

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

**REGULAR MEETING
December 21, 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: Donald Johnson, Alan Rich, Anthony Caldwell, Gary Rosenthal, Joel Reiss, Cheryl Bergailo (arrived at 7:33 p.m.), and Chairman Thomas

ABSENT: Raymond Betterbid, Laura Graumann, Bruce McCracken, Robert Shepherd,

ALSO PRESENT: Mr. Craig Shamy, Acting Board Attorney, Mark Healey, Planning Director, and Christine Woodbury, Planning & Zoning Secretary

MINUTES:

- **Regular Meeting – November 2, 2017**

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

FOR: Mr. Johnson, Mr. Rich, Mr. Reiss and Chairman Thomas

AGAINST: None

RESOLUTIONS:

- **Lindsay Steirer Taylor / ZBA-17-00018**

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

FOR: Mr. Rich, Mr. Caldwell and Chairman Thomas

AGAINST: None

- **CC Hamilton / ZBA-17-00013**

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

FOR: Mr. Johnson, Mr. Caldwell, Mr. Rosenthal and Chairman Thomas

AGAINST: None

- **Corporate Community Connection / ZBA-17-00001**

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

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

AGAINST: None

- **Parker at McCarrick, Inc. / ZBA-17-00025**

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

FOR: Mr. Johnson, Mr. Caldwell, Mr. Rosenthal and Chairman Thomas

AGAINST: None

DISCUSSION:

Vouchers:

- **Patrick Bradshaw – Kelso & Bradshaw – December, 2017 Retainer - \$865.00**
 - Taylor resolution - \$210
 - RWJ Barnabas resolution- \$560
 - Porter resolution - \$297.50
 - Muslim Foundation resolution - \$385

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

- **Franklin II Associates, Ltd – Appeal of Zoning Decision - Carried to January 18, 2018 – with no further notification required.**

HEARINGS:

- **GILL PETROLEUM, INC. / ZBA-17-00008**

CARRIED TO JANUARY 18, 2018 – with no further notification required.

- **SURINDER & RANO SINGH / ZBA-17-00020**

CARRIED TO JANUARY 18, 2018 – with no further notification required.

- **DEAN MERCADO / ZBA-17-00027**

Certification of pre-existing, non-conforming use in which applicant is seeking certification of an existing two family dwelling at 355 Davidson Avenue, Somerset; Block 502.01 Lot 54.01 in zone CB DL 12/31/2017 - **CARRIED TO JANUARY 18, 2018 – with no further notification required.**

DL 12/31/2017

- **MARK & LORI SLETTA / ZBA-17-00023**
- **WAYNE OLSEN / ZBA-17-00024**

Currently, the garage and driveway are shared between these two properties. A Hardship Variance Application was received to demolish the garage and rebuild a separate garage on each property as well as realign the driveway to accommodate both properties at 26 & 28 Washington Avenue, Princeton; Block 16, Lots 12 & 13, in an R-40 Zone – **CARRIED FROM DECEMBER 7, 2017 – WITH NO FURTHER NOTIFICATION REQUIRED.**

Mr. Healey stated that he would give more information for the Board's consideration. He noted that they did one Application for the two sites because they were next to each other in the R-40 zoning district and had been in the same family since 1926. He added that the property line separating the two properties ran down the middle of the existing garage and driveway. He went on to state that the Applicant was seeking to correct the situation by eliminating the existing garage and driveway and construct a new driveway and garage on each of the two properties. Even though the Application would be correcting an existing situation, Mr. Healey indicated that the existing driveway and garage were split down the middle and constructing a new garage and driveway on each property would create some new variances. He stated that the lot owned by Mark & Lori Sletta / ZBA-17-00023, 28 Washington Avenue, would now have three (3) new variances; the first would be one (1) side yard where 25 ft. was required and 6 ft. was proposed, total side yard setback of 75 ft. was required and 30 ft. was proposed and impervious coverage of 20% permitted, 16% was existing and 23% was proposed.

Mr. Healey then stated that the lot owned by Wayne Olsen / ZBA-17-00024, 26 Washington Avenue, would also have new variances; the first would be one (1) side yard where 25 ft. was required and 6.9 ft. proposed, total side yard setback of 75 ft. was required and 18.9 ft. proposed, building coverage of 10% permitted with 10.5% existing and 12.2% proposed and impervious coverage of 20% permitted, 18.6% existing and 25% proposed.

Mr. Healey then stated that the introduction of two separate driveways was largely driving the increase in impervious coverage on the lots. He added that side yard setback variances were internal and only affecting the two lots that were involved as the subject of the Application. Mr. Healey then told the Board that the Technical Review Committee (TRC) did a report and had no comments on the Application, just an FYI to the Applicants that when they submit for building permits that they need to satisfy comments 1-5 noted in the report.

Mr. Mark Sletta, Applicant residing at 28 Washington Avenue, came forward and was sworn in. Ms. Lori Sletta, Applicant residing at 28 Washington Avenue came forward and was sworn in. Mr. Wayne Olsen, Applicant residing at 26 Washington Avenue came forward and was sworn in. Chairman Thomas asked if the Applicants agreed with the summary given by Mr. Healey and they answered in the affirmative. Mr. Olsen testified that they were just trying to bring the properties up to code and have the driveways/garages more useful to both lots.

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

Mr. Reiss made a motion to approval ZBA-17-00023, and Mr. Rich seconded the motion. The roll was called as follows:

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

AGAINST: None

Mr. Reiss then made a motion to approve ZBA-17-00024, and Mr. Caldwell seconded the motion. The roll was called as follows:

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

AGAINST: None

- **DEAN MERCADO / ZBA-17-00027**

Certification of pre-existing, non-conforming use in which the Applicant was seeking certification of an existing two family dwelling at 355 Davidson Avenue, Somerset; Block 502.01, Lot 54.01, in the CB Zone - CARRIED TO JANUARY 18, 2018 – with no further notification required.

Mr. Healey stated that the Applicant needed to prove that the use as a two-family dwelling was in existence prior to the existence of zoning, which came into place in the late 1950's and had been in continuous use as a two-family dwelling up until now.

Mr. Dean Mercado, Applicant residing at 35 North Wilson Avenue, Milltown, NJ, came forward and was sworn in. Mr. Mercado was there that evening to officially receive certification from the township of a pre-existing, non-conforming use for a home that he purchased in 2002. Mr.

Mercado stated that he was single and the subject property was the first home he ever purchased and that he did his due diligence that he knew to do at the time. He indicated that he went to the Tax Assessor's office asking if the home was a legal two-family home. Mr. Mercado stated that they printed something out for him from the Tax Assessor's office indicating that the home was, indeed, taxed as a two-family home. In retrospect, after learning from the situation he was now in, Mr. Mercado indicated that he should have also gone over to the Zoning Office to ask the same question, but he did not know to do that at the time. He said that he purchased the home and did not have any problems for the past 15 years until there was a dispute between his neighbors. He stated that he did have a tenant in the home and that the neighbor called every department in the Township, including Zoning, and he received a letter from the Zoning Dept. for a zoning violation for converting a single family home into a two-family home without any permits. He went on to state that the letter requested that he come into the Zoning Office and apply for a permit or restore the home back to a single family dwelling. Mr. Mercado indicated that he went the very next day after receiving the letter to the Zoning Office, telling them that he did not convert the home from a single family home to a two-family dwelling. He went on to tell the Board that he immediately contacted the person he purchased the home from in 2002 and was lucky that they still had the same phone number. Mr. Mercado indicated that the previous owner returned his phone call and in turn contacted the owner that he had purchased the property from in 1995. He went on to explain that the owner of record who sold the home in 1995 happened to be an attorney, who wrote an affidavit, which he stated was his proof that evening. He added that the certification was from a Mr. Robert Golden, an attorney in New Jersey, who wrote the affidavit at the request of Mr. Dennis Allen Haciello, Esq., attorney for Mr. Dean Mercado, the present owner of the property known as 355 Davidson Avenue, Somerset, NJ. Mr. Mercado continued to read the letter of certification, where Mr. Golden stated that he was now 77 years old and that his family moved to 355 Davidson Avenue, Somerset, NJ, in 1946 when he was six years old. Mr. Mercado continued to read on where Mr. Golden stated that the house was a two-family structure at the time he moved there in 1946. The letter went on to state that it was Mr. Golden's understanding that the property was owned by his parents, Harold and Dorothy Golden, and by Jack and Stella Zeter. Mr. Mercado continued to read the letter where it stated that the Golden's lived on the first floor while the Zeter's lived on the second floor. Additionally, the letter goes on to state that the Golden's acquired the Zeter's interest in the property in 1966, with Dorothy Golden selling the property to Mr. Robert Paley in 1995. Mr. Mercado read from the letter that it was Mr. Golden's knowledge and belief that the home was always a two-family structure and that the statements contained herein were true. Mr. Mercado indicated that he was a professional architect in the states of NJ, NY, FL, MD, etc., and knows that to do any work on a home a building permit was required. He went on to state that he provided architectural plans to people sealed with his license and would never undertake a project without approval from the Township. He also stated that he had gone before Boards representing clients and was fully aware of the rules. He stated, therefore, that he was seeking certification that the home is, and possibly always was, a two-family structure. He noted that he believed that it was always a two-family structure because the floor plan was exactly the same on both levels.

Mr. Reiss asked if the property had been cleaned up. Mr. Mercado indicated that he had cleaned up the property since he received seven (7) violations because tenants had cars, campers, etc. all over the property. He also stated that the tenants causing the issues were also no longer there either. He added that there were new tenants in the home presently.

Mr. Mercado then told the Board that he also had an appraisal from 2002 when he first purchased the property, showing a first floor and a second floor apartment. He also had the survey from 1995 showing similar information on the home. Mr. Mercado testified that what was shown in 2002 was the current layout of the home presently. He added that he pulled permits to do work on the home on three (3) separate occasions. He stated that the first time was when he originally purchased the home and put on new roofing and siding and did basic cosmetic work inside like painting, freshening the carpets, etc. Mr. Mercado then told the Board that he replaced the heating system, with permits, and recently got several permits to do work in the front of the home on the stairs and the garage, but never changing the layout of the home.

Chairman Thomas asked Acting Board Attorney, Mr. Shamy, how much weight they could place upon the certification letter presented by the Applicant. Mr. Shamy stated that he would have to do further research to give a definitive answer, but his inclination was that it couldn't be considered as testimony without a sworn affidavit and a notary authenticating the signature. He indicated that his suggestion was to have Mr. Golden appear to testify on behalf of Mr. Mercado.

Ms. Bergailo then opened a discussion regarding the stairwell that went to the second floor, and Mr. Mercado directed the Board to the 2002 floor plan for details. She then asked about the heating system and electrical system. Mr. Mercado stated that there was a heating system in the basement, with two gas lines and two meters to service both units and that they each had their own electric meter as well. He did state that there was one thermostat in the first floor unit and that it has always worked well since he has always had tenants that were friends or family to each other. A discussion ensued among the Board.

Ms. Bergailo asked Mr. Mercado if there was anything in the home that would lead him to believe that it wasn't original construction in the home. He stated that there were old, plaster walls within the home.

Mr. Rich stated that everything that Mr. Mercado was describing was just like his home, with one boiler and all walls lining up from one floor to the next. Mr. Rich indicated that his home was built in the early 1900's.

Mr. Mercado also stated that he submitted the advertisement for the sale of the home to the former owner where it was being sold as a two-family home. He also testified that he went to the Tax Depts. and other departments in the Township asking for records on the home, but was told that they didn't have any records going back nearly that far. Mr. Mercado then stated that he was friends with the former owner of the neighboring property, but he passed away and his son moved in, so the dispute was with the son.

The Board entered into a discussion regarding the fact that the letter of authentication was not notarized. Mr. Healey asked the Board whether they felt the need to ask Mr. Golden questions or would they be satisfied as long as the certification document was notarized. Acting Board Attorney, Mr. Shamy, stated that he didn't feel that they had to have Mr. Golden appear for questioning, but that a notarization of his certification would be appropriate.

Mr. Healey suggested that the hearing be carried to the next meeting after Mr. Mercado proceeds to get the certification document notarized.

After discussion, Chairman Thomas stated that the hearing would be carried to the January 18, 2018 meeting.

DL 12/31/2017

WORKSESSION/NEW BUSINESS

There was no new business

MEETING ADJOURNED

Mr. Reiss made a motion to adjourn the meeting at 8:10 p.m. Chairman Thomas seconded the motion and all were in favor.

Respectfully submitted,

Kathleen Murphy, Recording Secretary
January 11, 2018