

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

**REGULAR MEETING
June 15, 2017**

This 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 Robert Thomas, Chairperson, at 7:30 p.m. The Sunshine Law was read and the roll was called as follows:

PRESENT: Raymond Betterbid, Laura Graumann, Donald Johnson, Bruce McCracken, Alan Rich, Anthony Caldwell, Gary Rosenthal, Joel Reiss, Cheryl Bergailo and Chairman Thomas

ABSENT: Robert Shepherd

ALSO PRESENT: Mr. Patrick Bradshaw, Board Attorney, Mark Healey, Planning Director, and Christine Woodbury, Planning & Zoning Secretary

RESOLUTIONS:

- **Somerset Therapeutics / ZBA-17-00007**

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

FOR: Mr. Betterbid, Mr. Johnson, Mr. Rich, Mr. Rosenthal, Mr. Reiss, Ms. Bergailo and Chairman Thomas

AGAINST: None

DISCUSSION:

Vouchers:

- **Patrick Bradshaw – Kelso & Bradshaw – Doublestone Holdings, LLC- \$210.00**
 - **RUKH Cedar Grove Lane Properties - \$385.00**
 - **June Monthly Retainer - \$865.00**

Mr. Reiss made a motion to approve the Vouchers as submitted. Mr. McCracken seconded the motion and all were in favor.

HEARINGS:

- **ALLEN MAGSIPOC / ZBA-17-00010**

Hardship Variance in which the Applicant was seeking approval to add a second floor addition at 142 Harrison Street, Somerset; Block 192, Lot 62 & 63, in the R-7 Zone - **CARRIED FROM JUNE 1, 2017 – with only legal notification required.**

Mr. Healey gave a brief summary of the proposal. He indicated that the Technical Review Committee (TRC) reviewed the proposal. He noted that the Applicant wanted to utilize the existing footprint of the home to add a second story to the 1-story home. Mr. Healey stated that there were a number of non-conforming conditions on the site, but those were basically staying “as is”. He then discussed the requested variances, but indicated that they were created because of the proposed covered front porch. The two variances were for building coverage, where 20% was the maximum permitted with a proposal of 21.3%, and the front yard setback requirement of 25 ft. with a proposal of 14.6 ft. Mr. Healey then told the Board that the 14.6 ft. front yard setback was actually the existing setback, with the front porch continuing the non-conformity. He added that the building coverage variance was needed, not because of adding any additional space, but that the covered porch contributed to the building coverage calculations. He then told the Board that he felt the plans satisfactorily presented the house as was proposed and thought it was an attractive looking home and would be a benefit to the neighborhood in terms of the aesthetics.

Mr. Allen Magsipoc, Applicant, came forward and was sworn in. Mr. Magsipoc testified that Mr. Healey’s description of the proposal was correct. He agreed with the Chairman’s statement that he did not have any other options in placing any portion of the home or addition in any other location on the property since it was only a 7,000 sq. ft. lot.

Mr. Healey indicated that the TRC had two recommendations should the Application be approved. He stated that the lots should be consolidated into one lot and that the impervious surfaces that were proposed to be removed actually be removed so that they can decrease the impervious coverage on the property to 36.5%. Vice Chair Graumann asked the Applicant if he would have a problem with the stated conditions, and Mr. Magsipoc answered in the negative.

Chairman Thomas then opened the meeting to the public. Seeing no one in the public coming forward, the Chairman closed the public portion of the meeting.

Vice Chair Graumann made a motion to approve the Hardship Variance as discussed. Mr. Johnson seconded the motion and the roll was called as follows:

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

AGAINST: None

- **TRUST UNDER ARTICLE 6 u/w/o SIGMUND SOMMER & LEVIN PROPERTIES, LP / ZBA-15-00017**

Mr. Jason Harlack, Esq., Attorney with the law firm of Wisniewski & Associates, appeared before the Board on behalf of the Applicant, Sigmund Sommer & Levin Properties, LP. He stated that they were before the Board in order to obtain a Use Variance in which the Applicant was proposing to construct 50 townhomes at 31 Cedar Grove Lane, Somerset; Block 468.09, Lot 34, in the R-40 Zone – **CARRIED FROM APRIL 20, 2017 – with no further notification required.**

Mr. Harlack went on to explain that the meeting that night was a continuation from a hearing on December 1, 2016 wherein they presented testimony and were adjourned to January 19, 2017 when they put forward additional testimony. He stated that the hearing was adjourned because the Board felt that they wanted to obtain an expert in the matter and the Application was carried to March 16, 2017. Mr. Harlack then stated that the hearing was once again carried to April 20, 2017 because an expert had not been obtained yet, but had to be carried once again because there was not a quorum of Board members present that evening. Mr. Harlack then testified that it was his understanding that the Board decided not to obtain an expert and wished the Applicant to proceed. Chairman Thomas concurred with that statement.

Mr. Harlack then stated that they were again before the Board that evening for a Use Variance Application for a 50 unit townhouse development, wherein 38 units were proposed to be 3-bedroom units and 12 were proposed to be 2-bedroom units. He reiterated from previous testimony that they were just there that evening to obtain a Use Variance and accompanying “D” variances only as they had bifurcated the Application. He went on to state that should they be successful in obtaining a Use Variance approval that evening, they would submit a full Site Plan Application in the future.

Mr. Paul Phillips, Planner, came forward and was sworn in. The Board accepted his qualifications. Mr. Phillips gave his summary of what was being proposed, noting that there would be two “C” variances required should the Use Variance be approved. He indicated that the variances they would be seeking would be for building lot coverage and impervious coverage, in reference to the R-40 Zone in which the property was situated. He then refreshed the Board’s memory to the fact that the property consisted of a single tax lot of 10.67 acres, after the dedication to the County of the right-of-way. Mr. Phillips indicated that there was about 450 ft. of frontage on Cedar Grove Lane. Mr. Phillips then drew the Board’s attention to Exhibit A-1, which showed the existing conditions of an unimproved lot with the Site Plan superimposed. He then discussed the surrounding uses, including a mix of multi-family residential, hotels, single family homes as well as commercial business and places of worship.

He noted that the rear of the property backed up to the rear lot lines of the properties that front on World's Fair Drive, which principally consist of office, manufacturing and indoor recreational facilities. He described the project proposal as 50 townhouse units distributed among nine (9) buildings, as shown on Exhibit A-1. Mr. Phillips then added that the Applicant was proposing a 20% set-aside of affordable units and has agreed, on the record, to integrate those units throughout the project. He then discussed the uses that were allowed in the R-40 Zone, including single family homes, farms and golf courses among the principal uses, as well as conditional uses that would be allowed such as wireless facilities and public utilities, hospitals, schools and places of worship. Mr. Phillips then discussed the positive and negative criteria that must be given, with the positive criteria to include special reasons in support of the Application and demonstrate particular site suitability. He added that the negative criteria clearly must show that the granting of the variance would not cause substantial detriment to the public good or substantial impairment of the zone plan or zoning ordinance. Lastly, he added that they also had an advanced quality of proof under the NJ Supreme Court's Medici decision, which required that they had to reconcile the granting of the Use Variance with the fact that the underlying zoning did not envision what the Applicant was proposing.

Mr. Phillips then discussed the special reasons that he felt would support the Application, including the fact that the property was basically the only developable tract of land within the section from Pierce Street north to Easton Avenue, with the exception of a very small vacant piece of land across the street. He then drew the Board's attention to the purposes laid out for the R-40 zone, noting that single family homes was not the predominant land use within the zone in that area. He also noted that of the single family homes in that stretch of land, only one of the homes fully conformed to the R-40 standards. He noted several houses of worship as well as commercial uses as being the dominant land use in that section of Cedar Grove Lane along with at least three (3) multi-family projects, i.e., Hidden Brook (a senior project), Lakewood townhouse project and Ukrainian Village (also a senior project). Mr. Phillips then discussed the hardship of attempting to develop a large lot, single family home development in that area due to the other types of development in the area.

Mr. Phillips then addressed the site suitability, noting that because it was a cluster development, it would allow for a significant buffer from Cedar Grove Lane as well as additional separation from the industrial zoning and uses on World's Fair Drive. He noted that the closest structure to Cedar Grove Lane would be 200 ft. or more. Mr. Phillips then testified that they had met with the Township professionals in order to meet all of the standards for townhouse development, which he felt spoke to the particular site suitability for this type of development. He added that the only standard that they did not meet was the width of private streets, with a 30 ft. requirement and a 26 ft. proposal. He indicated, however, that that width was determined to be adequate to permit emergency vehicle access. Mr. Phillips also added that they went on to permit a secondary emergency access drive per the recommendation of the Township's Fire Prevention Dept.

Lastly, Mr. Phillips testified that there was clearly precedent for multi-family development as well as townhouse development along that portion of the Cedar Grove Lane corridor and saw the proposal as a suitable alternative to as zoned, single family housing. He spoke about the advancement of at least three (3) purposes of the statute if the variance were to be granted. He noted them as Purpose A – to guide development in a manner that promoted the public welfare, Purpose E – to promote the establishment of appropriate population densities and concentrations, and Purpose G – to provide sufficient space in an appropriate location for a

variety of residential uses to meet the needs of the State's citizens. He then reminded the Board that the Applicant was committed to include the 20% affordable housing unit set aside.

Mr. Phillips then addressed the negative criteria, including the impacts the development would have on the area and whether those negatives impacts rise to the level of being substantially detrimental in nature. He told the Board that he did not think the proposal would have those negative impacts since the project would have a low density and was not incompatible with the current residential uses in the area, especially since they would be providing sufficient buffers to the adjacent single family residential uses. He noted that other impacts would be mitigated by the size of the property and the depth of the surrounding lots. Mr. Phillips added that the density being proposed translated to 4.7 units to the acre, where the townhouse zoning allows for up to as much as 6 units per acre and up to 8 units per acre with the inclusion of affordable units. He also added that they are proposing 6 units per building, where the ordinance would allow for 8 units per building. Mr. Phillips noted that there was probably going to be some opportunity to save some of the vegetation that was presently on the property in the front of the lot near Cedar Grove Lane as well as supplement the landscaping. He then told the Board that they were providing more parking than was required by Residential Site Improvement Standards (RSIS) and had meetings with the Township professionals to meet the concern of overflow parking. In order to address the zone plan impacts, Mr. Phillips mentioned the reconciliation under Medici and the most recent re-examination of the Master Plan of the Township, noting that it looked specifically at the specific section of the corridor in question and recommended low intensity uses. A discussion ensued among the Board and Mr. Phillips.

Finally, Mr. Phillips noted that he felt that they did not comply with the "C" variances for lot coverage and impervious coverage was that the standards they were attempting to meet were standards set for the R-40 single-family residential zone. He then indicated that the maximum building coverage was 10% in the zone and they were proposing 15%. He then stated that the they were at 55% impervious coverage/45% green space, which increased from the original plan due to discussions with the Township professionals to increase the visitor parking and increase the width of the drive aisles and the addition of the secondary emergency driveway access to meet the Fire Prevention Dept.'s recommendation

Mr. Reiss mentioned that they get to see Traffic Analysis for each project that was proposed on a roadway, but they don't ever get to see the traffic impacts of all of the projects combined and how they together impact the traffic on the roadway. Mr. Healey stated that, typically, a Traffic Impact Study incorporated all of the known traffic impacts and included a growth factor. A discussion ensued among the Board.

Ms. Bergailo opened a discussion regarding the re-examination of the Municipal Land Use Law (MLUL) in 2016 and how that affected what was recommended for land uses in the Cedar Grove corridor. Mr. Phillips indicated that the re-examined Master Plan spoke generally of utilizing low-intensity non-residential uses in the area. He stated that he believed that the Master Plan was opening the door to consider other uses and that the proposal, although residential in nature, would be considered a low impact for the reasons he previously presented. A discussion ensued among the Board regarding the generality of the language in that portion of the Master Plan, and Mr. Healey weighed in on the discussions that were held regarding a re-evaluation of the zoning for the Cedar Grove Lane corridor, particularly north of New Brunswick Road. The Chairman then discussed the history of the zoning in that area.

Mr. McCracken pointed out that there were two single family home lots next to the subject property. He questioned whether any attempt was made to purchase any of that land in order to make the subject lot more conforming and more conducive to fitting in 50 townhomes with the proper width of 30 ft. roadways.

Mr. Phillips then spoke to exceeding the Residential Site Improvement Standards (RSIS) on the width of the roadways and even then agreed to put in an emergency access driveway as well. A discussion then ensued regarding the proximity of other cluster residential (townhome) communities abutting single family home lots.

Mr. Healey reminded the Board that they might want to impose a minimum of 50 ft. buffer area along Cedar Grove Lane, and, at the time of the Site Plan approval, modify it in terms of the recreation, the basin, the emergency access as well as achieve as large a buffer as possible by Building 9 to shield them from Lots 33 and 35 should they be inclined to approve the Use Variance.

Mr. Harlack also reminded Mr. McCracken that the Applicant's Site Engineer testified at the last hearing that 50 townhomes was a low number of units for the size of the property. A discussion ensued among the Board.

Mr. Phillips testified that, since the Application was bifurcated, there was an opportunity to discuss the buffering that would be placed between the subject property and closest single family home in detail at the next hearing, should the Use Variance be granted.

Chairman Thomas then noted that there was no public to open the meeting to for questions or comments, so the meeting remained closed to the public.

Mr. Harlack then gave his summation and a brief overview of what had been discussed at the past few meetings over the past seven (7) months. He mentioned the testimony of the Site Engineer, Mr. Coco, who introduced the Exhibit A-1 and discussed the plan as well as the 169 parking spaces that would be included in the project. Mr. Harlack mentioned the testimony of Mr. Testa, the Architect of record, who discussed the distribution of the two- and three-bedroom units, the square footage of the units as well as the inclusion of the affordable housing units. He then spoke of the testimony of the Traffic Consultant, Scott Cannell, regarding the traffic report that he prepared as well as the request from the Board for him to prepare a Gap Study. Mr. Harlack then mentioned the testimony of Mr. Bob Carson, who is the Executive from Levin Management, who spoke about the fact that they had been marketing the property for over five (5) years and the difficulty of doing so commercially due to very little frontage and the fact that it was a very deep property. He then added that they presented the testimony of Mr. Otto, the marketing analyst hired to analyze the property, who determined that a townhouse development was the only financially feasible use of the subject property.

Because there had been several hearings on the matter, Mr. Harlack inquired as to how many of the Board members present that evening would be eligible to vote.

Ms. Bergailo pointed out again that the re-examination of the Master Plan in 2016 stated that the recommended use for the largest piece of vacant property in the corridor was either single family or a non-residential use. She opened a discussion regarding the Planning Board to look

at the subject site again and do a land use plan amendment for the governing body to do a zoning ordinance amendment.

Mr. Healey then reiterated the recommended conditions on any approval, i.e., the inclusion of for sale units, 20% affordable housing units (10 units integrated throughout the community following applicable COAH rules), work out an acceptable recreational plan presented during the Site Plan review, the inclusion of a sidewalk along the frontage, adding a 50 ft. buffer along the front and as close as possible to a 50 ft. buffer as possible along the side property lines on Lots 33 and 35 where they meet the adjoining home properties, and in doing so, look to relocate the emergency access drive, the basin, Building 9 and/or the recreation to accommodate the buffer. Additionally, a condition of no more than 38 three-bedroom units to be included might be considered.

Vice Chair Graumann made a motion to approve the Application for a Use Variance, subject to the conditions stated. Mr. Betterbid seconded the motion and the roll was called as follows:

FOR: Raymond Betterbid, Vice Chair Graumann, Mr. Johnson, Mr. Rich, Mr. Caldwell, Mr. Rosenthal and Chairman Thomas

AGAINST: None

WORKSESSION/NEW BUSINESS

There was no new business

MEETING ADJOURNED

Vice Chair Graumann made a motion to adjourn the meeting at 8:39 p.m. The motion was seconded and all were in favor.

Respectfully submitted,

Kathleen Murphy, Recording Secretary
July 31, 2017