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Florence, New Jersey 08518-2323  
February 23, 2010

The Regular meeting of the Florence Township Zoning Board of Adjustment was held on the above date at the Municipal Complex, 711 Broad Street, Florence, NJ. Chairman Zekas called the meeting to order at 7:34 p.m. followed by a salute to the flag.

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

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

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

ABSENT: None

ALSO PRESENT: Solicitor David Frank  
Engineer Dante Guzzi  
Planner George Stevenson (substitute for Bob Perry)

#### OLD BUSINESS

There was no Old Business to be discussed at this time.

#### NEW BUSINESS

Chairman Zekas called for Application ZB#2010-02 for T-Mobile Northeast, LLC. Applicant is requesting a use variance; bulk variance and minor site plan approval to permit the co-location of 9 telecommunications antennae on an existing 120' monopole on property located at 1496 Hornberger Avenue, Roebling, NJ. Block 125, Lots 22.02, 24 & 25.

Attorney Dolores Roberts appearing on behalf of the applicant, T-Mobile stated that the application was for minor site plan approval as well as use variance, height variance and bulk variances to permit the co-location of 9 telecommunication antennae at a centerline height of approximately 85' on an existing 116.7' monopole. The telecommunication facility is proposed to be located on the property that is designated as Block 125, Lot 22.02 on the Florence Township tax maps. The property is located in the NC Neighborhood Commercial Zoning District. Also proposed is the installation of related equipment cabinets at the base of the existing monopole.

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Attorney Roberts said that telecommunications facilities are not permitted uses in the NC zone therefore T-Mobile is seeking the use variance. In addition there are several existing conditions of the property including lack of street frontage providing access to the property, front yard setback and the height of the tower that do not conform to the ordinance requirements. In addition to this the applicant is also seeking side yard setback variance.

Solicitor Frank stated that the Board would like to start by addressing the completeness issues before opening the public hearing.

Engineer Guzzi referred to the requested submission waivers (Items A through L) in his review letter dated February 19, 2010.

Item A for an Environmental Impact Statement. There is an increase in the size of the compound as proposed to accommodate the equipment, although the tower itself isn't going to be modified. An abbreviated statement should be put on the record that there would be no impact.

Item B for Preliminary Delineation of Wetlands and Item C for the Preliminary Delineation of Stream Encroachment. The applicant should verify that there are no wetlands or streams on the site.

Item D for Contours at two-foot intervals. He said that based on the limited scope of the application a waiver would be supported.

Item E is the structures and wooded areas. Engineer Guzzi suggested that since it is proposed that the size of the compound be increased it is suggested that all trees in the area of the proposed expansion be added to the plans.

Item F requiring the names of owners within 200'. Engineer Guzzi recommended that this information be added to the plan.

Items G regarding the indication of drainage conditions, H for the location of existing utilities, I for the location of and extent of all easements, J for the location of all storm drains, and K the requirement for test borings. Engineer Guzzi stated that based on the limited scope of the project he would support the granting of these waivers.

Item L is the survey of the property by a licensed surveyor and this has been satisfied.

Attorney Roberts said that she thought that Item E for structures and wooded areas had been satisfied. Engineer Guzzi checked and stated that it had.

Motion of Taylor, seconded by Groze to grant waivers A through K except for E and to deem the application complete. Motion unanimously approved by all members present.

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Glenn Villaneuva stated that he was the radio frequency engineer for T-Mobile, 400 Street Road, Bensalem, PA 19020. Mr. Villaneuva stated that he had an advanced communications degree. He stated that he had 15 years experience in communications engineering. The Board accepted Mr. Villaneuva as an expert.

Mr. Villaneuva stated that wireless communication works by transmitting and receiving radio frequency signal from the air. Attorney Roberts submitted exhibit A1 a radio-frequency coverage map, A2 T-Mobile coverage of the proposed site, A3 T-Mobile existing coverage with other sites shown. A4 illustrates T-Mobile coverage with the other sites shown and the proposed site shown.

Mr. Villaneuva stated that the purpose of the antennae is to transmit radio frequency signals. He stated that the signal is impacted by topography and density of objects surrounding the facility. T-Mobile is an FCC licensed wireless telecommunication carrier.

Attorney Roberts said that FCC licensed telecommunications carriers are mandated by the FCC to provide reliable wireless communication service to the area.

Mr. Villaneuva stated that exhibit A1 shows T-Mobile existing coverage. The pink dot on the exhibit shows the location of the proposed site. The blue dots show the locations of existing T-Mobile sites. The yellow colored area shows areas of reliable in-vehicle coverage. The green color shows areas of reliable in-building coverage.

Mr. Villaneuva pointed out on the exhibit where all the surrounding T-Mobile antennas are located. The area in white on the exhibit shows areas of unreliable coverage. Exhibit A2 shows that installing the antennas at the proposed site will eliminate the areas of unreliable coverage in the Florence Township area. Without the addition of these antennas there is the possibility of dropped/missed calls in this area. He stated that the antennas were proposed to be located at 85'. This is the minimum height necessary to fill in the gap in coverage.

Member Montgomery asked for an explanation of where the gap in coverage was located. Mr. Villaneuva said that the gap in coverage runs along Sixth Avenue, a portion of Hornberger Avenue, along Tenth Avenue, Maple Avenue, Sullivan Court and Fifth Street all in the Roebling section of the township. This area is roughly .54 square miles.

Chairman Zekas asked about the relationship between the height of the equipment and the coverage area. Mr. Villaneuva answered that the higher the antenna is located the better the coverage. The ground elevation and clutter in the area also affect the signal.

Member Crowell asked if the software used to identify the gap in coverage was proprietary? Mr. Villaneuva stated that this was standard industry software, not proprietary to T-Mobile.

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Attorney Roberts submitted exhibit A5 the report of Kenneth R. Foster. Mr. Villaneuva stated that Dr. Kenneth Foster is a well-known professor at the University of Pennsylvania and consultant regarding radio-frequency electromagnetic field safety issues. He said that Mr. Foster's report states that the maximum exposure at any location of public access from the T-Mobile based station would be far below the relevant FCC exposure limits. Based on this there would be no detrimental impact on neighboring properties or emergency services.

Solicitor Frank stated that this was an expert opinion on this subject. He asked Mr. Villaneuva if within the scope of his personal knowledge are the statements contained in the report that this proposal would not exceed the FCC standards accurate? Mr. Villaneuva said that the statements were accurate.

Member Taylor said that we are looking at a distance of half a mile. She asked if the technology would advance to the stage where there would be less antennas required in an area rather than more. Mr. Villaneuva stated that the opposite was true. He said that as technology grows the end users are requiring more efficient coverage. The reliability of service also depends on the frequency that each carrier uses. For example, Verizon carries 700 megahertz. The lower the frequency the longer the distance that it covers. T-Mobile uses a 1900 megahertz band. Frequencies are assigned to the carriers by the FCC the higher the frequency the smaller the range of coverage. T-Mobile is also very susceptible to degradation from the clutter and the buildings so unfortunately the sites are getting closer and closer to one another as technology improves. Cell phones now are used as a browser and include, voice, data, video and camera. People are demanding in-building coverage as one of every five homes in the US is abandoning their landlines for cell phones.

David Balma, CMX Engineering, representing the applicant was sworn in by Solicitor Frank. Mr. Balma stated that he had a bachelor's of science from Virginia Tech University in biological systems engineering, a master's of science in civil engineering from Washington State University. He stated that he had 10 years experience in working in the wireless industry. He stated that he was a licensed engineer in the state of New Jersey and has been accepted as an expert by many Boards in the state.

Mr. Balma was accepted by the Board as an expert in the field of civil engineering.

Mr. Balma submitted exhibit A6, which was titled as sheet Z1, dated February 11, 2010 showing the overall site. The site is accessed from Hornberger Avenue. Sheet S-1 dated February 11, 2010 shows a closer view of the site. This was marked as exhibit A7.

Mr. Balma stated that the compound was a chain link fenced area measuring 20' x 20'. In order to accommodate their equipment this area will need to be expanded. The proposal is to match the existing fencing and extend the compound 17' to the east. So there will be a 17' x 21' extension to the area of the existing compound. 3 white pine trees will be removed to accommodate this, but 4 white pines 6' tall will be added for screening. In the extension of the compound they are proposing to install a 10' x 13'

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concrete slab on which they will put 4 equipment cabinets. The cabinets are approximately 4' 3" wide, 2 ½ feet deep and 5' tall. They are also proposing to add the Mesa cabinet, which will allow them to increase the diameter of the data pipe to the site.

Mr. Balma said that the coax cable would be routed from the proposed slab and cabinets onto the equipment bridge and then to the monopole. The cable will then be routed inside the monopole and will come out of the port at the elevation of the antennas. They are proposing 9 antennas total at this monopole – 3 per sector. So there will be 3 antennas for each sector. Each sector will face a different direction. These will be mounted on T-arm mounts. The antennas are approximately 4' x 1' in dimension. There will be nominal impact to the area as the plan is to install the antennas on an existing pole. The site is unmanned and will require no additional sewer service or water. The only utilities are electric and phone and they are already present on site. The additional drainage is negligible from the 10' x 13' slab that is being proposed. They are seeking a variance for an encroachment of the cable bridge by 4" into the side yard setback.

Mr. Balma said that they are proposing two 70 watt lights that will be pointing down. These lights will only be used in emergency situations by the technician if the equipment should break down. The light would be on a manual timer so if it is used it will automatically shut off. The technician will visit the site once per month during daylight hours.

Mr. Balma stated that there was no impact of this expansion on wetlands or open waters and they will meet all of the NJDEP requirements for the site.

Mr. Balma said that the proposed antennas would be located at centerline 85'. The top of the antenna will actually be at 87' 3".

Attorney Roberts asked Mr. Balma if he knew the height of the monopole? Mr. Balma stated that AT&T had originally been approved for a height of 115", but they had a survey crew measure the existing condition and the actual height is 118' 6". The proposed antennas will be installed well below that height but a height variance might be required for the existing condition.

Responding to a question from Attorney Roberts, Mr. Balma stated that 3 white pines would be removed and 4 white pines will be planted in replacement.

Chairman Zekas asked if the structural analysis that was done for the monopole was done by Mr. Balma's office? Mr. Balma stated that AT&T owns the monopole and they only use one firm to conduct the structural analyses of their monopoles. Mr. Balma stated that he did review the analysis.

Member Crowell said that Mr. Balma testified that 3 trees would be removed and replaced with 4 new trees. He asked for the height of the existing trees and the replacement trees. Mr. Balma stated that he thought that the height was 10' – 15' high. The replacement trees would be 6' tall and could grow to about 20' to 25'.

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Member Taylor asked who would be responsible for upkeep of the landscaping. Mr. Balma stated that he was not sure. AT&T leases the tower so it might be them (AT&T) or it could be the responsibility of the owner of the site.

Chairman Zekas asked about the height variance because T-Mobile would be a tenant. Engineer Guzzi stated that the approval for the original monopole was for 115' in height. In subsequent applications there has always been confusion as to how tall the tower is. This application came in and the tower height was listed as greater than 115' so Engineer Guzzi asked the applicant to have the monopole surveyed to determine once and for all how high it was. The pole is actually 116.7' tall. The top of the antenna is 118.6'. This applicant is not constructing the pole and they are mounting their antennas considerably lower than the 115'. Solicitor Frank stated that clearly there is a need to grant a height variance for this existing structure.

Attorney Roberts submitted exhibit A8, which is a redacted but more complete version of the lease agreement. This shows that the lease includes the area of the proposed expansion.

Solicitor Frank asked about the access to the site and the maintenance schedule. Mr. Balma said that the access would remain the same with the internal access road leading from Hornberger Avenue to the site. A technician will visit the site every 4 to 6 weeks. There will be minimal impact on the traffic of the site.

Douglas Cowan was sworn in by Solicitor Frank. Mr. Cowan stated that he has a bachelor's degree in landscape architecture and a master's degree in urban and regional planning. He stated that he was a licensed planner in the state of New Jersey and has approximately 25 years in the planning field and of that approximately 13 years in the telecommunications industry. He stated that he was a member of the American Planning Association and is certified by the American Institute of Certified Planners. Mr. Cowan was accepted as an expert in the field of professional planning.

Mr. Cowan stated that he prepared for this hearing by looking at the application and the drawings that were submitted. He visited the site personally to inspect the conditions around the property and the adjacent properties. The applicant is seeking a use variance because the proposed use is not specifically permitted in the NC Neighborhood Commercial zone nor is it permitted in any zone in Florence Township. The applicant also seeks a height variance and a C variance for a very slight side yard setback variance.

Mr. Cowan stated that the applicant needed to demonstrate both the positive and negative criteria under the Municipal Land Use Law. He said that this application is consistent with the purposes of zoning as they are enumerated in article 40-55d2 which is called the purposes of the act. Some of the purposes are to encourage municipal action to guide the appropriate use of land, secure safety from fire, flood, panic and other natural and man-made disasters, to provide sufficient space in appropriate locations for a variety of land

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uses and promote a desirable visual environment through creative development techniques and good civic design.

Mr. Cowan said that regarding the positive criteria; testimony was given that the applicant has a valid FCC license, which in New Jersey is one of the special reasons for granting a use variance. It shows that the proposed use is consistent with the public good. However, in New Jersey the case law also would have the applicant demonstrate that the site itself is particularly suited for what is being proposed. He stated that there is no question in his mind that the site is very well suited for the proposed facility.

Mr. Cowan said that there is an existing monopole telecommunications structure. By using an existing tall structure like this the applicant is able to avoid having to try to build a new tower somewhere in the same area. The reason that the existing tower was constructed was to support telecommunications systems such as the one that is being proposed tonight. So this is a very suitable site. There are existing utilities and access on the site. There are no wetlands being impacted and the site is adjacent to the River Line corridor.

Mr. Cowan said that with respect to the negative impact he would like to go through the 4 prong Sica balancing test.

The first prong is that the Board must identify the public interest at stake with respect to the application. Testimony was given that the radio frequency engineering has a gap in this area that would be filled if this application were to be approved and implemented. The applicant has a valid FCC license and services like 911 and emergency access are being enhanced by this kind of facility.

The second prong is that the Board should identify any detrimental effect that would ensue from the grant of this variance. Mr. Cowan said that in this case there is no detrimental effect or negative impact. There will be a slight addition to the pole by the addition of a 9 panel antenna array. This would be considered a de minimus impact.

The third prong is that in some situations the Board may reduce the detrimental effect by imposing reasonable conditions on the use. There is no way to make the antennas invisible on the pole. There may be reasonable conditions like coloring or painting the antennas and/or adding some additional landscaping if the Board felt that this would be helpful.

The fourth prong is for the Board to weigh the positive and negative criteria and determine whether on balance the grant of the variance would cause a substantial detriment to the public good. Mr. Cowan stated that in his opinion there is no substantial detriment or even any significant detriment to the public good. He stated that in his opinion this is a net positive benefit from approving and implementing a facility like this.

Mr. Cowan said in conclusion that he believes that this Board can and should approve the use variance and the height variance that has been requested. He stated that in his

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opinion there is no detriment to the zone plan or the master plan if the Board were to approve it.

Attorney Roberts asked about the C variance (setback). Mr. Cowan stated that the constraints that exist on the site and are associated with the existing compound are such that the applicant was not able to avoid the very minor encroachment into the side yard setback of .2'. There would be no detriment to the public if the Board were to grant such a variance.

George Stevenson, Remington & Vernick, was sworn in by Solicitor Frank. Mr. Stevenson is substituting as Board Planner for Bob Perry.

Planner Stevenson referred the Board to the Remington & Vernick letter dated January 15, 2010. He stated that testimony had been given that this application was for co-location of telecommunication antennas on an existing monopole. The applicant is required to demonstrate positive criteria and at the beginning of the testimony the attorney for the applicant stated that the applicant has an FCC license and by virtue of being a licensed FCC facility they've already met positive criteria. They also have to demonstrate that the grant of relief for this facility advances the general welfare of the community.

Planner Stevenson said that the applicant through testimony has shown and with the exhibits has indicated that there is a gap in coverage and that with the placement of the antennas on the existing monopole that the gap of coverage would be closed. The positive criteria have been achieved.

Planner Stevenson said that from a negative criteria standpoint the applicant had to be able to prove that there is no detrimental over the property line impact; that was indicated by the applicant's radio frequency engineer. Also in reviewing the application and looking at the various exhibits there does not appear to be any negative impact that would result from the grant of these variances.

Planner Stevenson stated that there were 3 variances necessary for this application. One for the use itself, one for height and the de minimus C variance for setback. He stated that several of the general comments on page 3 of his letter have been addressed already through testimony.

Planner Stevenson said that under General Comments on page 3 of his report Comment No.1 indicates that the final plan should have a note added to it that Clearwire has received a similar approval and their facilities should be indicated on the plan. Comment 4 requests that the height of the proposed cable bridge be shown on the site plan. Comment 6 requests that a note should be added to the plan that if the carrier abandons or discontinues the use of the facility, within 90 days the structures will be physically removed. Comment 9 requests that a site safety note be added to the plan.

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Attorney Roberts stated that they would comply with these comments as a condition of approval.

Engineer Guzzi referred to his updated report of February 19, 2010 stated that he would skip the items that had already been satisfied or addressed.

Item 4 on page 3 indicated that a variance is required because the site does not abut an improved street. This is a pre-existing condition.

Item 5 regarding the side yard setback – originally the application referenced all 3 lots and there was a question as to the actual setback. The testimony given this evening clarified that the setback is 19.79 feet so the setback variance is required.

Item 6 regarding the tower height, which has now been addressed the monopole 116.7' and the antenna at 118.5'. Engineer Guzzi said that the structural analysis that was provided for this tower was based on 115' tower. He requested that a letter be submitted from GPD confirming that it is still valid for the actual height of the tower.

Item 10 was a similar comment to Planner Stevenson's regarding having the recently approved Clearwire equipment shown on the final plan.

Item 11 regarding the evergreen buffering – 4 white pines have been provided. Engineer Guzzi suggested adding 2 additional white pines along the front of the compound. The applicant had indicated that they did not want to add the additional 2 trees since the compound may need to be extended again.

Item 12 the applicant needs to clarify the different line types shown for the 2 cabinets.

Item 16 future Metro-PCS equipment is identified on the plan. This approval does not apply to that future Metro-PCS equipment. There would have to be a separate application.

Item 17 requests a correction be made to the bulk table.

Item 18 what is the purpose of the Mesa cabinet and will this interfere with the access to the compound? Mr. Balma stated that the Mesa cabinet would keep this area clear. Technicians do not drive into the compound and there will be room to walk in and service the equipment.

Item 19 the Mesa cabinet should be added to the elevation drawing.

Item 20 should be revised to indicate the units for the vertical site elevation accuracy.

Engineer Guzzi said for the record that in respect to the completeness waivers that were granted there was adequate testimony with respect to the environmental impacts based on the applicant's planner's testimony.

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Solicitor Frank stated that the Board is looking at requests for variances for height, use, side yard and setback. He said that he knew that the requested side yard setback variance was de minimus but asked what the adjacent use to this side yard was. Mr. Balma stated that the adjoining use was commercial.

Solicitor Frank said that conditions were discussed regarding plan detail provisions that have been discussed in the course of the meeting. In Engineer Guzzi's letter this would be Item 12 on page 4 regarding line types, items 14, 19, 20, 17. In addition there are some plan detail comments from the Planner's letter of January 15, 2010 that were agreed on the record and the standard conditions for all applications apply. Attorney Roberts stated that they did agree.

Solicitor Frank said that this is the third time in recent memory that we have gone through the use variance proofs for this location. He suggested that in the resolution of approval we recognize that our Master Plan encourages and approves co-location. He suggested that we accept that this use is in this location and in the future we only require site plan review for this site. He stated that the Board has already done that for the Cathy Lane tower.

Member Crowell suggested that we also require a report on structural integrity with each site plan review.

Chairman Zekas opened the meeting to the public. Seeing no one wishing to comment motion was made by Fratinardo, seconded by Groze to close the public portion. Motion unanimously approved by all members present.

Motion of Fratinardo, seconded by Buddenbaum to approve the application for use, height and bulk variance and for minor site plan with the conditions related by Solicitor Frank including the condition to not require use variance approval for future co-location applications.

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 for Nicholas Careyote. Applicant is requesting use variance to permit construction of a 40' x 80' pole barn to support an existing landscaping business on property located at 1032 Potts Mill Road. Block 165.01, Lot 12.01.

Attorney John Gillespie representing the applicant stated that this application was for a use variance and a site plan waiver to allow the construction of a pole barn on property located on Potts Mill Road. The site is a 3.8 acre flag lot. The property is unique as from

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Potts Mill Road you can not see the back of the property where the applicants propose to construct the pole barn.

The applicants have been running a small family landscaping business on the property since 2002. This is a commercial application. Attorney Gillespie referenced a letter from Assistant Administrator/Acting Zoning Officer Thomas Sahol stating that while the township has not received a complaint about the nature of the business, a use variance would be required in order to allow the business to continue on the site and to permit the construction of the pole barn.

Attorney Gillespie stated that in all residential zones in Florence Township you could construct a 250 sq. ft. accessory structure. The proposed pole barn is 3,200 sq. ft., which sounds big, however if you look at the percentage of lot coverage of this pole barn on 3 acres and compare it to a 250 sq. ft. shed in the RC high density zone where the density is 6 units per acre. The percentage would be about 2% for either.

Attorney Gillespie said that he had visited the site and the back yard is very big and is screened across the back and all along the side. The applicants will submit photographs of the property. The flag lot presents the uniqueness of the property and the history of the use for almost 8 years illustrates that the property is suitable for this use even in this zone. The fact that there have been no complaints filed with the township against the use in the past 8 years is the proof that the negative criteria can be met because it doesn't have a negative impact upon the zoning plan or the zoning scheme and there is no substantial detriment to the public good. Otherwise, the township would have heard about this use. Attorney Gillespie stated that he did not bring a planner or an engineer as he feels that those proofs will speak for themselves.

Nicholas J. Careyote, 1032 Potts Mill Road was sworn in by Solicitor Frank. Mr. Careyote stated that he lives at the subject property with his wife Shannon and son Nicholas. They have lived there since May 2002. Mr. Careyote stated that his property was 3.8 acres and he does run the family landscaping business from this property.

Mr. Careyote testified that he does full landscaping, plants trees, installs patios and provides lawn maintenance. He stated that he also uses his landscaping equipment to maintain his neighbors horse farm.

Mr. Careyote stated that he and his wife run the business and have 4 other employees. No products are sold from this site. Customers do not visit the property. The 4 employees come in the morning leave their personal vehicles and pick up the landscaping truck and equipment and then go to the work sites. Mr. Careyote stated that his hours of operation are 8:00 a.m. to 5:00 p.m. weather permitting. On rainy days they may start later and work until sunset. This is a seasonal business that runs from April 1<sup>st</sup> through mid November, plus snow plowing if necessary over the winter months.

Attorney Gillespie submitted photographs to the Board. Mr. Careyote gave descriptions of the photographs. Exhibit B1 is a view looking straight back from the concrete

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driveway onto the stone driveway. He said that he parks his vehicles behind the existing red shed shown in the photo. Mr. Careyote stated that he has planted over 125 trees on the property as screening and to enhance the property. He said that he has planted a variety of white pines, Leyland Cyprus, spruces, Douglas firs as well as other deciduous trees. The white pines grow to approximately 40' to 50' tall with a canopy of 30' wide and they are fast growers.

Mr. Careyote said the exhibit B3 is a view from behind the red shed looking straight back to where the vehicles and trailers are currently parked. Mr. Careyote stated that he had planted the 14' to 16' white pine trees that are to the left of the equipment shown in exhibit B3.

Mr. Careyote stated that exhibit B4 shows the equipment that he uses. There are 5 trailers and 2 trucks. He stated that he also has a mini-excavator and skid steerer but this is not usually on site it is usually at the job site. He said that the large trucks would be housed in the pole barn if the variance were granted.

Mr. Careyote stated that exhibit B2 is a photograph of the back yard. He stated that the edge of the stone lot in the upper right hand corner of the photo is the proposed location for the pole barn. Exhibit B5 shows the view from Potts Mill Road pulling straight into the concrete driveway. Mr. Careyote stated that this driveway was there when he bought the property.

Attorney Gillespie asked the Board to compare the views from B5 and B1 and from Potts Mill Road all that is visible is the red shed. You can't see the majority of the back yard or the proposed location of the pole barn.

Member Montgomery asked which development was shown behind the red shed in exhibit B1. Mr. Careyote stated that this is the Hovnanian development (Crossroads). Attorney Gillespie stated that there are 2 houses shown in exhibit B3 behind the red shed. He said that he ask Mr. Careyote to testify about the expected growth of the trees in the photo to illustrate that in a few years, should the Board deem to grant the application, those houses would be screened from whatever structure was approved. Attorney Gillespie stated that whatever structure the Board approved would be better than leaving the trucks exposed in the parking area.

Member Fratinardo asked for the height of the proposed pole barn. Mr. Careyote stated that the max height would be 25.5'. Attorney Gillespie stated that they would like to amend the application to ask for a height variance as well. The R zone permits 20' height for an accessory structure so the variance would be required.

Attorney Gillespie submitted exhibit B6. Mr. Careyote stated that this was a photograph of a typical pole barn. He stated that the pole barn that he is proposing is 40' x 80' x 25.5' high. There would just be a stone floor and this would be at grade. No change to the grade is proposed.

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Mr. Careyote stated that he would use the barn for maintenance of his equipment, including changing oil and sharpening blades on mowers. No major maintenance would be done in the pole barn. He said that he doesn't change the tires on his vehicles, but sends them out for tire replacement. Mr. Careyote said that the pole barn is large enough to house his 2 machines, personal truck, and small personal trailer. The door of the pole barn will be situated so that you would follow the driveway around and then make a left into the pole barn. There will be no plumbing in the pole barn. There will be inside lighting. No light would be visible from outside of the pole barn.

Attorney Gillespie asked about noise generation. Mr. Careyote stated that the only noise would be generated from the vehicles running. There will be no heat to the pole barn. The purpose of this building is just for storage – to keep the equipment out of the elements.

Solicitor Frank asked what the height of the eave of the proposed building would be? Mr. Careyote stated that he wanted to do a 12' eave. Engineer Guzzi stated that this would create a steep roof. Mr. Careyote said that he wanted to put a storage loft in and the roof trusses are about 11.5'. Solicitor Frank pointed out that the photo of the building in exhibit B6 is does not show the actual size of the proposed building, it is considerably smaller. Mr. Caryote stated that he couldn't find an exact picture of the pole barn that he wants the photo shows a representative pole barn.

Mr. Careyote stated that the steeper pitch roof would allow for a 16' wide loft, 7.5' high the length of the building. He said that he would store grass seed, piping, lawn furniture, etc.

Member Taylor asked if there would be any exterior lighting. Mr. Careyote stated that he might want to install one sensor light on the front exterior and one on the rear exterior of the building for security.

Attorney Gillespie said that in Engineer Guzzi's letter a question was raised regarding soil conservation. Mr. Careyote stated that he had a meeting with the Soil Conservation District. Attorney Gillespie submitted exhibit B7 a letter from the Soil Conservation District indicating that there was no interest in the site. Attorney Gillespie had asked Mr. Careyote to double check to be sure. Mr. Careyote said that he showed the Soil Conservation District the site plan. There was no concern with the existing stone coverage. The only concern was that the building and the new stone coverage did not exceed 5,000 sq. ft. Mr. Careyote testified that the proposal would not exceed 5,000 sq. ft.

Member Crowell asked what the significance of the 5,000 sq. ft. Engineer Guzzi stated that if you disturb an excess of 5,000 sq. ft. then the Burlington County Soil Conservation District has jurisdiction to make sure that you put measures in place so that you don't erode onto other peoples properties. For example, the silt fence that you see during construction.

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Chairman Zekas asked about the appearance of the pole barn. Mr. Careyote stated that the pole barn would not have any windows. There would be a couple of garage doors. The exterior would be tan painted metal siding and green painted metal roof to match the color of the house. Mr. Careyote said that he might want to add a cupola to the roof of the pole barn. Member Fratinardo said that Mr. Careyote would have to state the requested height for cupola now or come back in to another meeting for a variance for the height of the cupola. Mr. Careyote stated that he would withdraw the idea of the cupola.

Attorney Gillespie asked what the height of the existing house was? Mr. Careyote stated that it was 29'.

Mr. Careyote stated that he doesn't have a fertilizer license. Responding to a question from Member Crowell Mr. Careyote stated that he would not be storing any nitrogen, ammonia, pesticides, flammables, explosives, or oxygen. There will be no above ground storage tanks.

Engineer Guzzi asked if there would be any fuel storage at all. Mr. Careyote stated that he would have small gas cans on site.

Member Montgomery referred to exhibit B1. The photo shows some small green trees. He asked if Mr. Careyote planted those trees. Mr. Careyote stated that he had planted those trees about 3 years ago. When he planted these trees they were 10' to 12' tall. Currently they are about 16' tall and they will grow to between 40' and 50' tall. So over time the neighbors at the back of the property will not have the view that they currently have. Attorney Gillespie pointed out that the neighboring house does have 2 large windows facing the Careyote property, but the patio area where the family would sit outside is already screened by the existing trees. Mr. Careyote stated that during the warm seasons the foliage fills in and it is nearly impossible to see that house from his back yard.

Member Taylor asked how this building would be anchored into the ground. Mr. Careyote stated that there would be concrete footers that will hold the poles into the ground.

Member Fratinardo asked how Mr. Careyote intended to prevent oil from seeping into the soil since this is a gravel floor. Mr. Careyote stated that usually he pulls the truck up onto the concrete of the driveway to change the oil and he would continue to do that.

Member Adams said that there are no doors shown at the rear of the building and asked if there would be a rear door? Mr. Careyote stated that there would just be the entry door and said that he doesn't need any doors in the back. Member Adams said that he was concerned with emergency egress. Mr. Careyote stated that he could add a back door if required. Engineer Guzzi stated that there didn't have to be a garage door, but there should be a man door. He stated that the building would have to meet all construction and fire codes.

Engineer Guzzi asked for a clarification as to whether or not oil changes would be done in the barn. Mr. Careyote stated that they would not.

Chairman Zekas opened the hearing to public comment.

Lori Stevenson, 1039 Potts Mill Road, was sworn in by Solicitor Frank. Ms. Stevenson stated that her home was caddy-corner across the street from the applicant's property. She stated that she was testifying against the granting of this application. She said that the Careyote family was well liked in the neighborhood but the purpose of zoning laws was to promote orderly growth in the community and were ruled upon according to municipal law not according to personalities or how well liked the applicant is.

Ms. Stevenson said that the application states "to allow the continuation of an existing commercial landscape business as well as the construction of an approximately 40' x 80' pole barn." She said that this statement concerned her because in 2008 the property was for sale as a residence. There was no mention of this property housing a commercial business. The website for the business does not list the Potts Mill Road address only Florence, NJ and the phone number. Also the phone book does not list an address for this business – only the phone number.

Ms. Stevenson said that there has never been any indication that a business was operating at the residence. There are no signs, no equipment coming and going from the residence and no visible landscape equipment parked on the property. She stated that the website for the business is impressive and indicates that "Untouchable Landscape" is far from being a small operation. They service Burlington and Mercer Counties and surrounding areas in Central New Jersey. She stated that the services advertised on the website include paver driveway, patios, walkways, ponds, excavation, drainage systems, sodding, seeding and much more. The web site claims that there is a crew of 10.

Ms. Stevenson listed her concerns regarding the construction of the barn. She said there are currently 2 hidden driveway signs on both sides of Potts Mill Road. Both signs are a very short distance from the Careyote property and their driveway. The signs face both directions. This portion of the road also has a slight hill. Accidents have previously occurred in this area with one known fatality. She stated that Potts Mill Road is a narrow township rural road with no shoulder or sidewalks. She said that many people walk, stroll with baby carriages, jog or bike along this road. Increased commercial vehicle traffic in this area would be a safety concern. The narrow driveway presents a problem to the traffic on Potts Mill Road as the Careyote driveway only allows for one vehicle to enter or exit the site at a time. The increase in residential developments in the area has caused an increase in the traffic along Potts Mill Road. Ms. Stevenson also listed other questions that she had, but that she admitted had already been answered by the applicant's testimony.

Ms. Stevenson said that she was visiting a neighbor at the Crossroads development behind the subject property and she could see the Careyote house. Solicitor Frank asked Ms. Stevenson if she had observed anything while she was visiting at Crossroads? Ms.

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Stevenson stated that she did not observe trucks coming or going. Everything was quiet. She stated that this is a residential neighborhood. She submitted photographs – exhibits O1 and O2 - photos looking into the driveway showing the “hidden driveway” signs. In each photo Mr. Careyote’s driveway is marked with a red arrow. The photos show views looking up and down Potts Mill Road. She stated that she gets nervous coming out of her driveway because of the amount of pedestrian and vehicular traffic.

Member Crowell stated that he lives in the Mallard Creek development, which is right down the hill from the subject property. He stated that he does use Potts Mill Road daily as he goes to work and he does walk it on the weekends and in the summer bikes on it. Member Crowell said that Ms. Stevenson made a compelling statement. He said that the traffic is increasing but that he knows the subject property and can say personally that he doesn’t think that traffic from the site poses a hazard.

Member Crowell asked Ms. Stevenson to confirm that in the beginning of her testimony she made the statement that she did not see a lot of traffic coming in and out of the property. Ms. Stevenson said that she knows that this is a commercial business because Mr. Careyote has signs on his truck and she stated that she believes that they answer the business phones from home but she has not seen Mr. Careyote taking vehicles in and out where the whole neighborhood would start complaining. She said that in her opinion the site is not operating as a commercial business. It is “under the radar”.

Ms. Stevenson submitted exhibit O3, which shows a real estate listing for the home from 2008, and doesn’t list a commercial use for the site.

Solicitor Frank asked if Ms. Stevenson was asserting that she did not think that this business was presently actively operating from this location? Ms. Stevenson said that she believes that Mr. Careyote currently has his equipment housed elsewhere, but she does think that the phone is being answered at the residence. She said that she thinks that the comings and goings of the equipment is happening from another location and that is why this business is so low key.

Ms. Stevenson submitted exhibit O4 a print-off of the business website. She said that the website indicates that this is a much bigger business. Mr. Careyote reviewed exhibit O4 and stated that it was his website.

Responding to a question from Member Adams, Ms. Stevenson said that she believes that the granting of the variance will cause the business to increase and will generate more traffic. She stated that her property value would plummet if this commercial business were permitted. She said that this business would cause a safety hazard. She stated that the lights from the equipment would shine through her picture windows at night. She is concerned with noise from the back-up equipment.

Chairman Zekas said that the applicant had given testimony as to the equipment that is currently being stored on his property and asked if this has created a problem for Ms. Stevenson with lights or noise? Ms. Stevenson answered that it had not and she stated

that she had no idea that Mr. Careyote was housing this equipment on the property. She stated that she hasn't heard any noise from this equipment. Chairman Zekas asked if the concern was that the business could grow and more vehicles would come to the property? Ms. Stevenson stated that this was very much her concern. She also stated that Mr. Careyote said that he had 4 employees. She stated that the website indicates that there are 10 employees.

Regina Worthy, 250 Leffler Circle, Florence Township was sworn in by Solicitor Frank. She stated that she was trying to determine where the barn would be in relation to her property. She said that she didn't think that it would be a problem, but just wanted information. She stated that she has not heard any noise from her property.

Ms. Worthy looked at exhibit B3 and pointed out the back of her house in the photo. She stated that her house is to the right of the red shed in exhibit B3. Mrs. Worthy stated that she does not see the trucks at all from her property. She said she had been living in her house one year as of last September. The only thing she hears is the mower when Mr. Careyote cuts the neighboring horse farm. She said that she had concerns about the height of the building, but doesn't think it will be a problem for her.

Veronica Stevenson was sworn in by Solicitor Frank. Ms. Stevenson stated that she was the mother of Lori Stevenson so she is often at her daughter's house. She stated that she never sees vehicles going in and out of the site except for the commercial pick up truck. She stated that the Board needs to investigate because the website indicates that there are 5 more employees and many more vehicles than Mr. Careyote has testified to having on his property.

Ms. Stevenson reminded Mr. Careyote that he was under oath and asked him if he was storing vehicles at another location. Mr. Careyote answered that he was not. All of his vehicles are being kept at the Potts Mill site.

Louis Bontya III, 7 Wagon Wheel Drive, Sicklerville, NJ was sworn in by Solicitor Frank. Mr. Bontya stated that applicant Shannon Careyote is his daughter. Mr. Bontya stated that he is a former Florence Township councilman he stated that when he was on council 15 years ago he tried to control housing development along Potts Mill Road because he knew that increased traffic would be a problem. He stated that he babysits for his daughter and from the front porch sees school buses flying down that road during the mornings and afternoon. He stated that this has more of a negative impact than landscaping vehicles exiting the Careyote driveway. Mr. Bontya stated that he has complained to the Township and the School Board about this. This is an issue that has to be addressed by the Township or the County not by Mr. Careyote. This increased traffic is a direct result of the increase in housing developments. The Township or Burlington County should look at increasing the width of Potts Mill Road.

Mr. Bontya stated that Ms. Stevenson has a legitimate concern regarding traffic, but this needs to be addressed by the Township or County and does not have bearing on Mr.

Careyote's application. Mr. Bontya said that he was speaking in support of the applicant and hoped that the Board would also support the application.

Member Crowell stated that Potts Mill Road is a township road so widening the road would have to be addressed by the municipality. He said that the road widening issues should have been addressed 20 years ago. He said that he doesn't know if anything could be done about it now. Engineer Guzzi stated that there are environmental concerns with widening the road.

Stanley Hambley, 1041 Potts Mill Road was sworn in by Solicitor Frank. Mr. Hambley stated that he lives directly across the street from the Careyote property. He asked to see the exhibit showing the vehicles parked on site. Mr. Hambley stated that Mr. Careyote does have the big truck, a dump truck, several trailers and some excavating equipment. Mr. Hambley stated that he has lived there for approximately 10 years and he has seen these vehicles coming out of the drive on a daily basis. Mr. Hambley stated that Mr. Careyote was friend of his. He said that he understands the concern regarding property values but he does not see an impact from the operation at this time. In regards to the proposed building, Mr. Hambley said that he couldn't see that part of the property from the road. In regards to traffic, Mr. Hambley agreed that the traffic has increased quite a bit over the 10 years that he has lived on Potts Mill Road.

Mr. Hambley stated that he is also friendly with Ms. Stevenson and hoped that this matter can be resolved so there is not a conflict of neighbors.

Marie Sager, 1028 Potts Mill Road was sworn in by Solicitor Frank. Ms. Sager stated that she lives in the horse farm right next door to Mr. Careyote. She said that they have been friends for a long time. They help each other. She said that she has no problem with the construction of the pole barn. Ms. Sager stated that she does see the vehicles on the property and they have been there for a while. Ms. Sager stated that she has a barn for the horses and her barn is visible from the street.

Responding to a question from Member Crowell Ms. Sager stated that she didn't see a lot of traffic coming in and out of the subject property. Member Montgomery asked Ms. Sager to describe the vehicles that she noted on the Careyote property. Ms. Sager stated that there are a couple of pick-up trucks and tractors. There is nothing really big on the site.

Member Taylor indicated that she had a question for the applicant. Solicitor Frank stated that the Board could come out of the public comment for questions and then would go back to public.

Member Taylor asked the applicant if it was his intention to increase his business and possibly purchase more vehicles? Mr. Careyote answered that 3 years ago when they put the house up for sale they decreased the size of the business because of the downturn in the economy. Prior to the downturn he did have 4 other employees and he laid those employees off. He said that he has found out that he is making more money with fewer

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employees due to less overhead. This is why his traffic has been a lot less over the past 3 years.

Member Fratinardo asked if the business were to increase would Mr. Careyote increase vehicles at the site. Mr. Careyote said that he would not increase his business again. Member Fratinardo asked if there were a condition that all the equipment has to remain within the pole barn and nothing parked outside would he accept this as a condition of approval. Mr. Careyote said that it would be impossible to keep all of the trailers in the barn. He said that he would keep 3 trailers outside. He would accept this as a condition. He also stated that he would accept a condition on the number of employees to 6 total - Mr. Careyote, Mrs. Careyote and 4 other employees.

Member Fratinardo said that the website states that Mr. Careyote offers fertilization and weed control. Mr. Careyote stated that the website was done many years ago and hasn't been updated. He said that he no longer holds a license for fertilizer.

Member Montgomery stated that he had a problem with a condition that limits that ability for Mr. Careyote to increase his business especially in this economy. Solicitor Frank explained that essentially what is being asked for is permission to break the law in a controlled way. The threshold for that is the applicant has to express special reasons why they should be able to do that. What is exceptional about this circumstance? And then the Board has to consider the effect of that on the zone plan and the public good to the neighbors. When the Board grants these extraordinary permissions the Board has a responsibility to look to what conditions would be imposed to minimize the damage to the overall zone plan. So limiting the scale of the business on this site is potentially, if the Board chooses to go that way, an important part of its role.

Mr. Careyote stated that if it ever came to the point where he wanted to expand then he would have to look elsewhere. Member Fratinardo said that the reason he suggested this condition is that as a neighbor and a businessman, Mr. Careyote is looking to have the least impact on the neighbors as possible. Member Fratinardo said that he was not trying to limit Mr. Careyote's business but in order to approve this application the Board has to consider the concern that was brought up about the future expansion of the business.

Mr. Careyote stated that his goal is to continue this situation where no one complains about the business. Attorney Gillespie said that the testimony that Ms. Stevenson gave actually advanced the argument that this is a peculiarly suitable site for this particular use because it has been there and they didn't even know about it. Ms. Stevenson testified that she didn't consider the site commercial. Mr. Careyote wants that approval for the commercial use, because it is by law a commercial use.

Attorney Gillespie stated that the fact that there are no sidewalks on Potts Mill Road is not a function of Mr. Careyote's business. Pedestrian traffic is not an issue because traffic is not flying in and out of the site all day long. The fact that no one can tell what was going on at the site is the proof that it hasn't had a negative impact.

Attorney Gillespie said that in regards to the allegation that Mr. Careyote is running the business from another location – all those questions that Ms. Stevenson asked regarding possible happenings on the site should the use be granted, is further proof that these things are not happening now. Ms. Stevenson didn't say that all those things were happening now, but that she was concerned that they would happen if the approval were given. Attorney Gillespie asked Mr. Careyote if he were running this business from another site? Mr. Careyote answered that he was not. Attorney Gillespie asked if Mr. Careyote was willing to live with the conditions in terms of seasonal, hours, number of people – the very things that are keeping it under the radar right now? Mr. Careyote answered that he was willing to accept the condition and wanted to keep the business low key.

The Board returned to the public comment.

Lori Stevenson said that the reason that she did not see the vehicles going in and out was because the property is residential – not zoned commercial and the Careyote's kept the activity low key. She stated that her concern with the narrow driveway is that if one vehicle is trying to enter the site while one is trying to exit what would happen? She stated that her concern is that if this approval is granted Mr. Careyote will operate more openly and freely. Ms. Stevenson said that this area is all residential and she opposes this application because she feels that granting this use will devalue her property. Mr. Careyote could seek a commercial location for his business instead of running it out of this residential location.

Member Crowell stated that this business already exists, so in his opinion as a licensed realtor, any devaluation of her property would already have occurred. Ms. Stevenson stated that the Careyote's were not able to sell this as a commercial property. Solicitor Frank explained that once a Use variance is granted it does run with the land. So within the limited scope of the Use variance the property would be able to be marketed as having a commercial (landscaping) use approval subject to any and all conditions that the Board applies to the approval. If the property were sold it could only be used for a landscaping use without further Board approval.

Tom Stevenson was sworn in by Solicitor Frank. Mr. Stevenson stated that he is the brother of Lori Stevenson. He said he is very concerned for his sister who has invested her money in Florence Township with the idea of having horses. He stated that Ms. Stevenson is protected by the law. This Board cannot just let somebody under guise of planting trees to hide something for 7 years and then come before the Board asking for permission to expand his business. This business was never granted in the first place. He said that he hopes that this Board doesn't take the view that if you don't see it, it is okay because it is not okay.

Mr. Stevenson said that he had gone through the Florence Township codebook today and stated that there is a code that says that you are not permitted to have commercial vehicles parked on residential properties.

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Mr. Stevenson read from a land use law book stating that a use variance should only be sparingly granted. He stated that this property is located in an R residential district. There are permitted uses and the Planning Board and Township Council have worked hard to put things in proper areas. He stated that there are other commercial properties available. There are areas where the parking of commercial vehicles is permitted. This is the purpose of planning.

Mr. Stevenson said that he hopes that the Board doesn't ignore the code and the law and takes into consideration his sister and other neighbors who are Florence residents.

Attorney Gillespie asked how long ago Ms. Stevenson bought her property. Mr. Stevenson answered that it was in 2003.

Mr. Hambly stated that he has been self-employed for 25 years. He had been through the same process for his business in a different municipality. He said that he has restrictions on his business and it has worked fine.

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

Attorney Gillespie stated that he has to take exception to the suggestion that we are breaking the law. The applicant is here under the land use law. He said that he appreciated Mr. Stevenson's reading of the law because he recognizes what we are here for and this Board knows why it is here because it hears these applications every month.

Attorney Gillespie said that he knows that he has to show, and he thinks that the testimony has adduced, that the property is particularly suitable for this use. The proof that there is no negative impact upon the zone plan and it is not a substantial detriment to the public good by the fact that Ms. Stevenson never knew that this commercial business was operating there. The Board should recognize the suitability of that site – the unique shape of that property. It is huge in the back narrow in the front. The land use law was designed with variances to allow flexibility in the law.

Attorney Gillespie suggested that with these conditions imposed what would happen would be exactly what has been happening for the past 8 years. Everyone is still going to think that this is a totally residential property.

Solicitor Frank suggested that the Board's professional's go over their review letters.

Planner Stevenson referred to his review letter dated February 2, 2010. He stated that a use variance is the hardest variance to grant. It requires 5 affirmative votes and many proofs. He said that there are actually 3 use variances that are requested as part of this application. The first use variance relates to the fact that there is a commercial use in a residential zone that has been operating outside of any municipal approval. Secondly there is a proposal for a 3,200 sq. ft. pole barn that is an accessory to the commercial use. The third variance for the height of the proposed pole barn.

Planner Stevenson stated that there needs to be a special reason demonstrated for a departure from the permissions of the zoning. There needs to be a demonstration that there is no over the property line detrimental impact. There also is a concern when you deal with uses that are not permitted in the zone as to the effect that it may have to the zone plan. Also with a D1 use variance you have to show enhanced quality of proof. The applicant has a duty to reconcile the application against the fact that the governing body has not permitted this use in the zone.

Planner Stevenson said that the Board is not under an obligation to render a decision tonight. In the event that the Board finds that they were not comfortable in granting the approval the applicant would not be able to operate his business from this location and would not be permitted to construct the pole barn.

Engineer Guzzi referred to most recent letter dated February 19, 2010. He said that the use variance issues had been addressed so he would skip those. In respect to the bulk issues the lot width is slightly undersized although this is a flag type lot. Existing non-conforming conditions include front yard setback and one side yard setback for the existing residence.

Engineer Guzzi reviewed the comments listed on page 2 of his letter.

Comment No. 1 the applicant should provide testimony regarding the use of the existing accessory buildings. Mr. Careyote stated that the red shed would stay but there is a smaller 8' x 8' shed that would be removed. The carport would remain. The red shed is used for residential storage included a four-wheeler and golf cart. The carport is where Mr. Careyote pulls his truck under if it is raining.

Comment No. 2 testimony was given that the soil disturbance would be less than 5,000 sq. ft. so there would be no requirement for soil conservation district approval.

Comment No.3 testimony was given that the height of the barn is 25.5'.

Comment No. 4 testimony was given regarding equipment storage and vehicle storage. Engineer Guzzi asked if any other landscape materials would be stored on the site? Mr. Careyote stated that excess pavers would be stored on the site. He said that he has firewood stored but that is for his house.

Comment No. 5 Mr. Careyote stated that there are no deliveries to the site.

Comment No. 6 Mr. Careyote testified that the property will not be regraded and the proposal will not increase runoff to neighboring properties.

Engineer Guzzi said that the Board should keep in mind that the applicant has requested in addition to the use variance, a site plan waiver. Basically they have supplied a survey and some sketches of what is existing and what is proposed. So that after the Board rules

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on the use variance they have to decide whether they have been given adequate information on the site and site improvements to justify granting that waiver.

Member Taylor stated she is uncomfortable approving the site plan waiver for this site due to the fact that the pole barn is so large.

Engineer Guzzi stated that as this Board has done in the past you could address the issue of use and postpone the vote on the pole barn.

Solicitor Frank stated that for purpose of analysis we could address the use and then address the structure. Associated with the structure would be the particularities of the site. He stated that Mr. Gillespie was proposing that the site is particularly suited to the proposed use because this particular use has been on going for quite some time and it hasn't raised the ire of the neighbors in the neighborhood. Excepting that on face value for a moment in order for it to continue to have the same character that it has had the following conditions have been discussed.

The applicant has discussed that he has no fertilizer and pesticides at the site. There would be no fuel in excess of 10 five gallon gas cans (50 gallons). There are 4 employees who are based at this site. They arrive at the site in the morning park their vehicles, leave from the site to travel to work sites elsewhere. These 4 employees are in addition to Mr. Careyote and his wife who also work in the family business. Solicitor Frank said that there are 2 residents who work at the site and 4 other employees. He said that he thinks that it is important that the business is operated by residents of the site.

Solicitor Frank stated that there are 2 pick-up trucks, 2 single axle dump trucks and 5 trailers that would be stored on the site. With the exception of 3 trailers, there would be no outside storage of trucks or equipment. There will be no outside storage of landscaping materials. There is an evergreen buffer that is starting to screen the properties to the rear and does screen the properties to the east. Engineer Guzzi suggested that as a condition those buffers at a minimum should to be maintained and may even need to be enhanced a bit.

There would be no heat or plumbing in the building. The lighting and electrical supplies would be for convenience only and not for any kind of fabricating or manufacturing activity.

The hours of operation would be from 8:00 a.m. to 7:00 p.m. Monday through Saturday, never Sunday. There would be 2 security lights down focused and controlled by motion sensors. There will be no retail sales from the property. There will be no exceedance of the 5,000 sq. ft. area of disturbance. There will be one set of vehicle (garage) doors facing the access drive – no vehicle doors will be located on the sides of the building facing neighbors. No oil changes will be permitted in the barn.

Solicitor Frank stated that the Board is looking at a use variance to permit this particular landscaping business on this particular property. A variance is also required to permit a

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second principal use on the site. In point of fact he said that he is not sure that a height variance is required because this is a principal use. In the zone a principal use is permitted to have a 35' tall building.

Attorney Gillespie pointed out that there are 2 existing lights at the back of the property that have been there. He showed where they were located on the photographs. Mr. Careyote said that he doesn't use these lights. This is in addition to the 2 motion sensor lights to be installed on the barn.

Motion of Taylor, seconded by Fratinardo to approve the use variance with conditions that apply to the use as stated.

Upon roll call the Board voted as follows:

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

Solicitor Frank asked the Board to think about whether they wanted to consider voting on the proposed pole barn now or if they wished to continue the application.

Attorney Gillespie said that the usual site plan issues do not apply and he wondered if the area of concern was narrow enough that once identified could it be approved subject to administrative review molding it.

Member Taylor stated that her concern was that the photograph of a pole barn that was submitted is not the actual barn that Mr. Careyote plans to construct. She said that she would like to know more about the building that is actually proposed.

Attorney Gillespie stated that they could either submit it to the Board's staff for review or come back to the Board. The Board stated that they would rather have the application come back to them. Attorney Gillespie asked that the Board list any other concerns so that they could be addressed at the next hearing.

The Board had a discussion regarding the snow removal part of the business.

Attorney Gillespie stated that they would come back to the Board with a better representation as to what this is going to be. The applicant is still seeking the site plan waiver, but it is difficult for the Board to grant a waiver of the unknown. He said that he hopes that if they show what the known is and then illustrates that those things won't change then the Board may feel confident in making a decision.

Member Crowell asked for some specs of the actual building. Solicitor Frank stated that the Board doesn't need the plans for the building but would like to see the elevation views of the architecture. Engineer Guzzi said that it is important to show how downspouts are located and direction of the run off. He also said that the setbacks should

be listed. The existing lights should be located on the new plan and the direction of the lighting should be shown. Member Taylor would like to see the building materials for the pole barn.

Motion of Fratinardo, seconded by Taylor to continue the site plan waiver section of the Board until the March 23, 2010 meeting. Motion unanimously approved by all members present.

The Board took a 5-minute break. The Board returned to the regular order of business.

Chairman Zekas called for Application ZB#2010-04 for K-Hovnanian at Florence II, LLC. Applicant is requesting a bulk variance for rear yard setback to permit construction of a gas fireplace and a small portion (corner) of a single family home on property located at 201 Leffler Circle, Florence Township. Block 165.08, Lot 11.

Carl Erler stated that he was an attorney with K. Hovnanian. The applicant is K. Hovnanian at Florence II, LLC. He introduced Dave Fisher, professional planner in the state of New Jersey who will be providing the bulk of the testimony.

Attorney Erler stated that the applicant is seeking bulk variance (C2) relief into the 50' rear yard setback on a particular home located within a subdivision known as the Estates at Crossroads.

Mr. Fisher was sworn in by Solicitor Frank. He stated that he has been a professional planner since 1986. He has been in the business approximately 30 years. He said that he did some municipal planning earlier in his career, worked for private developer clients providing permit and planning testimony. He stated that he has testified before several dozen different Planning and Zoning Boards throughout the state of New Jersey. Mr. Fisher was accepted as an expert in the field of professional planning.

Attorney Erler submitted 2 exhibits – A1, which is the plot plan, and A2, which is the larger plan that shows where the property is located within the subdivision.

Mr. Fisher confirmed that the plot plan was prepared at K. Hovnanian's direction. The plan showing the overall subdivision was not prepared by K. Hovnanian but by their predecessor in title, Quaker Group Burlington II, LP. Mr. Fisher stated that this was correct K. Hovnanian at Florence is the contract purchaser and owner now of the property that is being developed as The Estates at Crossroads.

Mr. Fisher stated that the subject property is known as Lot 11 and located on the corner of Leffler Circle and Seyebe Lane and located on it the plan for the Board's benefit. He stated that the application is for relief from rear yard setback on that particular lot which is under contract to be built. The home has not been constructed yet.

Mr. Fisher stated that this property is located in the low density residential zone and as such the front yard and rear yard setback is 50'. The side yard setbacks are 20' each.

This particular lot is a corner lot so there are 50' front yard setbacks from both Leffler Circle and Seyebe Lane. The driveway of this property will be on Leffler Circle. The relief that is being sought is from 91-180.A.2 subsection F of the ordinance which is the 50' rear yard setback. There are 2 minor portions of the building that would encroach into the setback. At the rear there is a bump out that represents a portion of the family room and the fireplace extends roughly 1' 8" into the rear yard and a small corner of that living area extends about 8" into the rear yard setback. Mr. Fisher stated that under subsection 55:D.2 I and K this promotes more desirable visual environment for the rear yard of the home and good civic design arrangement of the home on the lot, uniform aesthetics within the community and greater consistency with some of the other lots in the community.

Mr. Fisher said that they have exceeded the front yard by about 14'. The home is setback about 64' from Seyebe Lane. This is because the setback lines are a little askew; they are not parallel so it forces the home to be back a little bit further within the building envelope. The proposed impervious coverage for this lot is 16.6% this is well within the 20% maximum permitted. As a result the relief would advance those goals of the act.

Mr. Fisher said that on the garage side the home is set about 5" from the setback line because the owner has chosen to install brick on that side of the home as it faces a main roadway so they need a few extra inches to install the brick without violating the setback requirement otherwise the home could have been slid over and up and minimized the encroachments in the back. The other option would have been to slide the home over into the side yard setback, but didn't want to do this, as the side yard setback is only 20'. So the decision was made to have the minor encroachment in the back.

Mr. Fisher stated that there really is no negative impact associated with this application. He stated that the benefits of the deviation substantially outweigh any detriment.

Solicitor Frank said that in order for the applicant to keep the building that was consistent in scale and appearance with the neighborhood scheme of architecture, the building needs to be a certain size. To squeeze this house onto this lot with the aesthetics that are asked for required that the home be pushed into the rear yard setback.

Mr. Fisher stated that there is no encroachment into the front yard or side yard setbacks. He said that due to the de minimus nature of this variance it would not substantially impair the intent and purpose of the zone plan or ordinance.

Chairman Zekas asked what was the possibility of this happening on another lot. Mr. Erler said that it was not likely because he believes that all the corner lots are sold. There shouldn't be an issue with the remaining lots.

Engineer Guzzi referred to his report dated February 9, 2010. He said that most of the items had been addressed by the applicant. He stated that the height of this building exceeds the maximum height of 35' that is permitted in the zone, however the Planning

Board had granted a variance for the entire development permitting a maximum height of 38' (Resolution No. PB-2005-36).

Attorney Erler notes that in Engineer Guzzi's letter he states that the applicant is going to construct a 2,440 sq. ft. building. This is the square footage for the footprint of the building on the ground, but the actual usable square footage of the home is actually 3,800 not including the basement.

Motion of Fratinardo, seconded by Montgomery to open the public hearing. Motion unanimously approved by all members present. Seeing no one in attendance wanting to offer comment motion was made by Montgomery and seconded by Fratinardo to close the public comment. Motion unanimously approved by all members present.

Motion of Fratinardo, seconded by Groze to approve Application ZB#2010-04.

Upon roll call the Board voted as follows:

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

#### RESOLUTIONS

**Resolution ZB-2010-05**  
**Continuing Application ZB#2010-02 for T-Mobile Northeast, LLC until February 23, 2010.**

Motion of Fratinardo, seconded by Montgomery to approve Resolution ZB-2010-05.

Upon roll call the Board voted as follows:

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

#### MINUTES

Motion of Fratinardo, seconded by Buddenbaum to approve the Minutes from the January 26, 2010 meeting. Motion unanimously approved by all members present.

#### CORRESPONDENCE

- A. Correspondence for Ralph L. Finelli to Thomas Layou dated February 3, 2010 regarding Sassman building on the corner of Hornberger Avenue and Tenth Avenue, Roebing. Block 126.01, Lot 1

33.

Motion of Fratinardo, seconded by Groze to receive and file Correspondence A. Motion unanimously approved by all members present.

Motion of Montgomery, seconded by Fratinardo to adjourn the meeting at 11:29 p.m.

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Ray Montgomery, Secretary

RM/ne