

BOARD BUSINESS CONT.

December 19, 2007 Land Use Board Meeting:

A Motion was made by Mr. Martin and seconded by Mr. Gstatenbauer to have a Joint Meeting of the Township Committee and Land Use Board on December 19, 2007 and to begin the meeting at 6:00 p.m. to discuss the Municipal Self Assessment Report prepared by Jessica Caldwell of Harold Pellow & Associates to begin the Plan Endorsement Process. All were in favor. The Motion was carried.

FAR Ordinance:

A letter was received from William Haggerty, Esq. dated October 19, 2007 for the Land Use Board to review the FAR Ordinance. Mr. Clark indicated that the request was that up to 200 square feet of an expansion for a residence that was only a vertical addition that is within the existing footprint not be considered an FAR issue.

Mr. Haggerty indicated that he has a client who wants to put a bathroom on the second floor. He would have to change a roof pitch to put a bathroom upstairs. He further stated to come before the board with the surveying and engineering work necessary, the cost would be approximately \$5,000. He submitted to the board a sample of the change to the ordinance he is requesting. He indicated in the ordinance that a Certificate of Compliance by the Sussex County Health Department verifying that the septic system is properly functioning and no bedrooms are being added by virtue of the addition.

The board felt that 200 square feet was too big. Mr. Clark indicated that the board could consider this an exception to the FAR calculations. The board agreed to review the FAR Ordinance at the next meeting.

Subcommittee Reports:

The TDR Committee and the Technology Committee did not have anything to report this evening.

ZONING OFFICER'S AGENDA

There was no zoning report to review this evening.

PUBLIC PARTICIPATION

A Motion was made by Mr. Martin and seconded by Mr. Risdon to open this meeting to the public. All were in favor. The Motion was carried.

Lori Walsh of Claws appeared before the board. She is the operator of the Claws facility on township property at 28 Pellatown Road. She indicated to the board that in the Resolution it stated that no occupancy was allowed in the building. She requested that this be amended. She indicated that the veterinary technicians need to be there to take care of the pets. Mrs. Kristensen indicated that she feels someone needs to be there all the time because of the vandalism on the property. Mr. Larson questioned if this would be shift work or a primary residence. Ms. Walsh indicated that this would be the primary residence. Mr. Clark indicated that she would have to have the Township Clerk appear before the board for an amendment to the Resolution. Mr. McDowell questioned Ms. Walsh if the Lease signed with the township addresses this property as someone's residence. Ms. Walsh indicated that the Lease does not include a residence in it.

PUBLIC PARTICIPATION CONT.

There being no public participation, a Motion was made by Mr. Martin and seconded by Mr. McDowell to close this matter to the public. All were in favor. The Motion was carried.

BOARD BUSINESS

Application Process by the Land Use Board:

A discussion was held with regard to larger subdivision and site plans. It was agreed by the board starting in January, 2008 that all major subdivisions and site plans will have to come to the board for completeness only first and then a hearing date will be set.

APPLICATIONS CARRIED FROM PREVIOUS MEETING

Sana Enterprises – LUB 07-15 – Block 65, Lot 23 – Route 206 – Preliminary Major Site Plan & “C” Variance:

A letter was received from the applicant’s attorney requesting an adjournment to the December 19, 2007 Land Use Board Meeting.

A Motion was made by Mr. McDowell and seconded by Mr. Risdon to carry this application to the December 19, 2007 Land Use Board meeting without further notice. All were in favor. The Motion was carried.

NEW APPLICATIONS

Mark & Carole Vogel – LUB 07-23 – Block 266, Lot 7 – 44 Bonning Road – “C” Variance:

Mr. Haggerty appeared before the board requesting an adjournment to the December 19, 2007 Land Use Board meeting without further notice.

A Motion was made by Mr. Risdon and seconded by Mr. Ayers to carry this application to the December 19, 2007 Land Use Board meeting without further notice. All were in favor. The Motion was carried.

APPLICATIONS CARRIED FROM A PREVIOUS MEETING

Off Shore Marine, Inc. – LUB 07-12 – Block 50, Lot 3.01 – 352 US Highway Route 206 – Preliminary & Final Major Site Plan & “C” & “D” Variance:

Mr. Clark indicated that the board will have to decide if this application is a “C” or “D” Variance before going forward on this application.

Mrs. Kristensen and Mr. McDowell stepped down from this application.

Appearing before the board was the applicant, Lou Cecchini, his attorney Megan Ward, and his engineer, Daren Phil. Mr. Cecchini and Mr. Phil were still under oath from the previous meeting. Also appearing before the board was the attorney for the objector, James Bryce and his planner, Michael Kauker, and his environmental consultant, Bill Romaine.

Ms. Ward gave a summary of the application from the prior meeting.

Ms. Ward asked Mr. Cecchini to explain to the board his reasoning for requesting the relief with regard to boat storage on the property. Mr. Cecchini indicated that back in

APPLICATIONS CARRIED FROM A PREVIOUS MEETING CONT.

Off Shore Marine, Inc. – LUB 07-12 – Block 50, Lot 3.01 – 352 US Highway Route 206 – Preliminary & Final Major Site Plan & “C” & “D” Variance cont.:

March of this year he received a certified letter from the township stating he was in violation of the original site plan. The 2 items cited on the violation were (1) boat display and (2) the boat racks. He indicated he reviewed the prior Resolution for Haggerty Marine which allowed only (5) boats on display without a designated area. He noted that he worked for Haggerty Marine years ago and his business at that time did not have a lot of inventory. When he purchased the business 21 years ago, he also at that time did not have the inventory to display. However, over the years his business has grown. Over the past 15 years he has had 20 to 25 boats on display without incident. He indicated that this adds to what he does here, it says who they are and what they are about, and that they are a good, strong, healthy business with the products that he sells and the way he displays them. He started to increase business by taking on a specific boat line. At one point he was selling 4 different lines of boats, one of those lines had 37 different models. By showing these different models and different boats is very important. The one line of boats he took on approximately 12 years ago is the Cadillac of the speed boat world. By taking on this line of boats, took his dealership to a new level. Their area for sales is within a 100 mile radius. These boats cost between \$50,000 to \$70,000 and, therefore, they need to have a good presence. He further noted that after receiving the notice of violation, as soon as the weather permitted, they pulled all the those boats out of there and tried to maintain the 5 boat standard that was in the existing Resolution. He further indicated that there were rumors going around that since the boats were taken away, people thought he was going out of business. This is the reason why he needs a place to display. He indicated to the board that they sell boats from 8' up to 24' feet, therefore, size and number of boats is not the issue as much as the area needed to display the product he is selling.

Mr. Cecchini indicated that the next violation was the installation of the boat racks. He indicated that he has had boat racks on this property for over 15 years, one of the boat racks is next to the building which is visible from Route 206. The racks make the operation of the business more efficient. As stated above over the years the business has grown and there was a need for additional boat racks. He indicated that the boat racks are self standing, they are not bolted together. There is no foundation for the racks, they sit on concrete blocks. There is no excavation that needs to be done. He further mentioned that not only did it make the operation more efficient and organized it also made a much safer situation. They did not have boats tightly parked in designated areas. He noted that when he did receive the violation notice in March, as soon as the weather cleared, he was able to remove the racks and they are still not installed at this time.

Mr. Cecchini further indicated that at the present time there are some evenings when there are more than 5 boats in the front display because they are customer's boats for pick up after service or being dropped off for service.

Mr. Romania questioned Mr. Cecchini if he has looked into alternative sites since his business has expanded over the years. Mr. Cecchini indicated that over the last couple of years they have used Morris Coachworks as a place to put boats. However, he was told ultimately from the township, that they could not do this. He also indicated that he did try to purchase this property. However, he was informed by the owner that this property is not for sale at the present time. He also looked at the property to the North of him; however, as stated in previous testimony, there are wet areas there that make it no conducive to what he can do. There is a small part of that parcel that is developable, but it is not attached to his property. He also contacted Blue Ridge Rescue Squad to purchase there building, because he had heard that they were going to move to the new fire house that is being built. However, as of the first of this year, Blue Ridge decided

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not to move, therefore, this property is not for sale any longer. However, this may change in the future and if it does, there are some options for him. He further indicated that he went to a local storage facility to rent space. This storage facility was getting \$100 a boat for the season. He offered to rent 25 spaces from this facility with more as needed. When he went to rent these spaces, he was told that this was an introductory offer (\$100 a boat for the season) and if he was to be the person to rent there, he would have to rent the entire space for \$1,000 a month, which is not practical.

Mr. Bryce questioned Mr. Phil if his prior testimony was that he did not believe that a “D” Variance was not necessary for the storage racks and the expansion of boat storage for customers on this property. Mr. Phil agreed. Mr. Bryce questioned Mr. Phil if his prior testimony was that this was based upon a definition in the zoning code that said retail sales outdoor. Mr. Phil indicated that it was a little more involved than Mr. Bryce’s summary, but in prior testimony we did go through all the different definitions associated with the zoning ordinance and storage and he did explain how they interrupted this as being not applicable to a request for a use variance, but, in fact, a bulk variance. Mr. Bryce questioned Mr. Phil that the idea was that in the C1 Zone, outdoor retail sales is specifically prohibited, yet defined in the ordinance. Therefore, by implication it was permitted in the C2 Zone. Mr. Phil indicated that this was not how his testimony read to the reason why we established from the ordinance that the storage was permitted. Mr. Bryce questioned Mr. Phil if outdoor storage was not permitted in the C2 zone as a principal use. Mr. Phil disagreed. Mr. Bryce questioned Mr. Phil in his review of the ordinance and the permitted uses, is outdoor storage anywhere listed there as a permitted use. Mr. Phil indicated that specifically the way the ordinance is written, he feels an error was to outdoor storage as being permitted anywhere in the town. Mr. Bryce questioned Mr. Phil as the zoning code is written, does it list outdoor storage in the C2 zone as an accessory use. Mr. Phil indicated it does not. Mr. Bryce questioned Mr. Phil if it is listed as a conditional use. Mr. Phil indicated it does not. Mr. Bryce questioned Mr. Phil if he stated that outdoor storage was not listed anywhere in the zoning code as a principal permitted use, but it is defined. Mr. Phil agreed. Mr. Bryce indicated that this definition does state something along the lines that materials being stored outdoors for greater than 24 hours. Mr. Phil agreed. Mr. Bryce questioned Mr. Phil in his review of the ordinance is storage of goods of any kind a permitted use in any of the zones. Mr. Phil indicated that storage is permitted in the zone that this lot is located in. Mr. Phil indicated when you go through the definitions retail commercial use, storage is permitted. Mr. Bryce questioned Mr. Phil as to the definition of retail sales in this particular ordinance. Mr. Phil referred to Exhibit “A-3” which states the selling of goods or merchandise to the general public. The definition of retail sales outdoors the sales of products and services outside of the building or structure including garden and landscaping supplies, etc. Mr. Bryce questioned Mr. Phil if this implicitly indicates that merchandise and goods are being sold. Mr. Phil agreed. Mr. Bryce questioned Mr. Phil if he knew that in the zoning code there is a zone where warehousing and storage is a permitted use. Mr. Phil indicated that he is aware of that zone which is the LI Zone, which is the adjacent zone to the subject lot. Mr. Bryce indicated that the ordinance does not specifically permit as principal or accessory, an expressed permission to use outdoor storage in the C1 & C2, it did go out of its way to indicate that warehousing and storage where permitted in the LI Zone. Mr. Phil disagreed, it did not permit outdoor storage. He further indicated that no where in this ordinance does it specifically state where outdoor storage is permitted. It does specifically state that outdoor storage is not permitted in the C1 Zone and this is only language in the ordinance that discusses outdoor storage. Mr. Phil indicated that if you imply the storage of goods in the LI Zone is permitted outdoors, that also can be determined identically for the C2 Zone, but not the C1 Zone. Mr. Bryce questioned the applicant if the storage of boats is for boats for sales and also customer’s boats. Mr. Phil

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indicated that there are customer's boats on the property, but this is part of the service associated with the marine. Mr. Bryce questioned Mr. Phil if the boat variances on the rear and side yards this is generally to accommodate the storage of customer's boats. Mr. Phil indicated that Mr. Cecchini would have to answer this question. Mr. Bryce questioned Mr. Phil if he would agree even if the boat variances were denied that the subject property still has significant economic utility for the sale of boats and for the service of boats and to a limited extent the storage of boats. Mr. Phil indicated that it does, however, the submitted plan is a much better scenario for the community as it exists today.

Mr. Bryce questioned Mr. Cecchini if the racks were for the storage of customer's boats. Mr. Cecchini agreed that it was for customer's boats, new boats, and empty trailers during the summer. Mr. Bryce questioned Mr. Cecchini if people hire him to store their boats for them. Mr. Cecchini indicated that people hire him to service their boats, to do pick up and delivery, detailing, refurbishing and tune ups. Part of what his service is to keep the customer's boats there while they do this. Mr. Bryce presented to the applicant and the board Exhibit "O-6" which is a document from the applicant's website. Mr. Bryce referred to Exhibit "O-6" to "storage of boats" as one of the services. Mr. Cecchini indicated that it actually states "service storage". Mr. Bryce asked Mr. Cecchini to read the section of Exhibit "O-6" where it says storage. Mr. Cecchini read: "We offer inside and outside storage. We store boats up to 25' in length. Fees are figured by length." Mr. Bryce questioned Mr. Cecchini that generally the storage for customers exceeds 24 hours. Mr. Cecchini indicated that not all the time. Mr. Bryce questioned Mr. Cecchini if there are customers that utilize his storage services that store their boat with him for greater than 24 hours. Mr. Cecchini indicated that there are boats that are there being serviced for longer than 24 hours. Mr. Bryce questioned Mr. Cecchini if boats are just stored there. Mr. Cecchini indicated that they were not. Mr. Cecchini indicated that they offer storage as part of their service. This indicates what we do as part of his service. He further stated that they do not just do storage. They do not solicit storage, they just solicit service, which includes storage. Mr. Bryce submitted to the board Exhibit "O-7" which is a letter from Off Shore Marine to his customers. Mr. Bryce asked Mr. Cecchini to read the letter into the record. Mr. Cecchini read "Dear Off Shore Marine Family and Friends, While there is plenty of beautiful boating weather remaining, it is time to begin thinking about winter storage and winter maintenance service. At this time when competition is soliciting your business is more critical than ever that experienced mechanics perform your winterizing and routine maintenance. Many of you have already experienced unpleasant affects in your fuel system while running new ethanol fuel. Proper maintenance and winterization is critical and will help to greatly alleviate costly fuel system failures in the Spring. Simply shrink wrapping will not prevent serious mildew damage to the boat interiors. Boat cleaning and boat on trailer will not effectively clean the entire boat and is damaging to the metal on your trailer. When comparing services and prices with our competitors please feel comfortable in calling the office of Off Shore Marine with any questions that will help you choose the service that is most suitable for your needs. In addition, you will find a price list with other maintenance services. Remember that Off Shore Marine is open all winter. A great time for maintenance. Many of our customers took advantage of this time for preventive maintenance last season and enjoyed a more timely delivery in the spring. Keeping your investment in better condition keeps you on the water when it counts. If you are considering a new boat, the fall is one of the best times of year to purchase. There are left over factory deals and clean trade deals and clean trade ins for those interested in a pre-owned purchase. Also, a purchase in the fall may mean no storage or maintenance fees on your current boat and spring delivery on your new boat, also with no storage fees. We hope that this boating season has been a rewarding one. As always, thank you for

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your business. It has been a pleasure to serve you. We take pride in the work and enjoy the relationships we have made with you. Nautically yours, Lou, Sherry and the Off Shore Marine Gang.” Mr. Bryce indicated that it also references in here storage fees. Mr. Cecchini agreed. Mr. Bryce questioned Mr. Cecchini if they charge for winter storage. Mr. Cecchini indicated that they charge service fees. Mr. Bryce questioned if they charge storage fees. Mr. Cecchini indicated that one of the things they pride themselves on is to make it easier for their customer. We pick up the customer’s boats, we service the boats, we winterize the boats, and we keep it for them in the off season. We also prep it, wash it, vacuum it and deliver it back to their dock. This is the service that he has provided to his customers for over 20 years. Mr. Bryce questioned when they store boats for the winter, do they store boats with the engine attached with fuel. Mr. Cecchini indicated that they do. Mr. Bryce questioned if they keep fuel in the tanks during the winter storage season. Mr. Cecchini indicated that they do.

Mr. Bryce questioned Mr. Cecchini if he approached the property owner next to him to see if he could acquire a strip of his property so he would not be required to obtain the variance for the placement of the boat racks. Mr. Cecchini indicated that he had contracted to buy the property at one point, however, after having his engineer review the property if it was viable and it was not. Mr. Bryce questioned Mr. Cecchini with the prior site plan there was an approval to store boats indoors, how many boats does he store in the buildings on the property. Mr. Cecchini indicated it would depend on the sizes. Mr. Bryce questioned him as to how many boats could be stored both in the door barn areas and on the racks as proposed. Mr. Cecchini indicated again, it would depend on the size of the boats. Mr. Cecchini indicated that inside on an average, approximately 40 boats; outside on the racks, approximately another 15 to 20; and on the ground 32 boats. Mr. Cecchini indicated that, however, it could be more than that or less than that. He noted that the racks the way they are designed, if they are small boats, he can stack them 5 high. If there are larger boats, it may be only 2 high. He further stated that the racks are adjustable to service their needs.

A Motion was made by Mr. Martin and seconded by Mr. Larson to open this matter to the public. All were in favor. The Motion was carried.

Kurt Gewecke appeared before the board and was sworn in by the board attorney. He indicated that the boats on the applicant’s property were never offensive to him. He indicated he drives by the site several times a day and has watched the business grow and feels it is a quality marina in this township. He also stated he appreciates the fact that there is a quality marina in this township and he would like to see it stay.

There being no further public participation, a Motion was made by Mr. Martin and seconded by Mr. Risdon to close this matter to the public. All were in favor.

Mr. Bryce presented Michael Kauker, a planner, to the board on behalf of the applicant. Mr. Kauker gave his qualifications to the board and was accepted as an expert witness by the board. Mr. Kauker was sworn in by the board attorney.

Mr. Kauker was asked to review the site plan application before the board, the Frankford Township Zoning Ordinance as it relates to certain definitions and also as it relates to the permitted use table contained in the schedule of limitations, Mr. Pellow’s report, the Master Plan Update prepared by David Troast, the site plan for Haggerty Marine in 1984, and the resolution of the 1984 site plan approval. He indicated that the subject site is undersized as it relates to the 5 acre requirement which gives rise to certain conditions on the property which might not be there if it were fully compliant. The property is in the

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C2 Zone which has a very specific list of permitted uses as contained in the zoning ordinances. The site is located on a major highway and has very good access for a customer base and it also approximate to several lakes in the area. He stated that the principal retail use on the site which existed prior to 1984 through to the present date, essentially is the only activity on the site that is permitted as a matter of right. He indicated that there are two other uses that he feels also rise to the level of having a discrete principal use character and those are the repair activities that essentially take place in one of the back buildings and the storage activity on the site. He indicated the reason why he identifies these three major discrete uses is founded in the way in which the 1984 Resolution addressed the uses on this site. He stated that the 1984 Resolution took notice of the fact that a “D” Use Variance was essentially considered and given for the outdoor retail display in the front of the building, which is defined in the ordinance but not specifically listed under the principal permitted uses in the C2 Column. It also recognized they gave approval for a specific form of storage, which is indoor storage as it relates the 2 buildings that were proposed and approved in 1984. He basically feels that by virtue of the precedent that was set and the recognition to the 1984 application and the way it was processed and approved before the Zoning Board, that similarly the introduction of a third principal use on the site, which affectively is outdoor storage as compared to indoor storage, which was not a subject matter of the 1984 application represents an additional principal use on the site which is now proposed before this board. Mr. Kauker presented the board Exhibit “O-8” which is a 1984 Site Plan Map & Current Site Plan Map for the Current Application. He indicated that this particular exhibit essentially shows areas where over the years as a matter of the growth of this business, the area in yellow shows additional activity over and above the activities that were specifically approved in the 1984 application. He further stated that it is his view that the proposal before the board to approve those activities, mainly the additional outdoor storage, which is well defined in the township’s ordinance, but not specifically permitted, and mainly the expansion of the display area up in the front represents 2 forms of a “D” Variance. He feels it is a “D” Variance because it was never permitted formally by the board to be occupied or affectively utilized on this site neither prior to the 1984 Resolution or within the 1984 Resolution. By virtue of the fact it happens to be defined as outdoor storage and it being not listed in the C2 column, he firmly believes it is not a permitted use but it is a recognized use in the township’s ordinance. In order to properly review and consider this application within the proper framework of the Municipal Land Use Law, it is my respectful opinion to the board that a D1 Use Variance is the process by which that particular aspect of the application should be placed before the board and considered by the Zoning Board. He also believes that the expansion of the retail area in the front yard as proposed by the applicant relates to an outdoor sales and display definition that is contained within the township’s ordinance but not specifically mentioned in the C2 column. He believes the board in 1984 agreed that this was not a permitted use by requiring a “D” Variance to approve that particular activity. He indicated that this application proposes to continue that activity and expand the area within which it is proposed to occur, this in his opinion is a D2 Variance where they are proposing to expand a non-conforming use. The prior use approval for that the 5 units in terms of retail sales display establishes a basis upon which this applicant has the right to use that area.

Mr. Bryce questioned Mr. Kauker with reference to Exhibit “O-8” there is an area permitted with crushed stone, he asked him to explain this to the board. Mr. Kauker indicated that when the prior owner went before the zoning board, they presented this particular map which was approved in 1984. The prior applicant essentially requested to expand the use area and activity on this site to embrace to this area and include within that area a sufficient yard area which would be graveled in order to accommodate

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movement from one building to the other and proper circulation and the 2 buildings. This area is shown in red on Exhibit “O-8”. The area beyond the red lines represents an area which essentially has over the years been needed to accommodate the expansion of the business, which the applicant is appearing before the board for at the present time. Mr. Bryce questioned Mr. Kauker that on the 1984 approval there are trees on the rear yard of the site and as related has the gravel area changed on the site. Mr. Kauker indicated it has based upon his review driving around the site and based upon a 2002 Aerial Photograph, which was marked as Exhibit “O-9”. He indicated that the exhibit essentially shows the nature of the activity on the site. It also suggests that certain areas around the buildings have achieved a gravel surface as opposed to a natural surface that was in place in 1984. It also shows the areas where placement of boats has occurred in order to accommodate the expansion of the business. Mr. Kauker indicated he visited the site from the rear area through the woods and from the front. He did not physically go on the site. Mr. Bryce questioned Mr. Kauker if the amount of the boats shown on this exhibit are the same today from his visit as it was when this exhibit was created. Mr. Kauker indicated that the number of boats are fairly close to what the Exhibit “O-9” shows. However, as late as today he did not see the same amount of boats as shown on Exhibit “O-9”, it was less. Mr. Kauker indicated that the amount of gravel area is in the area as shown in the 1984 approval and has been extended to the other side of the buildings to some extent and also to the rear of the buildings, which is represented by the yellow color of Exhibit “O-9”.

Mr. Bryce questioned Mr. Kauker if the applicant was requesting 2 bulk variances to accommodate storage. Mr. Kauker agreed. Mr. Bryce questioned Mr. Kauker if the rear and side yard variances requested are to accommodate outdoor storage. Mr. Kauker agreed. Mr. Bryce questioned Mr. Kauker if storage is a commercial enterprise. Mr. Kauker indicated it was. Mr. Bryce questioned Mr. Kauker if an economic justification necessarily a justification of hardship under the Municipal Land Use Law. Mr. Kauker indicated it was not.

Ms. Ward questioned Mr. Kauker if he was using the term commercial enterprise as a land use term. Mr. Kauker indicated that commercial enterprise is not used ordinarily. Ms. Ward questioned Mr. Kauker if he reviewed prior ordinances that were in effect in Frankford Township. Mr. Kauker indicated he did not. Ms. Ward stated that through his testimony he reviewed the 1984 Resolution which included a variance to permit display in the front yard of this premises. Mr. Kauker indicated that the variances were identified as “D” Variances in the Resolution. Ms. Ward questioned Mr. Kauker so this would lead him to conclude that the display of boats in front of this retail operation was not permitted in the zone at that time, but it is permitted now. Mr. Kauker indicated he does not believe it is permitted at this time. Ms. Ward indicated that this property is located in the C2 Zone and the township ordinance contains a definition of Retail Sales, Retail Service and Retail Outdoors. She further indicated that the definition of retail outdoors includes specifically the outdoor display of boats. Mr. Kauker indicated that it could. Ms. Ward questioned by the definition of Retail Outdoors allowing the display of boats makes this use a permitted use in the C2 Zone. Mr. Kauker indicated that outdoor displays is not listed as a permitted use, it merely exists as a definition in an entirely separate section of the ordinance. Mrs. Ward indicated that in the C1 Zone the first listed permitted use is retail sales provided that no supplies, materials or goods are stored, displayed or offered for sale outdoors. She further indicated in the C2 Zone under permitted uses is retail-commercial uses. She indicated that the definitions in Exhibit “A-3” are, in fact, the definitions in the Frankford Township Land Use Ordinance with regard to retail. Mr. Kauker agreed. Ms. Ward indicated that there is no provision in the Frankford Ordinance applicable to the C2 Zone that prohibits outdoor sales or displays of materials. Mr.

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Kauker agreed. Ms. Ward stated that therefore, the outside display of boats for sale at this operation is permitted in the C2 Zone. Mr. Kauker indicated that respectfully this would not be his conclusion.

Ms. Ward referred to Exhibit “A-3” definitions which list a definition of outdoor storage from the current ordinance. She stated that in the C1 Zone there is a specific prohibition for outdoor storage. Mr. Kauker agreed. She stated that in the LI Zone the 5th listed permitted use is wholesaling including warehousing or storage of goods. Mr. Kauker agreed. Ms. Ward indicated it does not state indoor or outdoor storage. Mr. Kauker agreed that it was generic. Ms. Ward questioned Mr. Kauker if he was aware of any other references in the ordinance with regard to outdoor storage or storage. Mr. Kauker indicated he was not aware of any. Ms. Ward indicated that outdoor storage was not specifically prohibited in the C2 Zone. Mr. Kauker indicated that it was not specifically prohibited; however, it was not specifically permitted.

Ms. Ward referred to the 1984 Resolution. She indicated that the second “D” Variance that was granted was with regard to the boat storage buildings. Mr. Kauker agreed. Ms. Ward indicated that this was a height variance. Mr. Kauker indicated that there was a bulk variance in addition to the “D” Variance. Ms. Ward indicated that the “D” Variance was for the height. Mr. Kauker disagreed. Mr. Clark indicated he felt it was for the outside display. Ms. Ward referred to page “3”, paragraph “2” of the 1984 Resolution “Applicant proposes to erect two additional storage buildings to the rear to provide for boat storage of approximately 100 boats with a height requirement in excess of the permitted height per the Zoning Ordinance, in order to facilitate additional storage.” Mr. Kauker indicated that this described all the proposed activities that the board felt fell under 40:55D70(d) the building uses inclusive of the height. Mr. Kauker further stated that all of the uses on the site which include the buildings, the display in front and the height were viewed by that board as a “D” Variance. Ms. Ward referred to paragraph “3” on page “2” which states “applicant proposes to add two additional buildings as shown on Exhibit (1) which would require a height variance as well as a setback variance.” Mr. Clark indicated that this may have been a “C” Variance in 1984. Mr. Kauker indicated it was a “D1” for the buildings because of the use that were proposed to accommodate which was storage and a “D6” for the height. Mr. Clark indicated that this was not mentioned in the Resolution.

Mr. Bryce referred to the Zoning Ordinance of Frankford Township Section 30:401.4 prohibited uses and asked Mr. Kauker to read it to the board. Mr. Kauker quoted “All uses not expressly permitted in this article are prohibited.”

Mr. Clark referred to the 1984 Resolution which states: “a variance pursuant to 40:55D-70(d) be granted to permit the outside display of boats in front of the building on either side of the existing sign between the road right-of-way and the existing parking area and a variance pursuant to 40:55D-70(c) to erect proposed storage buildings to the rear of the building with a variance to increase the height to 24’ “. Mr. Clark indicated that the “D” variance was for outdoor display. Ms. Ward indicated that she believes that the “D” Variance was also for the height because they were considered accessory structures and there were lower height limitations for accessory structures. Mr. Clark disagreed.

A Motion was made by Mr. Martin and seconded by Mr. Larson at 9:00 p.m. for a 5 minute recess. All were in favor. The Motion was carried.

A Motion was made by Mr. Martin and seconded by Mr. Risdon at 9:15 p.m. to reconvene the meeting. All were in favor. The Motion was carried.

APPLICATIONS CARRIED FROM A PREVIOUS MEETING CONT.

Off Shore Marine, Inc. – LUB 07-12 – Block 50, Lot 3.01 – 352 US Highway Route 206 – Preliminary & Final Major Site Plan & “C” & “D” Variance cont.:

Appearing before the board was Bill Romaine an Environmental Consultant on behalf of the opposing party. Mr. Romaine was sworn in by the board attorney. Mr. Romaine gave his qualifications to the board and was accepted as an expert witness.

Mr. Romaine indicated that he was hired by Castle Storage to investigate the applicant's application in terms of the potential for there being some regulated activities that were not being permitted by regulatory agencies. His client felt that the board needed to be provided with the necessary information to make an informed decision about this application. Mr. Romaine presented to the board Exhibit "A-10" a GIS Aerial Photograph last revised 2002. He indicated that this exhibit shows the wetland coverage from the DEP data base. He noted that the site to the north of the applicant's property is designated as a wetlands area. He noted that there is a linear feature to the east of the applicant's property which is designated as a stream. He indicated that since this photograph was taken, the stream was slightly rechannelized, but the feature still exists. The stream now diverts below the property at the corner to the southeast. He indicated there are 3 features that are regulated under fresh water wetlands protection act and the flood hazard area act that are on or immediately adjacent to this property. He indicated under the flood hazard area act, there are two regulated areas which is the 100 year flood plane and the other being the riparian buffer. Mr. Romaine presented to the board Exhibit "O-11" which is a depiction of the flood plain off of the NJDEP GIS, based upon the FEMA flood maps. He noted that the blue area on this exhibit depicts the 100 year flood plane. He indicated that some of the flood does overlap onto the applicant's property. Mr. Romaine indicated that there are certain activities that are permitted within the flood plane of streams. He referred to the other regulated area, the riparian buffer, which is anywhere from 25' to 50' from the top of the bank of any regulated water body. He referred to the stream and the actual tributary to Culver's Creek, which runs across the corner of the property, they are both within 50' of some of the proposed activities. Mr. Romaine indicated that this being a trout associated waterway, the applicant is required to have the 50' buffer under the old rules. However, these rules were updated this year and now the buffer is 150' to the top of the bank.

Mr. Romaine indicated there are 3 regulated features, the wetlands, the ditch and the tributary to Culver's Creek. He indicated that with the riparian buffer and some of the activities within the riparian buffer, they are regulated under the flood hazard area control act. He indicated under the freshwater wetlands protection acts, there is a transition area associated with all wetlands. In this situation the transition area ranges from 0' to 150'. He indicated that a 150' foot transition area is applied to all wetlands associated with threatened or endangered species. He indicated according to the landscape project mapping from NJDEP, this stream is considered to be habitat for the wood turtle, which is a state threatened species. Therefore, it is very likely this wetland would have a 150' transition area associated with its boundary. Therefore, all activities, except those specifically exempted under the rules, are regulated within this transition area. He indicated if this depiction of the wetlands is correct, the wetland transition area is well into the applicant's property and some of the proposed activities are going to be conducted within that transition area. He further indicated that none of the proposed activities on this application are listed as exemptions under NJAC 7:7A-2.6 (1-3). He stated that it is his professional opinion that he did see vegetation that is indicative of a wetland, however, to the extent he could not testify. He further stated that there are also wetlands that are not depicted on this exhibit in the corner of the stream.

He indicated that the applicant could apply for a letter of exemption from the DEP. This is simply taking your site plan and supporting information and submit it to the DEP and if

APPLICATIONS CARRIED FROM A PREVIOUS MEETING CONT.

Off Shore Marine, Inc. – LUB 07-12 – Block 50, Lot 3.01 – 352 US Highway Route 206 – Preliminary & Final Major Site Plan & “C” & “D” Variance cont.:

they feel it is exempt, they will send the applicant a letter of exemption if they agree. Mr. Romaine referred to the Flood Hazard Area Control Act, there is something called the Acquittability determination. The applicant provides their site plan and supporting information to this bureau and they will provide a letter stating your activity is exempt.

Mr. Pellow indicated that his firm contacted the DEP also and they indicated that as long as they are not expanding the impervious area there is not a permit needed. Mr. Romaine disagreed. Mr. Pellow also indicated that the map presented as Exhibit “O-11” is not accurate. Mr. Romaine agreed.

Ms. Ward questioned Mr. Romaine if he was aware that Cook Road to the rear of this property was a Municipal Road and the Bridge to the rear of the applicant’s property was owned by the County of Sussex. Mr. Romaine indicated he was not aware of this. She further questioned Mr. Romaine that in his reference to the rechannelization of the stream, she questioned if he was aware that this was performed by the County of Sussex. Mr. Romaine indicated that he imagined it would be. Ms. Ward indicated that the applicant’s property is setback 15’ from the right-of-way for Cook Road. Mr. Romaine agreed that he saw this on one set of plans. Ms. Ward indicated that this application does not propose the addition of any semi-impervious or impervious coverage. Mr. Romaine agreed. She further indicated that the application does not propose any removal of any vegetation. Mr. Romaine agreed. Ms. Ward indicated that there was testimony at the previous hearing by Mr. Pellow that an LOI was not needed because there was no change in grading proposed. Mr. Romaine agreed. She further stated that Mr. Pellow has stated that he has spoken with the DEP and found that this was a trout maintenance water stream and, therefore, no setback was applicable in regard to this application.

Mr. Bryce presented to the board a survey of the subject property dated June, 1988 and was marked as Exhibit “O-12”. He questioned Mr. Romaine comparing the June, 1988 survey and the 1984 site plan map and the current proposal which shows gravel in the rear yard, is there any proof that he sees that changed to this property has occurred prior to 1987. Mr. Romaine indicated that on the 1984 site plan there was a fairly large vegetative area to the back of the existing structures. There is a notation on the plan that there was a vegetative buffer that was to remain on the property. Therefore, somewhere between 1984 and 1988 this vegetation was removed.

A Motion was made by Mr. Risdon and seconded by Mr. Martin to open this matter to the public. All were in favor. The Motion was carried.

Wayne Vanhorn appeared before the board and was sworn in by the board attorney. He indicated that the subject site is well maintained and is a good business for the township.

Pat Knaust appeared before the board and was sworn in by the board attorney. He indicated he was a customer of Off Shore Marine and has a good business relationship and he is very honest.

There being no further public participation, a Motion was made by Mr. Gstattenbauer and seconded by Mr. Ayers to close this matter to the public. All were in favor. The Motion was carried.

Mr. Clark indicated to the applicant’s attorney and the opposing council to review the new zoning ordinances passed by the township committee before proceeding further on this application.

APPLICATIONS CARRIED FROM A PREVIOUS MEETING CONT.

Off Shore Marine, Inc. – LUB 07-12 – Block 50, Lot 3.01 – 352 US Highway Route 206 – Preliminary & Final Major Site Plan & “C” & “D” Variance cont.:

A Motion was made by Mr. Ayers and seconded by Mr. Larson to carry this application to the December 19, 2007 Land Use Board meeting without further notice. All were in favor. The Motion was carried.

Mrs. Kristensen and Mr. McDowell returned to the meeting.

NEW APPLICATIONS

Nextel Communications – LUB 07-18 – Block 11, Lot 1 – 552 County Route 565 – Minor Site Plan & Conditional Use:

Appearing before the board was the applicant's attorney, Kevin Jones, Esq., Mr. Anthony Suppa, the applicant's engineer, Mr. Conelli, the applicant's RF Engineer and Mr. Karlebach, the applicant's planner. Mr. Conelli, Mr. Karlebach and Mr. Suppa gave their qualifications to the board and were accepted as expert witness. Mr. Conelli, Mr. Karlebach and Mr. Suppa were sworn in by the board attorney.

Mr. Jones indicated that this is an application for a Conditional Use approval and Minor Site Plan approval in order to construct a telecommunication facilities consisting of 12 antennas on an existing tree monopole on Ross' Corner. The applicant will be co-locating on an existing 94' monopole previously approved by this board by Verizon Telecommunications. He indicated that their antenna will be mounted at a centerline height at 82' which will be lower than the existing Verizon antennas. He further indicated that a 12' x 20' pre-fabricated shelter will be in place for their equipment in the existing compound. He indicated that the new structure does violate one of the side yard setbacks and they will need a variance. He indicated that they are conditionally permitted in the LI Zone.

Mr. Pellow reviewed his report dated October 10, 2007 for completeness:

Item 7: Compliance with legal notice requirements. Mr. Clark indicated that the notice is adequate.

Item 28: Existing structures within 200 feet (200') and distance to property line. The applicant is requesting a waiver. The existing structures are shown without distances to property line on the key map. A waiver is appropriate due to the large size of the subject property.

Item 43: Location of existing railroads, bridges, culverts, drainage pipe, water sewer, utility poles. The applicant is requesting a waiver. A waiver is appropriate as the existing utility pole serving the site is shown on the plans and no water or sewer services are required or proposed for the development.

Item 44: Natural features including existing vegetation, wet areas, watercourse, flood plain limit, rock outcropping. The applicant to confirm that no wetlands, transition areas, flood plains or flood hazard areas impact the site. Mr. Pellow indicated that this property being on a hill he does not see this as a problem, however, it should be certified by the applicant's engineer. Mr. Suppa did certify to the board that no wetlands, transition areas, flood plains or flood hazard areas impact the site.

Item 64: Environmental Impact Statement. Applicant is requesting a waiver. Provided that the application is reviewed as a minor site plan, Ordinance 30-613.b states that an

NEW APPLICATIONS CONT.

**Nextel Communications – LUB 07-18 – Block 11, Lot 1 – 552 County Route 565 –
Minor Site Plan & Conditional Use cont.:**

EIS is not required for minor site plans or minor subdivision. Mr. Pellow indicated that a waiver is appropriate.

A Motion was made by Mr. Zappile and seconded by Mr. Risdon to deem this application complete. All were in favor. The Motion was carried.

Mr. Pellow continued reviewing his report dated October 10, 2007:

“Item 5”: The proposed use is an expansion of the existing use on the site, which was approved as a conditional use in the Light Industrial Zone. A conditional use variance was granted for side yard setback where 300 feet is required, approximately 56 feet was provided. The board attorney to determine if conditional use approval is required and/or if the variance for the side yard setback is needed. Mr. Clark indicated that this would be considered a “D” Variance.

Due to the fact that this is a “D” Variance, Mrs. Kristensen and Mr. McDowell stepped down from this application.

“Item 6”: Site work has been completed from the original site plan approval. Retaining walls are not yet constructed and the “compound” area is not fenced. Additional grading and tree removal are necessary to clear the area to the size of the original approval and to construct the retaining walls. All site work from the previous application should be completed and a final as-built survey submitted to the Township prior to allowing any additional antennas to be placed on the site. Mr. Suppa indicated that he was at the site today and it is still in the same condition. He did speak to Verizon and they indicated that they will be contacting Mr. Pellow to complete this project.

“Item 7”: The existing monopole is 94 feet high. The proposed panel antennas for Nextel are located below the existing Verizon panel antennas and are proposed to be 85 feet high on the existing monopole.

“Item 8”: Photos of the existing conditions on the site and photos with renderings of the proposed antennas from various viewpoints were provided.

“Item 9”: Ordinance 99-15, Section II.F. “General Conditions Applying to All Towers and Antennae” requires the following:

- 1) F(1) Noise Levels – all noise generated by a tower and/or equipment shed shall meet the minimum standards contained in all State, Federal, or Local noise regulations. Applicant’s professionals to provide testimony.
- 2) F(2) Co-Location Conditions and Limitations – the application is for co-location of antennas. The applicant submitted a Radio Frequency Engineering Report, which provided information about the need for the additional antennas in the area.
- 3) F(3) Annual Report – The Ordinance requires several periodic reports and an initial report signed and sealed by a licensed professional engineer certifying the estimated useful structural life of the tower and an initial inventory of all equipment and antennae at the site. The applicant to testify if the initial report was completed for the existing site and if any additional reports have been provided.
- 4) F(4) Abandonment and Removal – Any tower that does not operate for a continued period of six (6) months shall be considered abandoned, and the owner of such tower

NEW APPLICATIONS CONT.

Nextel Communications – LUB 07-18 – Block 11, Lot 1 – 552 County Route 565 – Minor Site Plan & Conditional Use cont.:

shall remove the same within 90 days of receipt of notice. The Township may condition the issuance of any permit to construct a tower on the posting of an appropriate performance bond or suitable guarantee for the removal of the tower if needed. Its unclear if the tower as it exists is operating yet. The applicant to provide testimony as to the operating status of the existing tower.

5) F(5) Signs – signs are permitted, totaling 2 square feet in total area, if they include owner contact information, warnings, equipment information, and/or safety instructions. No commercial advertising shall be permitted. One sign 0.75 square feet in size is proposed on the door of the equipment shelter, which provides an emergency contact number and no trespassing warnings.

6) F(6) Lighting – security and safety lighting is permitted if the light is wired with a timing device and/or sensor so that the light is turned off when not needed for safety or security purposes and if the light is for security and safety at the entrance. No lighting is permitted on the communications tower. A single security light is shown mounted on the equipment shelter at eight (8') feet in height. A note should be added to the plans identifying if the light will be on a timer or a sensor.

7) F(8) RF Radiation – The applicant shall comply with the New Jersey Radiation Protection Act and regulations, and any other Federal or Local regulations in effect. Applicant's professionals to provide testimony to demonstrate compliance.

“Item 10”: An access easement in favor of the Township was required as a condition of approval of the original site plan to build the monopole. The easement has not yet been provided. Mr. Pellow indicated that this has not been provided from Verizon yet, but this applicant should not begin their project until this easement is in place. Mr. Jones questioned Mr. Pellow if this needed to be in place before the applicant applied for a construction permit. Mr. Pellow indicated that this must be in place, together with the wall being built and the road completed.

Appearing before the board was the applicant's RF Engineer, Mr. Conelli. Mr. Conelli submitted to the board Exhibit “A-1” which is a map showing existing sites, proposed sites, planned sites, reliable coverage, topography and town boundaries. He indicated that the yellow pie shaped marks on the map are sites that are currently in operation by Nextel. There are blue hash lines which are the towns that boarder Frankford Township. The grey scale on the map is the topography, the terrain features. The map also shows a small map in the bottom corner of some of the major roads that the applicant is trying to target; some of the areas they are looking to improve the coverage for subscribers. Mr. Conelli indicated that his first overlay of the Exhibit is a computer generated prediction of reliable coverage from the existing on air sites. He indicated that what the applicant is trying to do with this site is trying to close some gaps on Route 206, Route 15 and Route 565. Mr. Conelli referred to his second overlay of Exhibit “A-1” is the predicted coverage of the site and what they expect the coverage to be from this site. He further indicated that what they have calculated the anticipated improvement in coverage along Route 565 traveling northeast is 3 ½ miles of improvement; 2 ½ miles southwest along Route 206 and approximately 1.3 miles northwest; and 1.2 miles south on Route 15. This enable people traveling along Route 565, Route 206 and Route 15 to maintain the calls that they were on or initiate a call in this area.

Mr. Jones questioned Mr. Conelli if it was his professional opinion that (1) there is a gap in wireless coverage within and around Frankford Township and (2) that this particular

NEW APPLICATIONS CONT.

Nextel Communications – LUB 07-18 – Block 11, Lot 1 – 552 County Route 565 – Minor Site Plan & Conditional Use cont.:

site will assist your coverage objectives in filling out Nextel's coverage in this area as required by Nextel's FCC License. Mr. Conelli agreed.

Mr. Clark questioned the Mr. Conelli as to how he defined acceptable service, what negative DB. Mr. Conelli indicated that in this particular area they are targeting in car portable. He further indicated that a subscriber in a car, they need to provide enough signal strength outside to get inside the vehicle. He indicated in this particular case they are asking for a DB level with targeting around -6 or -7. Mr. Clark questioned Mr. Conelli if this proposal is more for coverage or capacity or both. Mr. Conelli indicated that this is a pure coverage proposal.

Appearing before the board was the applicant's planner, Mr. Karlebach. Mr. Jones indicated that they have submitted an Antenna Site FCCR Compliance Report from the Federal Telecom Group as required by the Conditional Use requirement of the ordinance. He indicated that basically the report states that the proposed telecom site is well below both the Federal Emissions Standards for RF Emissions and even further below the New Jersey Standards, the Radiation Protection Act.

Mr. Karlebach indicated to the board that the essential question is whether or not this site remains appropriate notwithstanding the deviation from the Conditional Use criteria. He indicated that the first applicant came before the board for the same relief. He feels this application is somewhat different, in that, the tower exists. He brings this point to the board because the 300 foot setback requirement that this applicant is violating in his mind applies to towers and not the related equipment. In review of the Ordinance, it specifically mentions fall down zones, placing these towers distant from property lines, places where people congregate, parking lots, things of this nature. While this is appropriate for a new tower, he does not feel this ordinance section really specifically should be applied to equipment buildings because those buildings are roughly the size of a single car detached garage. He feels that a 300 foot setback requirement for a 12' x 20' structure is certainly excessive. He stated that as it stands now, the distance from the property line to the existing fence is 56 feet. This area between the fence and property line is all wooded. In fact, the adjoining property, which is impacted by this setback deviation is also vacant, wooded property. He feels that 56 feet of wooded buffer is certainly sufficient to screen the equipment shelter. He indicated that there is no increase in the height of the structure. The use of the property does not change. There is no expansion of the existing compound. He further stated that the equipment shelter that violates the setbacks needs to be near the antennas for radio frequency reasons because as the cable runs get longer, you lose some of the signal. It is a technical requirement of the system that the equipment shelter and its cabinetry be located at the base of this tower. He noted that the tower exists and, therefore, it sort of dictates the fact that there is going to be an encroachment by these equipment cabinets. He feels that the only planning issues is if there is any visual impact onto the surrounding area and he submits to the board that there is no visual impact. These 12 antennas are going to be concealed within the branches of the stealth tree. Mr. Karlebach submitted to the board Exhibits "A-2" through "A-4" which are photographs. He indicated that "A-2" are two photographs. The photograph to the left of the exhibit represents the existing conditions and this photograph was taken from County Route 565 and Fetzer Lane approximately 1130' southeast of the site. The photograph on the right has been visually enhanced to show the addition of 12 antennas. He indicated that "A-3" are two photographs. The photograph to the left of the exhibit represents the existing conditions and this photograph was taken from County Route 565 approximately 1250' east of the site. Again the photograph on the right was visually enhanced. He reviewed Exhibit "A-4" which are two photographs. Again, the photograph on the left of the exhibit represents

NEW APPLICATIONS CONT.

**Nextel Communications – LUB 07-18 – Block 11, Lot 1 – 552 County Route 565 –
Minor Site Plan & Conditional Use cont.:**

the existing conditions and this photograph was taken from Northrup Road approximately 2060' northeast of the site. The photograph on the right, again was visually enhanced. He indicated that the additional antennas are virtually inconspicuous. They do not present any visual impact issues.

Mr. Karlebach indicated that this is an unmanned facility, therefore, there is no increase in population or employment at this site. It requires very little in the way of municipal services. It only requires electric and telephone service similar to a single family home. There is no water supply or sewer service required. There is virtually no traffic impact. He indicated that the technician visits the site every 4 to 6 weeks. Finally, this facility will not generate any noise, vibration, odor, glare, dust, fumes or any other objectionable influences. He stated that he believes this "D" Variance can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

Mr. Romania questioned the applicant if someone was going to provide testimony regarding the tower itself as to how much the antennas weigh, structurally whether it will support the cable and the additional antennas, and wind load. Mr. Suppa, the applicant's engineer, appeared before the board. Mr. Suppa described the site to the board. The property is off of Route 565 and Fetzer Lane. At the present time there is an existing compound that Verizon Wireless has built with a 75' x 75' fenced in compound when it is completed. There is a gravel access to the site with a retaining wall to be built by Verizon Wireless. There is electric and telephone service at the site. These sites need about 200 amps per carrier to run as well as a telephone land line, which already exists at the site. He indicated that what the applicant is proposing to do is locate a 12' x 20' shelter which is 10' high, prefab concrete shelter which is similar to the Verizon shelter. They are proposing an 11' x 15' concrete emergency generator pad in the event of a power outage. He indicated that the FCC just passed a law that the carriers are now required to provide back up power. He stated that the generator will not be located on the site, just the concrete pad in case of a lengthy power outage, they will bring a generator to the site which will sit on the pad. At the present time there is a battery back up which will last 2 to 3 hours. He indicated that there is currently on the site electric and telephone utilities which are underground. The tower that exists is a 94' tree pole. The applicant will be at 82' on the pole. The antennas will be located within the branches. The "T" arms are about 6' x 7" x 12". The pole was designed for 5 carriers. Therefore, the tower structurally meets code for 5 carriers with 12 antennas per carrier. Mr. Romania questioned Mr. Suppa as to the weight of the antennas. Mr. Suppa indicated that the antennas are approximately 10 to 20 pounds. All of the cables will be inside the tree, which is about 6' at the base and 2' at the top, therefore, you will not see any cables. There will be small sign on the door which is less than one square foot. He indicated that noises are well below the state limits at the property line for residential property lines. He indicated there are two GPS receivers on the shelter at 3' over top of the roof. When the shelter is built there will be a 7' wood fence around the compound with 1' barb wire which is the obligation of the prior applicant, Verizon Wireless.

Mr. Romania indicated that the board must make a decision if this applicant should be allowed to obtain a building permit for their project before Verizon Wireless has met all their conditions of the prior approval. Mr. Risdon indicated that he feels the applicant should be allowed to build and start the project, but not go on line until the all the prior conditions have been met. He suggested that this applicant do the improvements and go after Verizon to reimburse them for the improvements. Mr. Jones indicated that he will contact Verizon and try to get them to complete the conditions of their approval. The

NEW APPLICATIONS CONT.

Nextel Communications – LUB 07-18 – Block 11, Lot 1 – 552 County Route 565 – Minor Site Plan & Conditional Use cont.:

board agreed that the applicant can build their facility, however, until all the conditions of the prior applicant must be met before this applicant can go on line.

Mr. Ayers questioned the applicant as to the noise level of the generators. Mr. Suppa indicated that the noise level will be approximately 60' feet away from the property line and it will be at 60 to 70 decibels only when the power goes out.

A Motion was made by Mr. Ayers and seconded by Mr. Gstattenbauer to open this matter to the public. All were in favor. The Motion was carried.

There was no public participation.

A Motion was made by Mr. Ayers and seconded by Mr. Dolan to close this matter to the public. All were in favor. The Motion was carried.

Mr. Clark summarized the application. He indicated that this is a Use Variance D3 type of variance because they can't meet one of the conditions of the conditional uses, which the board heard testimony about the accessory structures and the 300' limitation. The applicant provided evidence as to why special reasons under a case which states that if your not in conformance, if its an approved use, you look to see what affect, if any, the non-conformity creates in the area. The testimony was that there was no affect because it is buffered by trees and the site exists by a prior approval of Verizon. The second aspect of the application is a site plan amendment. The conditions of this application would be the standard conditions as set forth in the telecommunications ordinance, to comply with Mr. Pellow's report dated October 10, 2007, and also all conditions of the existing approve site plan must satisfied before this carrier can go on line.

Mr. Romania indicated that a letter should be sent to the building department that Verizon or Nextel should not go on line with their service until all the conditions of original site plan approval have been complied with.

A Motion was made by Mr. Martin and seconded by Mr. Risdon to approve the application requested by the applicant with the conditions as set forth in Mr. Clark's summary. Roll Call:

YES: 7 Ayers, Risdon, Zappile, Gstattenbauer, Martin, Larson, Romania

NO: 0

ABSTAIN: 0

The Motion was carried.

Tammy Mindo – LUB 07-23 – Block 29, Lot 7.06 – 175 Wykertown Road – “C” Variance:

Appearing before the board was the applicant, Tammy Mindo, and her planner, Wayne McCabe. Ms. Mindo and Mr. McCabe were sworn in by the board attorney.

Mr. Pellow reviewed his report dated November 15, 2007 for completeness:

“Item 7”: Compliance with legal notice requirements. Mr. Clark indicated that the legal notice was adequate.

NEW APPLICATIONS CONT.

Tammy Mindo – LUB 07-23 – Block 29, Lot 7.06 – 175 Wykertown Road – “C”
Variance cont.:

“Item 26”: Zoning Chart listing existing/proposed requirements for area, setbacks, lot coverage, height, density, floor area ratio, and parking. Mr. Pellow indicated that the floor area ratio has been shown. Mr. Pellow indicated that the existing floor area has not been shown on any plan. Mr. McCabe indicated that the existing first floor is 2,052 square feet. The applicant is adding 149 new square feet to this. From this, they are permitted to take 250 square feet for the garage, which leaves 1951 square feet. They are constructing 1433 square feet on the second floor giving a total square feet of 3,384 square feet which meets the floor area ratio ordinance of Frankford Township. He indicated that the applicant is allowed 7.5% or 3,750 square feet.

“Item 32”: Properties within 200 feet, lot and block number and owner, outline of 200 foot perimeter. Owners of Lots 16 and 16.06, Block 32 have not been shown on the certified list. Mr. Pellow questioned if these property owners were notified since they do not show up on the list. Mr. McCabe indicated that they were.

“Item 75”: Building floor plan, elevation views and first floor elevation with overall building height. First floor elevation to be shown.

The applicant has requested the following waivers which are acceptable:

“Item 14”: Copy of NJDOT/NJDEP applications. Mr. Pellow indicated that this is acceptable, as an application is not needed.

“Item 70”: NJDEP Letter of Interpretation. Mr. Pellow indicated that this is acceptable, as wetlands are over 150 feet from any proposed construction.

A Motion was made by Mr. Risdon and seconded by Mr. Gstattenbauer to deem this application complete. All were in favor. The Motion was carried.

Mr. Pellow continued reviewing his report:

“4”: The applicant states that there are three bedrooms now and there will be three bedrooms after renovations. A floor plan for the existing house to be shown to verify the bedrooms. Mr. Pellow indicated that Mr. McCabe’s Memo of November 23rd explains what is happening on the first floor. Mr. McCabe submitted to the board exhibit “A-1” which is a portion of the architectural plans prepared by Charles Schaefer of the first floor plan. The plan shows how the first floor is to be altered. He has marked in color the outline of the 3 bedrooms that currently exist. Mr. Pellow indicated that this was acceptable.

“5”: Was the original septic system designed for three bedrooms. Need copy of permit. Mr. Pellow indicated that Mr. McCabe’s memo explains that no septic permit is on file. Mr. McCabe indicated that this is a 3 bedroom home and it will remain a 3 bedroom home.

“6”: COAH requirements are not applicable to this application as the house exists. Mr. Clark agreed.

“7”: Question for Dick Clark: Since the applicant cannot conform to the former 1-acre requirements, will she have to comply with the current 5-acre ordinance? Mr. Clark indicated that they do not have to comply with the 5-acre ordinance because they have an existing structure.

