

Florence, New Jersey 08518-2323  
June 1, 2017

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:

Joseph Cartier	Anthony Drangula
Larry Lutz	Anant Patel
Lou Sovak	B. Michael Zekas
Margo Mattis	Dennis Puccio

Absent: Brett Buddenbaum

Also Present: Solicitor David Frank  
Engineer Andrew Banff

Excused: Planner Barbara Fegley

#### APPLICATIONS

##### **A. Application ZB#2017-06 for Randy Wooden for Bulk Variance for impervious Surface coverage to construct an inground pool on property located at 242 Leffler Circle, Florence. Block 165.04, Lot 39.**

Mr. Wooden was sworn in by Solicitor Frank. Chairman Zekas asked him to provide an overview of his proposed construction and why a variance is required. Mr. Wooden said he would like to install an in-ground pool in the back yard. He needs a variance because the impervious coverage would be over the allowable 25%. It would actually be 31%. Chairman Zekas asked what the dimensions of the pool were. Mr. Wooden said it was about 24' X 48'. Chairman Zekas asked if there was a concrete walkway around the pool. Mr. Wooden said there was, it is about 400 square feet around the perimeter. Chairman Zekas asked if the pool was proposed to be 14' from the side yard and 20' from the rear yard. He didn't think a variance was required for that, there was only one required for impervious coverage. Engineer Banff confirmed the applicant only needed a variance for impervious coverage. Chairman Zekas asked if there was any other construction planned for the property. He asked if the concrete landing and wooden deck were existing. Mr. Wooden said they were. Chairman Zekas asked if on the drawing the pool equipment was shown on the outside of the fence. Mr. Wooden said that was correct. He asked if that was accounted

for in the impervious coverage. Engineer Banff said the application has accounted for the existing impervious coverage and also the proposed coverage. Chairman Zekas said the application seemed pretty straight forward. He asked if there were questions from any of the board members. Member Drangula asked about an antenna that was in the front yard. Engineer Banff said the application didn't include the antenna, it was something he noticed when he drove by. It would be an existing condition. Chairman Zekas said it wouldn't add to the coverage, it is just something that is there.

Chairman Zekas asked if there were any other pools in the area and if they were similarly sized. Mr. Wooden said there are. There is one three doors down and there are two on the opposite side of the street at the entrance of the development. Member Drangula asked about the drainage and if there would be any problem for the neighbors. Mr. Wooden said the property would be graded to prevent any drainage to other's property. Drainage hasn't been as issue.

Chairman Zekas asked if the applicant had considered putting a walkway to the pool from the rear deck. Mr. Wooden said not at this point. He might possibly put pavers to the pool. Chairman Zekas said he mentioned it so if the applicant was considering it, it could be added this evening. Pavers are not included in impervious coverage so that could be done at any point but if he was considering concrete now would be the time to do it.

Engineer Banff said that while reviewing the application he computed the impervious coverage to be about 26% proposed and the applicant is asking for 31%. He suggested providing approval for the 31%. Chairman Zekas said it is still a relatively small increase over the 25% that is allowed. Solicitor Frank said to clarify, the applicant has requested 31% based upon his calculations. Engineer Banff went over the submitted calculations and determined the application would only require 26%, but he suggested approving what was requested. Engineer Banff concurred. Chairman Zekas asked the applicant how he arrived at 31%. Mr. Wooden said it was provided by the pool company. Member Patel asked if there were any changes since the house was built. Mr. Wooden said there was nothing done.

Solicitor Frank suggested using what was requested and he would note the discrepancy.

It was the Motion of Lutz, seconded Cartier to open the meeting to the public. 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 Engineer Banff if there was anything in his report that was not addressed. Engineer Banff said the fencing on the property would need to be code compliant and the plot plan would be evaluated by the Township Engineer for any drainage issues.

Solicitor Frank said this was a C2 detriments and benefits analysis.

It was the Motion of Mattis, seconded by Lutz to approve Application ZB#2017-06.

Upon roll call, the Board voted as follows:

AYES: Cartier, Drangula, Lutz, Patel, Sovak, Mattis, Zekas

NOES: None

ABSENT: Buddenbaum

Motion carried.

**B. Application ZB#2017-07 for John Herbert for Bulk Variance to legalize several structures that were installed without prior municipal approval and for impervious surface coverage and side yard setback on property located at 925 Schisler Drive, Florence. Block 155.05, Lot 23.**

Mr. Herbert was sworn in by Solicitor Frank. Mr. Herbert said he brought photos. He explained that the work was already done and he was not aware that what he did required permission or approvals or permits. Everything has already been done. Solicitor Frank entered the photos as exhibits A-1 through A-11, a series of photos of the subject properties. Solicitor Frank said before the photos were reviewed, he believed Engineer Banff had some completeness matters to review with the applicant.

Chairman Zekas asked Mr. Herbert if he received a copy of the engineer's letter regarding completeness and if it would be acceptable to review the letter now. Mr. Herbert concurred. Engineer Banff said the impervious coverage amount was based on a survey from 2001. Many of the improvements were drawn on it. He wasn't able to get a clear understanding of what is actually installed. It is hard to calculate the amount of impervious surface. It would be better to have a survey to accurately show what currently exists. In addition, there should be a topography survey to see if there are any drainage issues. It would show how the water runs off the property.

Mr. Herbert said he might be able to shed some light on a couple of the concerns. Chairman Zekas said he noticed the request for coverage was for 59%. The engineer calculated as a best guess around 71%. That is quite a difference. Engineer Banff said existing coverage would have been about 51% at the time of the survey. Since then until today, impervious surfaces have been added, including sheds, pavilions and various things. He doesn't know what is currently at the site.

Mr. Herbert said there was an existing shed that was on the survey that he erased from the survey because he took it down. It was 3' off the fence line and was 16' X 10'. It was there when he purchased the property. He put up a Rubbermaid shed and he wasn't aware of all of the requirements.

Chairman Zekas said he thinks the pictures will be helpful but he doesn't know that it is going to provide all the information needed regarding dimensions, the exact coverage and other information.

Mr. Herbert said he would be able to talk about the pictures and he also wanted to talk about how he got to this point. When he first moved in the house, the driveway, sidewalks and wooden deck on the house were existing. There was also existing concrete around the pool.

Beyond the concrete surrounding the pool there were large round rocks. The pool was graded on such a slope and there were so many rocks no one could really walk around the yard. It was wasted space. The first spring at the house he added a small section of pavers to walk out to the pool. At that time the ground level was brought up to the pool and it corrected the pitch. Everything was properly pitched by a landscaper. It turned out so well that the next fall he added another section of pavers. It was beautiful and made it possible for him and his family to enjoy the yard. That wasn't possible previously. Over the next few years he continued to add pavers around the pool. It has been an on-going project, it wasn't something he did all at once.

He then consulted with his family to pick out the pavilion and fire pits. It was very expensive to install the fireplace and pavilion. There weren't any trees in the yard. When the family entertains or the kids have friends over there is no shade in the yard. It is hot in the yard in the summer. The pavilion adds protection from the sun. The house is a bi-level. The basement is shallow. There has never been any water in the basement. The neighbor's garage is closer to his property and the basement is on the other side of the house. The other neighbor's basement is right against his property and there has never been any problem with run off or with water. When the notifications were sent, his neighbors offered to attend the meeting to say they didn't object. Solicitor Frank said Mr. Herbert saying what the neighbors told him is hearsay.

Mr. Herbert said there is a cemetery behind him. The yard is pitched perfectly and the water runs off and there is no puddling. None of the neighbors have complained about water and there is no water in his basement. There is a sump pump in the basement so at one time there must have been a water problem.

The previous owners of the house had dogs. The yard was dirt at all different levels. The dogs had torn up the yard. Once it was improved with the pavers it brought the yard up to the proper level and made it look much better.

There are two gutters on one side of his house that come down to his closest neighbor's house. There has never been a problem. He noted in exhibit A-1 the gutters. The water comes off the house and runs straight down the driveway. He said he had never even heard of the term impervious coverage until this situation arose. If he would have known he would have gone through the right channels. He spent a large amount of money on the back yard upgrades. It adds a nice atmosphere for the family. It is almost like another living room. He and his family spend a lot of time there. It is very private because of the cemetery and one of his neighbors also has a large pool with a section of pavers. It is a nice area and a nice setting.

Mr. Herbert said his understanding was that there was a problem with water run-off and the percentage of coverage. He said whatever number is determined, he realizes it will be over what he is allowed. He feels it should be allowed because it is an upgrade to the house and an upgrade to the community and his family's quality of life. There are no water problems. There is no puddling anywhere at all.

When he bought the property he was told he needed to install a fence. When he applied for the permit for the fence it was determined that the existing chain link fence was on his property so the new privacy fence could be put directly against the old fence.

Member Patel asked if the calculation of 71% coverage included the pavers. Engineer Banff said in the application there was no way to distinguish between pavers and concrete surfaces. The calculation includes everything. Mr. Herbert said the person who installed the pavers told him he didn't need a permit for the pavers because it is not concrete. There is sand and the water runs through. Solicitor Frank said the township has a peculiar ordinance. It says that pavers are not typically considered impervious surface. It may be the case that some of the pavers, depending on how they were installed, may not count toward impervious surface. He doesn't believe a construction permit is required to install them. The engineer can't distinguish the different surfaces so it is hard for the board to know for sure what variance relief is required. There are additional structures and the impervious coverage is already over what is allowed. Anything that is in fact impervious is going to add to it.

Chairman Zekas explained if there is area of pavers that is covered by a roof or other structure it becomes impervious. Solicitor Frank said he appreciated that Mr. Herbert was saying there does not appear to be any run off conditions. The engineer is asking that a surveyor provide some topographical information. There will need to be some variances for some of the structures that were built. The board needs to be assured that there aren't any problems being created by the way a site is used. It could cause problems for an adjoining property. The board will need to weigh if they need that information to properly make a decision on the application. If it does, Mr. Herbert would need to get it done and bring it back to the board.

Chairman Zekas said he doesn't know that he has ever dealt with a property with as much coverage as this applicant's property seems to have. Solicitor Frank said even if pavers won't count for impervious surface, for purposes of the ordinance analysis there is still a genuine concern about the impact of what is essentially wall to wall pavers. There are also some other additional impervious surface variances needed regardless of how the pavers are classified.

Mr. Herbert asked if someone could come and look when it is raining. He understands the number is high. If there was a problem with water he would understand the concern. Solicitor Frank said there is the practical approach, which is to go look at it during a rain storm. Then there is the way that typically things are analyzed. That is through the creation of a document, the topographic survey, that shows how it is draining. That way everyone can look at it together and the engineer can review it. That would create a record of what is there. That is the best way for the board to address this kind of problem.

Chairman Zekas said without that kind of report the board would have to ask a lot of questions to get an idea of what is really going on. He looked at the exhibits and saw gutters on the rear of the house and he can't really tell where they go. Mr. Herbert said they come off the top roof onto the second roof and then across the porch to the front. The water goes to the driveway and into the street. Solicitor Frank said the board needs to be assured that the

neighbors are not affected. The survey would include parts of some of the adjoining properties.

Engineer Banff said right now there might not be a problem but that doesn't mean that something won't develop later at the site. The survey would show if there was potential for problems later by looking at how water drains. Mr. Herbert said the pavers have been there for a while. They have not sunken or moved.

Chairman Zekas asked for input from the board members based on what was discussed. Member Cartier said he would like to see the survey to see how the run off goes from the yard. Member Sovak said he would like to see an accurate calculation of the coverage. Member Drangula asked if the board could still discuss some other issues even if the applicant is asked to provide more information. Solicitor Frank said that would be up to the Board Chair. The bulk of the variances being requested are impervious lot coverage variances. There are a few side yard setbacks associated with the pavilion. It is up to the board what they would like to do. Chairman Zekas said without having a good picture of coverage he doesn't know how far to continue.

Member Drangula said he didn't know if Mr. Herbert had information for any of the other items that were in the engineer's report. Mr. Herbert said he does not because he just received the report in the mail today. Member Drangula said there were about 11 questions to be addressed. Mr. Herbert said he would be willing to review them since he was here. Chairman Zekas said it might be helpful to him since he just received the letter today.

Solicitor Frank said question three dealt with a 10' wide telephone easement. He asked if Mr. Herbert had a title search done when he purchased the home. Mr. Herbert said he did. Solicitor Frank requested Mr. Herbert send him a copy of the title search. He would be looking for the terms of easement. The question is if the easement allows Mr. Herbert to build on top of it, because he has. Engineer Banff said the fire pit is in the easement and some of the pavers are in the easement. Mr. Herbert said he was not aware of that. The easement doesn't directly impinge upon the variances that are being requested as the direct business of the board but it would be good for everyone to know what the terms of the easement are.

Solicitor Frank said the next question referred to the fire pits. These most likely would require some sort of building permit.

Engineer Banff said in his letter, number 5 asked if the fireplace was physically attached to the pavilion. That would be a building code issue. The garden shed does appear to be in compliance with the ordinances in regard to size and location. There was discussion earlier about the impervious surfaces. He said he had calculated it to be all impervious but that could change once he knows how much is pavers. That would need to be distinguished on some kind of plan provided that was prepared for a surveyor.

Engineer Banff said in his letter he asked if there were dry wells or other infiltration structures on the site. During the discussion this evening he learned there was not. There is a

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sump pump. The applicant said it drains to the side. Engineer Banff said all the structures that were installed would require building permits to make everything legally compliant.

Solicitor Frank said the biggest issue is the survey. Engineer Banff said that was correct. Regarding the pavilion the maximum size of the structure can be 250 sq. ft. and this one is 300 sq. ft.

Member Drangula asked if the required permits were pulled to install the privacy fence. Mr. Herbert said they were and he was told by the inspector he was able to install the fence inside the chain link fence.

Chairman Zekas said he thought everyone was in agreement that the next step was to get the topographical survey done.

It was the Motion of Drangula, seconded by Cartier to open the meeting to the public regarding Application ZB#2017-07. Seeing no one wishing to be heard, it was the Motion of Patel, seconded by Cartier to close the public hearing. All ayes.

Chairman Zekas told the applicant this would be the time, if he wanted to, to request the hearing be continued until the time when he could provide the topographical survey with the impervious coverage information.

Solicitor Frank suggested the application be adjourned without additional notice required. He asked Mr. Herbert if he would like for it to be one month or two months. Chairman Zekas suggested two months to the August meeting. Mr. Herbert agreed. Solicitor Frank said the adjournment would be subject to the applicant agreeing to the extension of time for decision by the board consistent with the two month period that was granted. Mr. Herbert agreed. Chairman Zekas said there would be no requirement for him to re-advertise or re-notice.

It was the Motion of Lutz, seconded by Drangula to adjourn Application ZB#2017-07 to the August 7, 2017 meeting of the board.

Upon roll call, the Board voted as follows:

AYES: Cartier, Drangula, Lutz, Patel, Sovak, Mattis, Zekas

NOES: None

ABSENT: Buddenbaum

Motion carried.

Solicitor Frank said he saw on the agenda there was a resolution memorializing the dismissal of the application from Salt & Light. Solicitor Frank said to his knowledge that action has not been taken yet by the board. The board has not actually voted to dismiss that application. The resolution he prepared suggests that the application would be dismissed with prejudice. That is something the board rarely does. Usually an application is dismissed without prejudice because it hasn't been decided on its merits. In this case that was done last July and the board denied it. In this instance it is appropriate to dismiss with prejudice. The

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written resolution he prepared is phrased in that way. He suggested the board dismiss with prejudice the application of Salt & Light requesting the reconsideration of their application.

It was the Motion of Patel, seconded by Lutz to dismiss ZB Application#2016-05, a request for reconsideration of a prior denial. All eyes. Motion carried.

Chairman Zekas said the resolutions would be taken out of order with the Salt & Light resolution leading.

## RESOLUTIONS

**A. Resolution ZB-2017-11 Dismissal of request for reconsideration of Salt & Light Company's application ZB #2016-05 for Use Variance and Bulk Variance to convert a previously approved 4-unit condo into an 8 one bedroom affordable units on property located at 111 Norman Avenue, Roebling. Block 118, Lot 20.**

It was the Motion of Cartier, seconded by Lutz to approve Resolution ZB-2017-11.

Upon roll call, the Board voted as follows:

AYES: Cartier, Drangula, Lutz, Patel, Sovak, Mattis, Zekas

NOES: None

ABSENT: Buddenbaum

**B. Resolution ZB-2017-10 granting postponement from the April 3, 2017 meeting to the May 1, 2017 meeting and approval at the May 1, 2017 meeting of Application ZB#2017-03 for Nathan and Joelynn Tompkins for Bulk Variance for front setback and impervious surface coverage for an in-ground pool on property located at 301 Pigott Drive, Florence. Block 156.09, Lot 9.**

It was the Motion of Lutz, seconded by Patel to approve Resolution ZB-2017-10.

Upon roll call, the Board voted as follows:

AYES: Drangula, Lutz, Patel, Sovak, Mattis, Zekas

NOES: None

ABSENT: Buddenbaum

**C. Resolution ZB-2017-12 Approval of application ZB# 2017-04 for Michael Potpinka for Bulk Variance for impervious surface coverage for a partial above-ground pool, deck and shed on property located at 333 West Fourth Street, Florence. Block 38, Lots 7.01 & 13.**

It was the Motion of Lutz, seconded by Patel to approve Resolution ZB-2017-12.



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Upon roll call, the Board voted as follows:

AYES: Drangula, Lutz, Patel, Sovak, Mattis, Zekas

NOES: None

ABSENT: Buddenbaum

**D. Resolution ZB-2017-13 Approval of application ZB#2017-05 for Devon Graf, Registered Agent and Attorney for Miraj Properties, LLC, for Use Variance to expand a non-conforming residential use of four apartments (on first and second floor) to four larger apartments on first, second and third floor of the existing building on property located at 18/20 West Front Street, Florence. Block 48, Lot 7.**

It was the Motion of Drangula, seconded by Lutz to approve Resolution ZB-2017-13.

Upon roll call, the Board voted as follows:

AYES: Lutz, Patel, Sovak, Mattis, Zekas

NOES: None

ABSENT: Buddenbaum

MINUTES

It was the Motion of Lutz, seconded by Patel to approve the minutes of the Regular Meeting of May 1, 2017. All ayes.

CORRESPONDENCE

There was no correspondence.

OTHER BUSINESS

Solicitor Frank said he doesn't know if the board members have been following the news lately, but the Bernards Township Planning Board is paying \$3.25 million in damages to a mosque that it denied an approval for over years of hearings. The basis for the proposed denial was that even though houses of worship were a permitted use in the zone there is a standard for the number of parking spaces per-seat in a church but mosques don't really have seats. They use prayer mats on the floor. The planner suggested that because of the nature of after work worship at the mosque, they needed significantly more parking than would be required of a house of worship with seats. On the basis that they weren't providing required parking, even though they met the standard in the ordinance, the application was denied. The applicant sued in federal court and won and was awarded damages. The federal claims were largely statutory and essentially said barriers could not be put in the way of people exercising their religion.

He said the board always needs to be careful when it deals with any religious institution because that federal law lurks in the background. If the township does not treat everyone in

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those circumstances very carefully it could be a problem. Of course put the applicant through their proofs and have them demonstrate that they comply with ordinance standards or that they meet the standards that are necessary for variances from ordinance standards. If they have done that, the board would need to move on and give them the approval or it could be sued and the town would have to pay a lot of money in damages. That is the lesson of that case.

He remembered some of the applications that Florence has had in the past and he congratulated the board for how they dealt with them; the board did their job very well.

#### PUBLIC COMMENT

There was no public present.

#### ADJOURNMENT

It was the Motion of Lutz, seconded by Cartier to adjourn the meeting at 8:34 p.m. Motion unanimously approved by all members present.

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Larry Lutz, Secretary

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