walk a hand cart through there. He asked if Mr. Schoen would have trouble with him doing something like that. Mr. Schoen said he has never seen Mr. Dennison use it. Member Buddenbaum said he thought it didn't sound like a big deal. Mr. Schoen said right now he keeps his trash cans and recycle receptacles there.

Member Cartier asked how far back the fence goes and also asked if it was going to be in the middle of the garage. Mr. Schoen said the fence ends at the rear of the garage. Mr. Cartier asked if there was a fence there now that is 1.5' off the garage. Mr. Schoen said the fence ends at the garage and doesn't go all the way to the alley. Mr. Schoen said the fence is on the property line. Member Cartier said it was his impression that there was an open space of about 4.5'. Member Cartier asked if Mr. Schoen was going to put a fence up that went all the way to the end of the alley. Mr. Schoen said he had no plans to install a fence. Member Drangula said Mr. Schoen could install a gate with a lock if he wanted to, it's his property. Solicitor Frank said it is fair to say it is not within the Board's power to require a landowner to provide a use right to another landowner as a condition of approval. That doesn't mean neighbors can't all agree to get along. Solicitor Frank said the applicant has agreed to stake out the location of the garage prior to construction and the gutters and downspouts will be directed to the alley in the rear. Any regrading should not change existing grading.

It was the Motion of Lutz, seconded by Buddenbaum to approve Application ZB#2016-07.

Upon roll call the Board voted as follows:

YEAS: Bott, Buddenbaum, Cartier, Lutz, Patel, Sovak, Zekas
NOES: None
ABSENT: Mattis

B. Application ZB#2016-08 for Kelly Lung. Applicant is requesting a Bulk variance to permit construction of an arbor with solar mounted panels in the rear yard of the property of 1 Almond Court, Florence, NJ 08518. Block 144.49, Lot 15.

Chairman Zekas called Ms. Lung. She was sworn in by Solicitor Frank. Solicitor Frank asked if she had received a copy of the Board Engineer's letter. She said she received it that day. Chairman Zekas asked her to provide an overview of the proposed construction and explain why a variance was required. Ms. Lung said she was having solar panels installed. Along with that she is having an arbor built on the back. There isn't the required 35' setback so she needs a variance. It is being constructed to hold solar panels so she has enough panels to cover the electric that she uses. She said her setback would only be about 25'. Chairman Zekas asked her to describe the arbor. She said it is going to be a wood roof with four posts. It won't be a flat roof and it will not be connected to the house. It is a few feet off. Chairman Zekas asked if this would be a free standing structure with a peaked roof really just to mount solar panels. She concurred, noting that it would be used for outdoor space. Solicitor Frank asked if it was going to have a roof deck and have material that is roofing under the panels or were the panels going to be the roof itself. She said there would be shingles under the panels.

Solicitor Frank said the fact that the arbor is not attached to the house, it would trigger impervious coverage. Engineer Banff said the way the law is interpreted solar panels on their own are a permitted use and they are not considered impervious coverage, provided that the material underneath is lawn or grass or a field. In this case it is a solid roof. If the panels weren't there the roof would still be there. Chairman Zekas said on the applicant's sketch that was submitted to the Board, there is a concrete pad below the proposed arbor. It isn't the same size, it is slightly smaller. The impervious coverage would be the difference between the size of the arbor and the existing concrete pad. Engineer Banff agreed. Chairman Zekas asked if there was enough information to figure out how much it would be. Engineer Banff said he had enough information. The zone permits 25% maximum coverage, the variance is for 25.5%, slightly above the total maximum. Chairman Zekas noted it was a very small increase over what is allowed in the zone. Member Buddenbaum asked how far the arbor is over the concrete pad. Engineer Banff said taking a guess, because the drawing isn't to scale, he thought the sides were about 5' on one side and 8' on the other. The existing concrete patio is about 15' X 15' and the arbor is about 25' X 25'. The existing coverage on the lot is 21.7%.

Member Patel asked how much solar was being installed. Ms. Lung said she didn't know. Member Patel asked how many panels were being installed. Ms. Lung said she didn't know but the entire back of the roof was being covered with the exception of where the attic fan is. There will also be panels on the side of the arbor that is facing south. Chairman Zekas said that answered Engineer Banff's question about the open panel space. It was because of the vent fan.

Member Buddenbaum asked how the panels on the arbor were going to be connected to the house. Ms. Lung said she didn't know.

Chairman Zekas asked the engineer if he determined yet the size of the arbor in relation to the concrete pad. He said the concrete pad is 15' X 15' and the arbor is 25' X 25'. Ms. Lung said the installers told her the arbor would be 22' X 22'. Member Patel asked if the solar installers were putting in the arbor. She said yes. Member Buddenbaum said it would have been helpful to have a representative at the meeting. Ms. Lung said she was told it wasn't necessary. Member Buddenbaum asked if the company drew the plan that was submitted. Ms. Lung said they did not. Member Buddenbaum asked if the company explained the placement of the panels, he asked about a specific area of the plan where there was a space. Chairman Zekas suggested it could be because of a vent pipe. Ms. Lung said there is a vent that runs from the downstairs bathroom up through the ceiling. Ms. Lung said the representatives told her she needed the arbor to cover the full amount of energy that is used. Everything is electric. That is the only reason she considered the arbor. She was told just having roof panels wasn't going to cover the entire amount of energy she uses.

Member Drangula asked if the arbor was going to be enclosed or open. Ms. Lung said it was going to be open. Member Bott asked if the roof was going to be slanted. She said it would be. Member Patel asked if both sides of the arbor roof were going to have panels. Ms. Lung said she believed it would just be one side. Member Bott asked if she knew the size of the panels. She said she did not know their size. Member Drangula asked if what was shown on the panels was the extent of the solar that would be on the property. Ms. Lung said that was correct. Member Cartier asked about the other half of the yard. Ms. Lung said the other half of the yard doesn't get any sunlight. Member Sovak asked how high the arbor would be. Ms. Lung said it will be about 10'. Member Sovak asked if it was going to line up with the roof line at the back of the house. She said the house is a bi-level so it would probably be at the half way point of the house. Member Zekas asked if the peak of the arbor would be the same way as the home. He said she mentioned the panels would be on the southern half. Ms. Lung said the peaks would go to the back of the house toward the fence. Member Patel asked if the arbor had an "A" peak. Ms. Lung said yes. Member Buddenbaum said it is like an open shed. Ms. Lung agreed and said it is a roof over a patio.

Chairman Zekas said the applicant is requesting a rear yard setback variance for installation of an arbor to house solar panels. Solicitor Frank there is the need for impervious surface coverage. Solicitor Frank said there a lot of details that were not provided. Member Patel asked about the shed that is shown encroaching on the other property. The applicant said it was already there when she bought the house. She believed it was right on the property line and only realized recently it wasn't. Engineer Banff said it was considered an existing variance. It is not too unusual to see a shed over a property that someone just constructed. Chairman Zekas said the Board is not legalizing it, it is a preexisting condition. Solicitor Frank said the Board can't authorize anything to be built on another property. Engineer Banff asked what kind of material

would be underneath the arbor. Ms. Lung said it is a concrete slab and there are no plans to change it.

Member Patel asked the square footage of her house. The applicant said the house is about 1,700 sq. ft. Member Patel asked if it was electric or gas heat. Ms. Lung said everything was electric. Member Patel asked if she remembered how many kilowatts would be produced. She said she provided all of the paperwork and she was surprised it wasn't supplied to the board. Solicitor Frank asked if it was sent to the Construction Department. Ms. Lung said the Zoning Department had the paperwork when she spoke to them. Solicitor Frank asked if she meant the Zoning Officer. She said yes that was who she spoke to. Solicitor Frank said he understands it may sound ridiculous but any evidence the applicant would want to supply would have to be given to the Board by the applicant. The Zoning Officer and this Board are two separate parts of the local government. The Board is not provided with copies of everything that the Zoning Officer receives. The Board only receives what the applicant submits with their applications. Sometimes that is a plus, and other times it isn't. In this case it is not helpful because a lot of the information that the Board might like to have is probably in that file the Zoning Officer has. The information was not given to the Board. Ms. Lung said she asked what else she needed to bring and was told nothing by the administration.

Member Patel said the reason he was asking was because it seemed like a large amount of solar panels for the size of the house. He doesn't know what the company told her or what was on the paperwork. Member Buddenbaum said it could be that the Board members are misinterpreting because they don't know how many panels there will be. Chairman Zekas asked if that was necessary for the Board to figure. If this was an application for a roof over an existing concrete deck, the board wouldn't be having this conversation.

Chairman Zekas asked if the applicant was told the solar company didn't need to attend to provide details about the solar. Ms. Lung said she was under the impression that everything the Board needed would be here. She thought everything she submitted to the township was available. Chairman Zekas said the board doesn't take it as their responsibility to figure out how many solar panels might be needed for a residential use since they don't know any of the details. He suggested the Board treat it simply as a porch roof. The applicant called it an arbor, but it basically is just a covering over a concrete pad.

Member Bott asked if the application should be postponed for the applicant to get the information the Board members were asking for. Solicitor Frank said that would be at the discretion of the Board. Chairman Zekas asked the applicant what her plan was for starting construction if she received approval. The applicant said she understood there is a process at the township she would have to follow but the solar company has been waiting.

Member Drangula asked what the difference would be if the roof had solar or if it was just covering over the concrete pad. Chairman Zekas agreed and said it should be treated as a porch roof. Member Drangula asked how the solar affected the application.

Solicitor Frank said he thinks the argument is that the arbor is needed and in a certain way with the setback because the applicant needs the panels. This Board goes out of its way to work with applicants. In order to have the proper proofs in the record, a rear yard setback is necessitated by the shape of the structures and it is required. There needs to be something provided that shows there was nowhere else to put the panels and this is the shape it has to be in order to achieve that. That is the argument for the arbor and the shape of the arbor. There isn't anything wrong with putting on a porch in the back but that would be a different argument and a different set of considerations. It would have to do with similar amenities in the zone and that are increasingly common. These are arguments the Board hears all the time, such as with the previous application. There are hardships such as an undersized lot. He doesn't think this application has an undersized lot. All those considerations are different than the argument that has been presented. It is for the Board to work through. He just wanted to explain the argument that was presented.

Member Buddenbaum said it really comes down to the roof and the impervious coverage. Solicitor Frank said if the Board is satisfied that there are good reasons for the roof to be there regardless of if it has solar then it could be a C1 where there is a hardship or a C2 that it is a better zoning alternative than strictly adhering to the ordinance standards, for just the porch, then that would be an option. There would need to be positive criteria and negative criteria would need to be reviewed. There needs to be a place to start to justify granting the relief. The reason offered was that the shape was required for solar panels. He said he didn't believe there was much evidence in front of the Board regarding the need for that shape other than that somehow somewhere someone said that. There is nothing in the record before the Board that substantiates that, in his opinion.

Setting that argument aside, if the Board were just talking about the porch, then there would need to be some positive criteria to embrace that. Member Bott said he didn't believe there was enough evidence to support it one way or the other. There was no information provided.

Chairman Zekas asked the applicant if she understood the discussion. Ms. Lung said she did. Member Drangula asked why the rear yard setback was 35'. He wondered why it was so large. Chairman Zekas said that was what the ordinance called for. He said it seemed large for a residential area, he thought the setbacks were 10' for residential. Engineer Banff said it was the assumption that the arbor was attached to the building. Member Patel asked what the setback would be if it were an accessory building. Solicitor Frank concurred that the setback should be 10' feet in the RA zone. There is no need for the rear yard setback because the arbor is not attached to the house.

Solicitor Frank said if the arbor is detached and is therefore an accessory building, the ordinance allows for residential accessory buildings that aren't garages or carports to be up to 250 sq. ft. in area. They can be 5' from the rear and side and 10' from the alley. The proposed structure is more in area. The applicant does need a variance, just not the one that was originally thought. He asked if the structure was in fact detached. The applicant said it was. Solicitor Frank said he didn't know if there was a requirement for minimum separation from principal to accessory, but he believed there was. There would

need to be a variance for that. It is hard to do this on the fly. One little piece of information, such as the structure not being attached, changes everything. The ordinances are complicated and interweaved.

Solicitor Frank and Engineer Banff reviewed the ordinances related to the RA Zone. Solicitor Frank said he reviewed the ordinance book and did not find any standard that has a required minimum set distance between structures in the RA Zone for principal and accessory. Assuming this is an accessory structure, the only thing that would be required is a lot coverage variance for a very minor increase in impervious coverage.

Chairman Zekas said he didn't remember there ever being an issue with proximity requirements. Solicitor Frank said it is atypical that it isn't in an ordinance. He believed it was driven by the historic pattern development in Roebing and some of the tighter areas in Florence. Every other town he works with has a minimum distance, it is usually 15' or 20'. It is driven by fire considerations. Chairman Zekas said in Florence Township, considering the lot sizes, a variance would be needed for just about everything.

Solicitor Frank said the only issue was a one half of one percent impervious lot coverage variance. If the arbor was 54 sq. ft. smaller the variance would not be required. Chairman Zekas said the professionals have concluded that the application may be better suited to be an impervious coverage variance for an accessory structure. The review of the ordinances doesn't show any minimum distance between an accessory structure and the primary structure. There may be options to reduce the size, but that would require the applicant to go back and talk to her solar company. He said it was up to the applicant to decide how she would like to proceed. She said she would like to continue this evening.

It was the Motion of Lutz, seconded by Patel to open the meeting to the public regarding Application ZB#2016-08. Seeing no one wishing to be heard, it was the Motion of Lutz, seconded by Patel to close the public hearing. All ayes.

Chairman Zekas asked if the professionals had any comments. Engineer Banff said he wanted to note that at one point there was an existing swimming pool on the property that was larger than what is now being added. At one point the coverage of the lot did exceed the 25% coverage and it has come down. The applicant said the pool was there when she bought the house and it was taken down about five years ago. Chairman Zekas asked if she was planning to put another one up. Ms. Lung said she did not intend to put another pool up.

At this time the applicant asked for a recess to contact the solar company about making the arbor smaller to eliminate the need for a variance. The board called for a recess.

Chairman Zekas announced that the meeting was back in session. He asked the applicant if there was any new information. Ms. Lung said she spoke to her husband and they decided to proceed with the variance.

Solicitor Frank said during the recess he confirmed with the applicant and she is quite confident this is a detached structure. There was confusion with the drawing that was submitted to the Zoning Officer and Construction Office as to whether it was attached or detached. They interpreted it as being attached so that was why there was a variance application and denial. That was the initial source of the confusion.

Chairman Zekas said the Board has the applicant's request for a variance for impervious coverage. The proposed coverage is 25.5%. This is a half percent over the allowable 25%.

It was the Motion of Patel, seconded by Buddenbaum to approve the impervious lot coverage.

Upon roll call, the Board voted as followed:

YEAS: Bott, Buddenbaum, Cartier, Lutz, Patel, Sovak, Zekas

NOES: None

ABSENT: Mattis

RESOLUTIONS

- A. **Resolution ZB-2016-12 granting the dismissal of Application ZB#2015-15 for Matthew Everett. Applicant was requesting a Use Variance to allow legalization and continuation of a non-conforming commercial use (roadside mechanic business) as well as the construction of an approximately 30' X '50' X 16' pole barn to house both personal vehicles and equipment associated with the mechanic business on property located at 2030 Bustleton Road, Florence Township. Block 170, Lot 3.04.**

It was the Motion of Lutz, seconded by Cartier to approve Resolution ZB-2016-12.

Member Drangula asked what dismissing without prejudice meant. Solicitor Frank said when the Board votes on something it becomes a decided thing. When the Board decided tonight that the variance for coverage could be granted, that was decided. If the Board would have decided to deny it, that would also have been a decided thing. Once something is decided, it is generally frowned upon in the courts and before the boards, for someone to come back and ask for the same thing over and over again. The decision was made. When an application is dismissed there is always the option to dismiss with or without prejudice. If something is dismissed with prejudice, it is because there was a significant aspect of it was decided, such that it should not come back to the Board in the same form. An example is the Planning Board heard and decided a subdivision. Between the vote to approve it and the drafting of the approval resolution, the applicant said he didn't want to do what was approved because he didn't like the conditions. He said he didn't want the Board to pass the resolution of approval. The Planning Board dismissed it with prejudice because they didn't want someone to come back with the

same proposal looking for easier conditions. In this case, there wasn't anything factually decided. It wasn't determined if the applicant was entitled to or not entitled to the variances her requested. Since no decision was made, it's appropriate to dismiss without prejudice. All decisions the Board makes run with the land.

Upon roll call, the Board voted as follows:

YEAS: Bott, Buddenbaum, Cartier, Lutz, Patel, Sovak, Zekas
NOES: None
ABSENT: Mattis

- B. Resolution ZB#2016-13 continuing the application of Francisca Santiago. Applicant is requesting a Use Variance to legalize and existing apartment on the second floor of the residence which will include separate cooking, bathroom and sleeping rooms located at 320 West Fifth Street, Florence. Block 40, Lot 5.**

It was the Motion of Patel, seconded by Lutz to approve Resolution ZB#2106-13.

Upon roll call, the Board voted as follows:

YEAS: Bott, Buddenbaum, Cartier, Lutz, Patel, Sovak, Zekas
NOES: None
ABSENT: Mattis

MINUTES

Member Lutz said some questions and statements were attributed to him in the minutes of the Regular meeting of June 2, 2016 that does not believe he made. He would like corrections to be made and the minutes resubmitted. Chairman Zekas said the minutes would be held for the next meeting. All ayes.

CORRESPONDENCE

- A. Letter to David Frank, Esq. from Patrick McAndrew regarding the reopening of the application for 111 Norman Avenue.**

Solicitor Frank said he would like to discuss the issue in Closed Session. A resolution was prepared for the Closed Session.

It was the Motion of Patel, seconded by Lutz to approve Resolution ZB#2016-14 to enter into closed session.

Upon roll call, the Board voted as follows:

YEAS: Bott, Buddenbaum, Cartier, Lutz, Patel, Sovak, Zekas
NOES: None
ABSENT: Mattis

Solicitor Frank said before the Board went into Closed Session he wanted it noted for the record that this was specifically for attorney/client matters. Minutes of the meeting would be made available to the public when the matter is discussed and it is no longer sensitive in nature.

At 9:25 pm the Board entered into a Closed Session. At 10:01 pm it was the Motion of Patel, seconded by Buddenbaum to return to Open Session. All ayes.

Chairman Zekas said based on the discussion it would be appropriate to ask for a Motion to rehear the 111 Norman Avenue application.

It was the Motion of Bott, seconded by Patel to rehear the 111 Norman Avenue.

Member Sovak asked if the Board could request feedback from the applicant prior to them appearing. Solicitor Frank said if there were any changes to the proposal it would be provided prior to the hearing. Chairman Zekas said based on the letter that was received he thought it would be sometime in September or October. Voice vote, all ayes.

Chairman Zekas said he trusted Solicitor Frank would communicate the information to the applicant. Solicitor Frank said he would relay the decision.

OTHER BUSINESS

Member Bott said his term is up this year. He would like to be reappointed to the Board but that would be his last time. He said he'll be 86 then. He has enjoyed serving but he wanted to let the Board know that if he is reappointed it would be his last term.

Motion of Patel, seconded by Cartier to adjourn the meeting at 10:05 p.m. Motion unanimously approved by all members present.

Larry Lutz, Secretary

/ak