

TOWNSHIP OF FRANKLIN
ZONING BOARD OF ADJUSTMENT
COUNTY OF SOMERSET, NEW JERSEY

REGULAR MEETING
January 10, 2008

The regular meeting of the Township of Franklin Zoning Board of Adjustment was held at 475 DeMott Lane, Somerset, New Jersey and was called to order by Chairman Thomas at 7:40 p.m. The Sunshine Law was read and the following members took the Oath of Office:

OATH OF OFFICE

- **Regular Board of Adjustment Regular Member – Laura Graumann**
- **Regular Board of Adjustment Regular Member – Donald Johnson**
- **Alternate Board of Adjustment Member #1 – Phillip Kramer**
- **Alternate Board of Adjustment Member #4 – Anthony Caldwell**

The roll was called as follows:

PRESENT: Raymond Betterbid, Grace Evans, Laura Graumann, Donald Johnson, Bruce McCracken, Robert Shepherd, Phillip Kramer, Carl R.A. Wright (arrived at 7:55 p.m.), Alan Rich, Anthony Caldwell and Robert Thomas

ABSENT: None

ALSO PRESENT: Patrick Bradshaw, Board Attorney, Mark Healey, Professional Planner, Vincent Dominach, Zoning Officer and Olga M. Burke, Administrative Officer/Secretary

REORGANIZATION

- **Nomination / Selection of Chairman**

Ms. Graumann made a motion to nominate Robert Thomas. Mr. McCracken seconded the motion. Seeing no further motions, the nominations were closed. The Board nominated Robert Thomas by affirmation and all were in favor.

- **Nomination / Selection of Vice Chairman**

Mr. McCracken made a motion to nominate Grace Evans. Ms. Graumann seconded the motion.

Seeing no further motions, the nominations were closed. The Board nominated Grace Evans as Vice Chairperson by affirmation and all were in favor.

- **Appointment of Board Attorney**

Mr. McCracken made a motion to nominate Patrick Bradshaw, from the law firm of Kelso & Bradshaw, for the appointment of the position of Board Attorney. Mr. Shepherd seconded the motion.

Seeing no further motions, the nominations were closed. The Board appointed Patrick Bradshaw to the position of Board Attorney and all were in favor.

RESOLUTIONS

- **Philomena Tomaro-Executrix Estate of Domenica Primiano
Docket # ZBA-07-00050**

Ms. Graumann made a motion to approve the Resolution as submitted. Mr. McCracken seconded the motion and the roll was called as follows:

FOR: Mr. Betterbid, Vice Chair Evans, Ms. Graumann, Mr. Johnson, Mr. McCracken and Chairman Thomas

AGAINST: None

- **Natalie Santayana / Docket # ZBA 2006-0488**

Mr. McCracken made a motion to approve the Resolution as submitted. Mr. Johnson seconded the motion and the roll was called as follows:

FOR: Mr. Betterbid, Vice Chair Evans, Ms. Graumann, Mr. Johnson, Mr. McCracken and Chairman Thomas

AGAINST: None

- **Maureen & Edward Matson / Docket # ZBA-07-00029**

Mr. McCracken made a motion to approve the Resolution. Vice Chair Evans seconded the motion and the roll was called as follows:

FOR: Vice Chair Evans, Mr. McCracken, Mr. Shepherd and Chairman Thomas

AGAINST: None

- **Amrith & Aurora Sukhram / Docket # ZBA-07-00043**

Mr. McCracken made a motion to approve the Resolution as submitted. The motion was seconded and the roll was called as follows:

FOR: Mr. Betterbid, Vice Chair Evans, Ms. Graumann, Mr. McCracken, Mr. Rich and Chairman Thomas

AGAINST: None

- **Vipul Shah / Docket # ZBA-07-00041**

Vice Chair Evans made a motion to approve the Resolution as submitted. Mr. McCracken seconded the motion and the roll was called as follows:

FOR: Mr. Betterbid, Vice Chair Evans, Ms. Graumann, Mr. Johnson, Mr. McCracken and Chairman Thomas

AGAINST: None

- **Raritan Valley Habitat For Humanity, Inc. / Docket #ZBA-07-00044**

Ms. Graumann made a motion to approve the Resolution as submitted. Mr. McCracken seconded the motion and the roll was called as follows:

FOR: Mr. Betterbid, Ms. Graumann, Mr. Johnson, Mr. McCracken and Chairman Thomas

AGAINST: None

MINUTES

- **Regular Meeting – November 15, 2007**

Mr. McCracken made a motion to approve the Minutes, as submitted. Mr. Betterbid seconded the motion and the roll was called as follows:

FOR: Mr. Betterbid, Vice Chair Evans, Ms. Graumann, Mr. Johnson, Mr. McCracken, Mr. Rich, Mr. Caldwell and Chairman Thomas

AGAINST: None

- **Regular Meeting – December 6, 2007**

Mr. McCracken made a motion to approve the Minutes as submitted. Mr. Betterbid seconded the motion and the roll was called as follows:

FOR; Mr. Betterbid, Vice Chair Evans, Ms. Graumann, Mr. Johnson, Mr. McCracken, Mr. Shepherd, Mr. Rich and Chairman Thomas

AGAINST: None

HEARINGS

- **Gabriella Zastocki / Docket # ZBA-07-00046**

Application for a Use Variance to convert an existing single-family dwelling into a two-family dwelling located at 4 Bedford Road, Block 392, Lot 47, in the (R-20) Residential Zone – **postponed to February 21, 2008 – no further notification required.**

DL 2/21/2008

- **Peter DiGiovanni / Docket # ZBA-07-00047**

Mr. Darren Dapas, Esq., Attorney with the law firm of Lanfrit & Tullio, LLC, appeared before the Board on behalf of the Applicant, Peter DiGiovanni. Mr. Dapas indicated that the Application was for a Hardship Variance to construct an accessory two-car garage structure and concrete patio located at 6 Whittier Avenue, Block 194, Lot 120, in the (R-7) Residential Zone – **carried from December 13, 2007.**

Mr. Dominach's Zoning report indicated that a variance is needed for impervious coverage where the maximum allowed is 30% and 34.5% is existing/proposed. In addition, he stated that the existing frontage of the property is 70ft. where the minimum needed is 75 ft. Mr. Dapas added to that by saying that the impervious coverage is actually 36%, when factoring in the coverage for the shed. He also told the Board that

they would be seeking a variance for side yard setback for the 108 sq. ft. frame shed where 8 ft. is required and 5 ft. exists.

Mr. Peter DiGiovanni, Applicant, came forward and was sworn in. Mr. DiGiovanni testified that he purchased the property in 2005, when there was an existing wooden deck. He also added that there was no garage when he purchased the property, but there was a concrete driveway existing. Mr. DiGiovanni stated that in 2006 he received a building permit to construct a garage on the property, which is now completed. He added that he did not extend the driveway to meet the garage because of existing shale. He also stated that he wasn't ever planning to extend the driveway and understands that if he should want to in the future, he would have to come back to the Board to request an additional variance. He requested a Certificate of Occupancy for the garage when it was completed, but was denied due to the excess impervious coverage.

Mr. Shepherd requested clarification regarding the history of the property and construction of the garage and placement of the shed. Mr. Dapas clarified the situation and also indicated that the shed could be moved farther away from the side yard property line in order to avoid the need for that variance. Mr. DiGiovanni also suggested that he could remove the shed from the property entirely.

Mr. Kramer asked Mr. DiGiovanni what the intended use was going to be for the garage. He indicated that the doorways appeared oversized and was concerned that some sort of truck would be entering and exiting the property. Mr. DiGiovanni indicated that he just built it the same size as the garage on his old property and that he only intended to put his cars in the garage and possibly some accessory equipment such as lawnmowers, etc. Mr. Kramer suggested possibly removing the concrete patio or one of the two sidewalks leading to the front door. Mr. Dapas indicated that asking the Applicant to bear the expense of such an action with only a minimal percentage reduction of impervious coverage would not be prudent. The Board also discussed the runoff of groundwater and Mr. Dapas indicated that they were not aware of any problems nor did the Township bring any problems to their attention.

Mr. Thomas made a motion to open the meeting to the public. Seeing no one come forward, the meeting was closed to the public.

Mr. Shepherd made a motion to approve the Hardship Variance to construct a 2-car garage and patio, along with the associated variances for 34.5% impervious coverage and frontage variance for 70 ft. (existing condition). He also added that the approval would be conditioned upon the removal of the shed on the property and the agreement to not extend the driveway. Ms. Graumann seconded the motion and the roll was called as follows:

FOR: Mr. Betterbid, Vice Chair Evans, Ms. Graumann, Mr. Johnson, Mr. McCracken, Mr. Shepherd and Chairman Thomas

AGAINST: None

- **Art Heinrich / Docket # ZBA-07-00061**

Application for a Use Variance and Minor Site Plan to expand the existing one-story resident-looking medical office structure located at 6 Hawthorne Drive, Block 194, Lot 126, in the (h-B-D) Hamilton Street Business District – **carried from December 13, 2007.**

Mr. Dominach's Zoning report indicated that the Applicant is proposing an addition to an existing medical office building in an HBD zone. While the property is located in an HBD zone, medical office use is not permitted since the subject property does not have frontage on Hamilton Street. The prior zoning (OP Zone) of the property permitted medical office use.

The following variances are needed:

1. D-2 for the expansion of a pre-existing non-conforming use (medical office)
2. Side yard setback (accessory structure) – 5 ft. minimum, 3 ft. proposed
3. Lot area – 10,000 sq. ft. minimum, 8,763 sq. ft. existing/proposed
4. Lot frontage – 100 ft. minimum, 70 ft. existing/proposed

Dr. Art Heinrich, Applicant and Owner, came forward and was sworn in. Dr. Heinrich testified that he is a solo, unincorporated physician, with areas of specialty in Occupational and Preventive Medicine, and presently servicing as the Employee Health Physician at Colgate Palmolive Company in Piscataway, NJ. He explained that it was his intention to expand his practice at the Somerset location to include consultative services to Workman's Compensation firms. He added that his expectations, in the long run, would be 5-6 patients on a busy day with an average of 2 patients per day. He explained that he would not be giving any treatment, but spending time on evaluation and report preparations. He testified that his staff would consist of a part-time Billing Clerk and his wife, would serve as Secretary and Receptionist.

Dr. Heinrich proposed to add 532 sq. ft. off the front of the building as well as expanding the attic and basement. Dr. Heinrich indicated that he required variances for both lot area and lot frontage and testified that there was no additional property available to bring those conditions into conformance. Dr. Heinrich briefly described the neighboring properties as well as the subject property. He stated that the rear parking area allows for six parking spaces presently and he proposed adding one handicapped parking space with an adjacent accessible area as well as a handicap ramp that would serve as access to the building from the rear. He went on to explain that the building materials used would be a blend of commercial and residential features and the proposed sign would be fixed and centered to the façade as well as externally illuminated. Dr. Heinrich also stated that the handicap signage would be prominently displayed, a stop sign would be installed at the right side of the driveway before entering Hawthorne Drive and a 4 ft. wide concrete sidewalk would be constructed along Hawthorne Drive that would connect the two sidewalks of the adjacent lots. He also testified that the two small trees in the front of the building would be relocated and the utility shed would be relocated to comply with the ordinance. He also added that the size of the shed would be reduced to less than 100 sq. ft. and, therefore, can no longer be considered an accessory building.

Dr. Heinrich testified that the attic would be used for storage and archiving of records. Separate access to both the basement and the attic were desired as it worked well into the architectural design and would provide additional firefighting access to the building.

Mr. Shepherd questioned what the use of the basement would be. Dr. Heinrich indicated that it would be used for some sort of storage.

Ms. Graumann opened a discussion regarding the limit of impervious coverage in the zone. Mr. Dominach stated they can have up to 85% impervious coverage and the project falls well within that limit.

Mr. Healey gave clarification regarding the testimony and how it related to parking requirements.

The Board brought up the topic of the driveway width and that the present 12 ft. driveway width would not allow for two-way traffic. Mr. Thomas stated that Dr. Heinrich's testimony indicated a small patient load and was not sure that the driveway would be a problem.

Mr. Phillips asked that there be as a condition of approval confirmation of the exact impervious coverage calculations for the proposed site.

Patient access was discussed among the Board members. Mr. Healey clarified with Dr. Heinrich that there would be signage to direct patients around the opposite side of the building from the driveway and into the building.

Mr. Dominach brought up the comments made by the Public Works Dept. regarding drainage and runoff. He indicated that the Engineering Dept. needs to review the drainage issue on this property.

Mr. Healey stated that the project needs to go before the Hamilton Street Business and Community Corp. and Dr. Heinrich stated that there is a copy of a letter stating that they have reviewed the Site Plan. Dr. Heinrich briefly characterized their comments. Mr. Dominach indicated that it is not an ordinance that requires an Applicant to follow their recommendations, but that the Board could make it a condition of approval that the Applicant would have to comply with the Hamilton Street Business and Community Corp.'s recommendations.

Mr. Paul Fernandez, Architect, came forward and was sworn in. The Board accepted his qualifications. Mr. Fernandez marked into the record, Exhibit A-1, which were revised Site Plans, and were intended to reply to the responses from the Township Professionals. Dr. Heinrich briefly described the layout of the rooms on the plan.

Mr. Shepherd opened a discussion regarding business hours. It was discussed to set business hours of 9 a.m. to 6:00 p.m., weekdays and 9:00 a.m. – 4:00 p.m. on Saturdays, with a limit of 6 patients per day. Mr. Dominach added that the condition could be included in the Resolution and the Resolution could be filed with the deed in order to keep the condition as part of the property even if it changes hands in the future.

Mr. Thomas stated that the Board should have all Resolutions filed with the deeds across the board and deal with exceptions should they be presented.

Mr. Shepherd made a motion to approve the Use Variance and Minor Site Plan. The approval would be subject to the presentation of these plans to the Hamilton Business and Community Corporation for their comments on the proposal and complying with their recommendations. The approval would also be subject to complying with all the comments on the staff reports, including the recalculation of the impermeability rates for the site. Also, approval would be conditioned upon the Board's approval being recorded along with the deed in the Somerset County Clerk's office. Additionally, the approval would be granted subject to the following limitations:

- The office hours would be limited to 9:00 a.m. – 6:00 p.m. weekdays and 9:00 a.m. – 4:00 p.m. on Saturdays
- Patient visits limited to 6 per day.

Ms. Graumann seconded the motion and the roll was called as follows:

FOR: Mr. Betterbid, Vice Chair Evans, Ms. Graumann, Mr. Johnson, Mr. McCracken, Mr. Shepherd and Chairman Thomas

AGAINST: None

DISCUSSION

- **Televising Board of Adjustment Meetings
Carried from December 13, 2007**

Chairman Thomas indicated that the Board is under intense pressure from some Council members to move forward with televising meetings.

Mr. Shepherd referenced the Resolution of the Planning Board regarding televising meetings as a good example because they are not going to use the televised meeting as the official transcript of the meeting. He added that as long as they follow the Planning Board's Resolution, he felt that would be the best scenario for televising future meetings.

Mr. Shepherd made a motion to adopt as the Resolution of the Zoning Board of Adjustment of the Township of Franklin, Somerset County, NJ the same Resolution that was adopted by the Planning Board of the Township of Franklin, Somerset County, NJ regarding the use of televising the meetings of that Board. The motion was seconded. Vice Chair Evans questioned whether there might be some cases where you wouldn't want to publicly televise discussions of a sensitive nature. Ms. Graumann asked if there were any cases in the past that come to mind that would constitute something too sensitive to televise. A discussion ensued among the Board members regarding the positive and negative issues involved. Chairman Thomas suggested that they could adopt the Resolution and, if at any time in the future there become significant issues regarding the televising of meetings, all it would take is a motion and a majority to stop

the practice. Mr. Shepherd added that the Resolution could always be amended if there are problems. The Board decided to go ahead with the original motion and the roll was called as follows:

FOR: Mr. Betterbid, Vice Chair Evans, Ms. Graumann, Mr. Johnson, Mr. McCracken, Mr. Shepherd and Chairman Thomas

AGAINST: None

WORK SESSION / NEW BUSINESS

MEETING ADJOURNED

Mr. Shepherd made a motion to adjourn the meeting at 9:15 p.m. and was seconded. All were in favor.

Respectfully submitted,

Kathleen Murphy, Recording Secretary
January 31, 2008