

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

**REGULAR MEETING
January 18, 2018**

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: Bruce McCracken, Alan Rich, Robert Shepherd, Anthony Caldwell, Gary Rosenthal, Cheryl Bergailo and Chairman Thomas

ABSENT: Raymond Betterbid, Donald Johnson, Laura Graumann and Joel Reiss

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

OATH OF OFFICE:

Acting Board Attorney, Mr. Peter Vignuolo, administered the Oath of Office to the following members.

- **Robert Shepherd**
- **Anthony Caldwell**
- **Cheryl Bergailo**

REORGANIZATION:

- **Nomination/Selection of Chairperson**

Mr. Shepherd nominated Mr. Robert Thomas for Chairperson, and Mr. Johnson seconded the motion. Hear no other nominations; Mr. Healey made a motion to close the nomination process. All were in favor of nominating Mr. Thomas as the Chairman of the Zoning Board of Adjustment.

- **Nomination/Selection of Vice Chairperson**

Ms. Bergailo nominated Ms. Laura Graumann for Vice Chairperson, and the motion was seconded. Hearing no other nominations, Chairman Thomas made a motion to close the nomination process. All were in favor of nominating Ms. Graumann as the Vice Chairperson of the Zoning Board of Adjustment.

- **Witness Oath – Director of Planning, Mark Healey**

Acting Board Attorney, Mr. Peter Vignuolo, administered the Witness Oath to Mr. Healey.

- **Board Attorney Interviews**

Chairman Thomas indicated that they were losing their long-time Board Attorney, Mr. Patrick Bradshaw, since he was recently appointed a judge. The Chairman then stated that the Board had two applicants to interview.

Mr. Scott King, Partner with Dakotas Fitzpatrick Golden & Goblin in Teaneck, NJ, came forward and introduced himself. He then indicated that his practice was primarily engaged in real estate and had been so for some 34 years. Mr. King then told the Board that he was currently the Planning Board Attorney in the boroughs of Oradell and Closter, NJ in Bergen County and also sat as a member of the Planning Board in his home town of Glen Rock, NJ and former member of the Board of Adjustment in River Edge, NJ.

Chairman Thomas then told Mr. King that the Zoning Board of Adjustment here in Franklin Township typically held their meetings on the first and third Thursday of the month, wondering if that schedule would be agreeable to Mr. King. Mr. King answered in the affirmative.

Mr. Rosenthal then asked Mr. King what he knew about Franklin Township, and Mr. King stated that he did not know that much, but that part of any new assignment to a borough he represented was getting to know the ordinances in the borough as well as the people there and try to make sure that there was a good fit..

Mr. Healey asked if he had any experience representing Zoning Boards. Mr. King stated that he had never represented a Zoning Board and only was a member of one. Mr. Healey then asked if he had the need to defend the decision of one of the board's he represented. Mr. King stated that he had not, noting that his goal was to guide the board he represented so that litigation was the last resort. He indicated that being part of a larger law office was having the assistance of a number of very excellent litigators and other land use attorneys so that in the event he could not make a meeting for whatever reason, he could call on one or two other partners. He noted that he would be the primary attorney, however. Also mentioned was the distance from Bergen County, and Mr. King stated that it was not an issue and that he liked to drive.

Mr. Caldwell noted that Mr. King seemed to have a very full plate and wanted to know how he would have the time to research the Township and be a good match for the needs here. Mr. King stated that he would take whatever time that was needed to accomplish that and adjust his other schedule accordingly. He then indicated that his primary goal would be first to learn about the Board itself and the local zoning ordinances and then fit the meetings right into schedule after that.

Chairman Thomas then asked if Mr. King had any estimate of the times he might not be available for a meeting and have to send an alternate. Mr. King stated that in the past year, he missed one meeting for one of the two boards he represented.

Mr. Healey then suggested that the Board ask similar questions of the next applicant and look at the two fee schedules provided to discuss.

Mr. King then summarized what he felt were his qualifications for the position.

Mr. James Kinneally, with the firm of Marriott, Callaghan and Blair, came forward and introduced himself. He indicated that his firm was located in Sea Girt, but that most of his practice was in the area. He indicated that he currently served as the Piscataway Zoning Board Attorney and had held that position for approximately 15 years as well as the Spotswood combined Planning & Zoning Board Attorney position that he had held for the past 11 years. He added that he was also the South River Zoning Board Attorney for the past 17 years. Mr. Kinneally indicated that those listed were the Boards he currently represented, but that he had represented other Zoning Boards in the past such as Marlboro, Manalapan Township, North Brunswick, as well as other Planning Boards such as Manalapan Township. Mr. Kinneally did state that his first and third Thursdays of each month were open and anticipated being able to make all of the meetings. He then told the Board that he had not missed any meetings for any of his Boards in the past four (4) years, indicating that he scheduled his vacations so that he could attend the meetings.

Mr. Rosenthal asked Mr. Kinneally whether he thought there would be any conflict between being the Zoning Board Attorney for Piscataway and for Franklin Township. Mr. Kinneally stated that the meetings for Piscataway were the second and fourth Thursdays of the month.

Mr. Healey then asked if he had the need to defend the decision of one of the boards he represented and what was the result. Mr. Kinneally stated that he had defended probably about 100 cases on appeal, including at the trial level, noting that he was at the Appellate Division that morning representing the South River Zoning Board on a non-conforming use case. He also told the Board that he had been to the Supreme Court, the Appellate Division and trial court level in multiple counties. He then testified that he had won more cases than he lost, but could not say he never lost a case.

Mr. Healey felt that the Board had covered the same questions as in the previous interview, and recommended that they could discuss, later in the evening, the applications, the interviews and the fee schedules presented in the paperwork.

Mr. Shepherd asked Mr. Kinneally that if there ever came a time that he had to miss a meeting, was there someone he could call on to substitute for him. Mr. Kinneally indicated that there was a community of land use attorneys who cover for each other when there are conflicts. He added that they don't call a first year associate, but he would call someone who had the same level of experience that he had.

Mr. Kinneally gave a summation of his qualifications, noting that his practice had been primarily zoning and planning for the past 20 years and that he thought he would be a good fit.

MINUTES:

- **Regular Meeting –October 19, 2017**

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

FOR: Mr. McCracken, Mr. Rich, Mr. Shepherd, Mr. Caldwell, Mr. Rosenthal, Ms. Bergailo and Chairman Thomas

AGAINST: None

- **Regular Meeting –December 21, 2017**

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

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

AGAINST: None

DISCUSSION:

Use of Microphones:

Christine Woodbury, Planning/Zoning Secretary, discussed with the Board the importance of speaking directly into the microphones on the dais so that their comments and questions could be heard by the Recording Secretary. She noted that sitting back in their seats or turning their heads away from the microphones when they were speaking caused difficulty in hearing what they were saying, making it more difficult to complete the minutes of the hearing. Also, Ms. Woodbury asked that Applicant Attorneys as well as witnesses and the public be asked to state and spell their names into the microphones so that they could be properly identified in the record.

Vouchers:

- **Patrick Bradshaw – Kelso & Bradshaw – Various Matters - \$280.00**
 - **Parker @ McCarrick - \$175.00**
 - **Dunbar Homes - \$4,600.00**

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

Appeals:

- **Franklin II Associates, Ltd – Appeal of Zoning Decision – CARRIED TO MARCH 15, 2018.**
- **Vipul Shah - 1 Bertram Avenue – Zoning Interpretation**

Mr. Jeffrey Chang, Esq., Attorney with Heilbrunn & Pape, 516 Highway 33, Millstone Township, NJ 08535, appeared before the Board on behalf of the Applicant, Vipul Shah for a Zoning interpretation. Mr. Chang explained that Mr. Shah operated essentially as a vendor on Amazon, and there had become an issue regarding the definition of home occupancy pursuant to 112-4. Mr. Chang stated that he believed that the Township had a narrative of on-line business, but indicated that he would briefly describe what an on-line business was. He noted that Mr. Shah lived at 1 Bertram Avenue in an R-20 Zone and has an on-line business selling video games, toys, and limited wireless hardware. Mr. Chang went on to explain that he did not have any individuals coming to his property, and the business was not open to the public. Mr. Chang testified that Mr. Shah utilized UPS delivery and pickup, Monday through Friday, with no box trucks coming to his residence. He stated that they were there that evening to obtain a better definition of “home occupation”. Mr. Chang stated that they filed a zoning permit application on August 15, 2017 and were denied by the Planning Dept. of the Township.

Chairman Thomas asked if the business was operating prior to the denial of the zoning permit application and, if so, what brought the Applicant to the Township to obtain a permit for home occupation. Mr. Chang stated that it was his understanding that there were complaints from the neighbors.

Mr. Vipul Shah, Applicant, 1 Bertram Avenue, Somerset, NJ, came forward and was sworn in. Mr. Shah stated that he was not aware of any issues with the neighbors until he received a letter from the Township. He indicated that he did not know who complained, but that only three (3) neighbors would actually be able to see his house. He said that he approached his neighbors telling them he received a letter from the Township and wanted to know if they specifically had any complaints and, if so, what could he do to resolve them. Mr. Shah indicated that the first neighbor he approached was the yellow home just across from his and she verified that she was the one who filed the complaint with the Township. He then stated that his neighbor had problems with larger trucks coming to his home. Since that time, he stated that he had put a stop to having the larger trucks come into the neighborhood and had documentation to show proof of that. Mr. Shah then discussed the content of the letter from the Township where it stated that he was operating a business out of his home and that he was not allowed to do so.

Chairman Thomas wanted to clarify the record and asked for verification of Mr. Shah that he lived on a dead-end street. Mr. Shah answered in the affirmative. The Chairman next asked for clarification of what the Applicant was seeking. He asked Mr. Shah if he was before the Board that evening to obtain a clarification of zoning for a use that probably needed to have an application hearing that hasn't been approved. Mr. Chang answered in the affirmative.

Mr. Healey then interjected, stating that they had received a complaint that there was a business being conducted on the subject property. He then indicated that the Zoning Inspector

went to the home and took photos of a tractor trailer truck delivering products that were being piled up on the driveway and that the tractor trailers were tearing up the neighbor's lawn, therefore, a zoning violation was issued. Mr. Healey stated that he heard from the Applicant's attorney, Mr. Chang, and basically told him that his client needed to submit an application for a zoning permit and describe what his client was doing on the site. He then added that he told Mr. Chang that he would review it as the Zoning Officer to make a determination as to whether that fit under the Township's definition for home occupation or not. Mr. Healey told the Board members that what the Applicant submitted was included in their packet and that the business consisted of sales on Amazon, with a description of the nature of the products that were being handled. He also told the Board that also in the application paperwork, it stated that the Applicant received (Monday through Friday) via UPS, 5 packages being delivered in the morning and 7-8 packages outgoing in the evening, also via UPS, between 5 and 7 p.m. Additionally, Mr. Healey stated that it was noted in the Application that the packages were less than 50 pounds in weight and that no tractor trailers would be making deliveries. Mr. Healey then indicated that he reviewed the information against the Township's definition of "home occupation", which he said was also in the Board's packet, and highlighted the language included in the definition that said there shall be "no deliveries received in frequency or quantities beyond those ordinarily delivered to a residence." Mr. Healey then made the determination that it was not typical for a residence to receive deliveries five (5) packages five (5) days a week and up to 50 lbs in weight, as well as send out 7-8 packages five (5) days a week. Mr. Healey indicated that the Applicant then asked the Zoning Board for an appeal of that decision by letter, dated 9/17/17, asking for the Board's interpretation of "home occupation", particularly with respect to the number of deliveries that can or cannot be received and sent out. Mr. Healey then asked Mr. Chang if his description of what had occurred accurately described the situation. Mr. Change answered in the affirmative.

Mr. John Chadwick, Planner, 3176 Rte. 27, Suite 1-A, Kendall Park, NJ, came forward and was sworn in. The Board accepted his qualifications. Mr. Chadwick explained that it was a function of the retail industry, and that Mr. Shah's business had a cyclical curve to it. He stated that packages from just before Thanksgiving and through Christmas might be the time when five (5) packages were received in the morning and broken down into smaller packages for outgoing distribution in the evening. Mr. Chadwick then indicated that once beyond the busy holiday season, there would be a vastly different volume of vehicles and packages coming to and from the home. Mr. Chadwick then discussed whether a typical residential home would have UPS trucks coming to the home in the morning and evening five (5) days a week, noting that it was a good possibility that they would not. He went on to state that there might be an occasion where that might happen, especially in today's economy and the way business transactions were conducted online. That being said, Mr. Chadwick didn't think that it was beyond the scope of what would fall into the category of a "home occupation" description. Mr. Chadwick also added that the issue that triggered the complaint, with large trucks coming to the home, had been stopped. A discussion ensued among the Board.

Mr. Shah stated that approximately 45% of his business was conducted during the holiday season. Mr. Shah also indicated that the number of trips and packages delivered that he testified to was an average for the year. He went on to explain that in the past week, there were only two deliveries and two pickups during that week.

Mr. Healey asked Mr. Shah to explain how the deliveries and pickups were handled. Mr. Shah stated that the deliveries that would have normally come in a tractor trailer were now delivered

to a self storage unit on Easton Avenue. He then described the process for delivery and pickup from the UPS trucks. Mr. Shah indicated that, depending on the driver that day, some help him load the boxes into his garage and other drivers just leave the boxes outside. He did testify that he was generally home most of the time and has security cameras around his home and usually brings the packages inside himself fairly soon after they were delivered. Mr. Shah then described the process of having a UPS truck come in the early evening to pick up outgoing packages. A discussion ensued among the Board.

Chairman Thomas expressed some concern, noting that, as a Board, they don't know what was in the packages, they don't know how the packages were stored and they don't know if they represent a danger to the public. He then stated that he felt that Mr. Shah was running a regular business out of a home in a residential neighborhood, but that belongs in a business facility. The Chairman then told Mr. Shah that there was precedent for not permitting that kind of activity in a residential neighborhood.

Mr. Shepherd took notice of the Township's definition to exclude a "home occupation" if it involved merchandising trade. He opined that it would seem like the business Mr. Shah was running out of his home was exactly that.

The Acting Board Attorney, Mr. Vignuolo, stated that the example of "excluding merchandising trade" from the definition of "home occupation" was exactly what they were there that evening to decide. Because the phrase after that in the definition speaks to people coming to the home for sale of a commodity, Mr. Vignuolo indicated that that was why the Applicant was before the Board to ask for an interpretation of the definition. He went on to state that the interpretation of the description of "home occupation" within the Township ordinance should not be specific to the Applicant's use in an interpretation. Mr. Vignuolo suggested that another option for the Board to follow would be to look at the situation and say that it was not really an interpretation because the Applicant was looking for what would be an acceptable number of packages being delivered or picked up. He noted that the answer to some of the questions the Board might ask would be different each time they had someone else who operated a "home occupation" business and would depend upon the use. A discussion ensued among the Board.

Mr. Shepherd then stated that he believed they needed to ask the question as to whether the activity in question was greater than what would be ordinarily delivered to a residence in a residential zone. He stated that he was uncomfortable coming up with an acceptable number of packages and/or deliveries because there were two (2) issues: frequency of deliveries and number of packages.

Mr. Healey then spoke of all the different language regarding the home occupation issue and the intent of the ordinance through all of the language in it. He stated that a home occupation business was generally deemed to be invisible.

Mr. Shepherd made a motion to deny the Applicant's request for an interpretation of the ordinance and recommend that the Applicant come before the Board with an application to allow a home occupation either as falling into the home occupation definition or one which requests some relief from the ordinance. Mr. McCracken seconded the motion and the roll was called as follows:

FOR: Mr. McCracken, Mr. Rich, Mr. Shepherd, Mr. Caldwell, Mr. Rosenthal, Ms. Bergailo and Chairman Thomas

AGAINST: None

HEARINGS:

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

Site Plan w/Use and Sign Variances in which the Applicant was proposing to construct a two-story mixed use commercial building at 799 & 821 Hamilton Street, Somerset; Block 229, Lots 5-9 & 10.01, in the HBD Zone – **CARRIED TO FEBRUARY 15, 2018 – with no further notification required.**

DL - 3/31/2018

- **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 FROM DECEMBER 21, 2017 – with no further notification required.**

Mr. Healey gave a summarization of the last hearing, noting that he believed the Applicant had given some testimony regarding the historic use of the site. He then stated that the Applicant had presented a certification from a gentleman by the name of Robert Golden speaking to the fact that he had observed the house being a two-family home at the time that he was there in 1946. At the last hearing, Mr. Healey reminded the Board that they had asked Mr. Mercado to have that certification notarized so that they could be assured that the certification letter could be considered true and actual testimony from Mr. Golden. Mr. Healey indicated that Mr. Mercado had since done that and that the certification that was notarized was before the Board members this evening.

Mr. Dean Mercado, Applicant, 35 North Wilson Avenue, Milltown, NJ, came forward and was sworn in. Mr. Mercado explained that when he contacted Mr. Golden, he indicated that Mr. Golden was very happy to have the letter notarized and that he also found out that he was a former Somerset County Prosecutor and a Municipal Prosecutor for Franklin Township and an Attorney for the Board of Adjustment for various townships.

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

Mr. Shepherd made a motion to grant the Certification of Pre-Existing, Non-Conforming Use because the use began before the zoning ordinances were created. Mr. McCracken seconded the motion

FOR: Mr. McCracken, Mr. Rich, Mr. Shepherd, Mr. Caldwell, Mr. Rosenthal, Ms. Bergailo and Chairman Thomas

AGAINST: None

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

Mr. Peter U. Lanfrit, Esq., Attorney, appeared before the Board on behalf of the Applicant, Surinder & Rano Singh. Mr. Lanfrit explained that they were there before the Board that evening to obtain a Hardship Variance in which the Applicant was seeking the variance due to his going 1,070 sq. ft. over the previously approved impervious coverage at 3 Buell Street, Somerset; Block 83, Lot 1.04, in an R-20 Zone.

Mr. Healey's Planning report indicated that the Applicant received approval to construct a single-family home on the subject 20,192 sq. ft. site, located in the R-20 residential zone. At the time of the zoning permit approval, the Planning report detailed that the site was approved with lot coverage of 21.5% and an impervious coverage of 32.09%. Also noted in the report was that the Application required the following variances:

- Lot Coverage: 15% permitted – 21.5% approved/constructed
- Impervious Coverage: 25% permitted – 32.09% approved – 37.40% constructed.

Mr. Lanfrit gave a summary of the Application, reiterating what was stated in Mr. Healey's Planning report. He added that, after construction of the single-family home, an As-Built Survey must be done in order to obtain the final Certificate of Occupancy (CO). He went on to state that what was originally submitted, exceeded the ordinance and Mr. Singh needed a variance. Mr. Lanfrit then told the Board that when he built the home, Mr. Singh added some additional impervious coverage by widening the driveway and adding two (2) walkways.

Mr. Surinder Singh, Applicant, 3 Buell Street, Somerset, NJ., came forward and was sworn in. Mr. Singh indicated that he and his wife, Rano Singh, purchased the vacant property in 2013. Mr. Singh told the Board that the intent was to build a family home for himself, his wife and two sons. He then explained that when he applied for a building permit, the home that was proposed to be built was an approximately 4,000 sq. ft. home, and a building permit was obtained. Mr. Singh then testified that when he came in for the building permit, no one in the Township ever said that the size of the home exceeded the impervious coverage in the zone. He said that when he applied for the building permit, he also showed driveways and walkways on the property, and the impervious coverage was shown at 32.09%. He then added that no one ever stated that the driveway exceeded the coverage in the zone. Mr. Singh then testified that when he applied for the building permit, he knew nothing about building coverage or impervious coverage and had his contractor build what was on the plans and approved by the Township.

Mr. Lanfrit then entered into the record as Exhibit A-1, photos of the home and property. Mr. Singh then discussed what was shown in the photographs, noting that the front walkway was on the original plan and was constructed. He then discussed a walkway at the rear of the home, and testified that that walkway was not on the original plan. Mr. Singh then testified that he was unaware that adding the walkway to the rear of the home would violate the zoning ordinance. Mr. Singh then discussed a third walkway that went from the driveway to the side entrance of the home. He did state that that walkway was also not on any of the original plans.

Mr. Singh then told the Board that the increase in impervious coverage on the property was caused by the addition of the two walkways discussed as well as the widening of the driveway. He noted that the original driveway width was 12 ft. wide and it was constructed at 18 ft. He told the Board that the home had a side entry garage and that they had four (4) vehicles, with no parking on the street (both sides). Mr. Singh then discussed the runoff from his property going onto his neighbor's property, so he had the contractor add a ditch and piping to bring the water to the front of his home so it wouldn't go onto his property.

Mr. Singh then testified that after he submitted the As Built Survey, he was called into the Township offices for a meeting with the Engineering Dept. and Mr. Healey. He stated that that was when he was informed that the lot coverage and the impervious coverage exceed what was allowed in the zone, the first time he was aware of that issue. Mr. Singh indicated that at that time, he spoke with Mr. Vega in the Engineering Dept., who told him he would need a variance and would have to deal with the drainage because there were issues with water runoff. Mr. Singh then told the Board that he hired Amertech Engineering to deal with the runoff issue and had the contractor construct what they designed. He then told the Board that he subsequently applied for a variance in August of 2017. Mr. Singh then noted that the Engineering Dept. came to inspect what had been done and noted some areas that needed changes or corrections to the drainage system. He then added that he had the changes and corrections made, in accordance with what the Engineering Dept. wanted. He then told the Board that the hearing had been postponed from a few months ago to make sure that all of the corrections had been done. Since that time, Mr. Singh indicated that there was another inspection by the Engineering Dept. and Mr. Dominach to ensure that all the recommendations and corrections had been done.

Mr. Healey then stated that a review was done by the Technical Review Committee (TRC) on October 2, 2017, and that the latest review of the site at that time was on August 25, 2017 from Mr. Julio Vega. He noted that the Engineering letter of that August date mentioned some issues had been satisfied and some that had not been satisfied. Before the Board that evening, Mr. Healey stated was the most up-to-date written report from the Engineering Dept., dated November 22, 2017, that did include some additional issues that had been satisfied, but that there were still some issues that had not been satisfied. Mr. Healey then told the Board that there was a subsequent site inspection by Scott Thomas from the Township Engineering Dept. and Mr. Dominach, noting that issues that were identified to him in the November 22, 2017 report had been completely satisfied per the Engineering Dept. He added that there had not been a follow-up memo yet from the Engineering Dept., however.

Mr. Shepherd then opened a discussion regarding the circumstances around how the Applicant got to the situation where variances were required. A discussion ensued among the Board.

Mr. Caldwell then spoke about the added walkways and increased driveway width as not being part of the calculations for coverage. Mr. Healey stated that the two additional walkways and wider driveway were now included in the coverage that they were asking a variance for that evening, but also the Engineering Dept. was asking the Applicant to also modify the storm water management system to accommodate for those additional impervious coverage items.

Ms. Bergailo then asked if the storm water management system that was put in was designed for the approved 32.09% impervious coverage or for the actual 37.04%. Mr. Lanfrit stated that

the storm water management system was designed by Amertech Engineering to accommodate for the 37.04%. A discussion ensued regarding the dry well on the property and how the water was regulated so as not to cause flooding issues for the neighbor on Buell Street.

Chairman Thomas then opened the meeting to the public for questions or comments.

Mr. Richard Phillips, 23 Den Herder Drive, Somerset, NJ, came forward and was sworn in. Mr. Phillips stated he was a lifelong resident of Franklin Township and had always lived on Den Herder Rd. He also stated that he had been with the Middlebush Fire Dept. for the past 41+years. He then asked Mr. Singh if he had a Certificate of Occupancy (CO) or a Temporary Certificate of Occupancy (TCO). Mr. Singh stated that he had a Temporary CO. Mr. Phillips then asked if Mr. Singh represented GSM, LLC, the contractor/builder of the subject home, and Mr. Singh answered in the affirmative. Mr. Phillips then inquired as to whether Mr. Singh, as a builder, should have known about the required impervious coverage and construction requirements based on Township ordinances. Mr. Phillips then stated that it appeared that the home that was constructed was almost 33% over the 15% allowed in terms of additional size and almost 48% above what was permitted (25%) in terms of impervious coverage. Mr. Phillips stated that he had made the Township aware of the drainage issues on the property in November 2015 when he first sent a letter to the Township Engineer's Dept. He said he had been working with Julio Vega up until August, 2017, when he was no longer working for the Township and then everything was approved and then this hearing was put on the docket. Mr. Phillips then gave the Board and public some background on the property and the purchase of property by himself and other neighbors in the surrounding area around the subject property with the vacation of the railroad in that area. He passed out a 13-page document, and it was entered into the record as Exhibit O-1. Mr. Phillips stated that some properties were subdivided as a result of the vacation of the railroad in that area and that with each subsequent home built, he kept having more and more drainage issues. He discussed what was shown in the exhibit, with part of his exhibit showing the grading of the properties before any construction had been undertaken. He then stated that page two of the exhibit showed Image #1, showing 3 Buell Street with the home shown on the property without the extra walkways. He indicated that the pictures were taken in late 2015/early 2016. He then described and showed the images in his Exhibit O-1, showing the various stages of construction. Mr. Phillips noted that the excavation of the basement and the addition of gravel and top soil certainly changed the topography of the property so much so that it was much higher than his property. He also showed photographs of the drainage system getting placed. Mr. Phillips then pointed out the original construction drawings in his exhibit that called for two dry wells on the front of his property. He then showed the next image that he said only included one dry well filled with stone. He stated that he would be agreeable to whatever they built as long as it was approved by the Township in the front yard, however, the runoff from Mr. Singh's rear yard and the rain from the heights of the Buell Street properties ran into his yard. Mr. Phillips then stated that what was there was corrugated pipe, but when speaking with Mr. Vega, it was supposed to be a 12" smooth pipe that was supposed to be put in. He added that no large stone was put down by the storm drain on Buell Street and that the owner/contractor company was asked to put in a second drainpipe, which was done, but again no large stone was placed and the swale was very small. He then discussed how there was standing water in the swale between 21 and 23 Den Herder Drive and didn't feel it was draining properly. Mr. Healey felt that the pictures Mr. Phillips had in his exhibit might have fallen between the time period between August, 2017 and November, 2017 when the Applicant was attempting to

satisfy the Township Engineering Dept. Mr. Phillips testified that some of the last photos in the exhibit he presented were taken after that review period by the Township Engineering Dept. Mr. Phillips indicated that images #23, #25, #26 were taken after the Township Engineer's Review. He added that in image #25 and image #26, there had also been a tree removed after those photos were taken. Mr. Phillips indicated that the tax map of reference that was used didn't include the lot line adjustment property from the railroad in terms of the volume of acreage that the swale should be able to handle in terms of runoff. Finally, Mr. Phillips wanted the Board to know that when the house was first built, it had been listed for sale for a number of months at about \$975,000 and that it didn't sell. He indicated that he spoke with the realtor who said there was some sort of apartment or a live-in apartment above the garage with a potential for a separate kitchen which could be locked out from the rest of the house. He stated that he didn't know if it was supposed to be a mother/daughter or father/son situation, but indicated that the realtor was surprised that the home did not have a Certificate of Occupancy at that time. Mr. Phillips then stated that that was when the owner/builder moved in with his family.

Mr. Lanfrit then asked the Chairman if he could ask Mr. Phillips a few questions, wondering at the time he took image #25 and image #26 if the two drainage pipes were in. Mr. Phillips stated that they were in place at the time those two images were taken, and to his knowledge all the work had been completed, still with debris blocking the inlet. A discussion ensued between Mr. Lanfrit and Mr. Phillips. Mr. Phillips believed that even if the Applicant/contractor had satisfied the Township Engineer's Dept., he felt that the engineering plans done by Ameritech were in error because the plans did not take into account his entire property. He stated that he would like the Township Engineer's Dept. to revisit the situation.

Mr. Shepherd then asked Mr. Phillips about the contractor, GSM, LLC that he mentioned earlier in his testimony.

Mr. Bill Connell, 25 Spring Street, Somerset, NJ, came forward and was sworn in. Mr. Connell discussed Mr. Phillips' testimony and felt that to approve the additional lot coverage and impervious coverage would just be continuing or exacerbating a problem. Mr. Connell also believed that the home on the property clearly stuck out in the neighborhood and was too large compared to others in the neighborhood.

Ms. Judith DeFrancesco, 25 Den Herder Drive, Somerset, NJ, came forward and was sworn in. Ms. DeFrancesco stated that she lived in Franklin Township her whole life and on Den Herder Drive for 46 years. She stated that she had never seen flooding in Mr. Phillips' backyard as bad as since the subject property was built. She added that the home sits above everyone else's property and all the runoff runs down into Mr. Phillips' backyard. She added that it didn't affect her property as much, but it did cause her sump pump to become more active.

Seeing no one else wishes to speak, the Chairman then closed the meeting to the public.

Mr. Shepherd then asked Mr. Singh about GSM, LLC, with Mr. Singh correcting the name to GSM Global, LLC. Mr. Singh stated that it was a company owned by his wife, but that it didn't really conduct any business. He said that it originally owned the property, but that they had it switched over to his and his wife's name since then. Mr. Shepherd then inquired as to whom the contractor was who built the home, and Mr. Singh indicated it was multiple contractors. He

added that he was retired and that he just oversaw the construction. He did testify that that was the first time he had built a home.

Chairman Thomas asked Mr. Healey if the home plans were approved by the township and if they showed two kitchens or that it was set up as a two-family home. Mr. Healey stated that he would have to look at the house plans, but that the home was not zoned for anything other than a single family home. He added that a mother/daughter home was also not approved. Mr. Healey did state that they had had realtors that marketed a home in the Township as a mother/daughter, and that they have had to correct them. Mr. Healey indicated that the subdivision came before the Board a number of years ago in an R-20 Zone and was for two (2) approximately 20,000 sq. ft. lots that conformed. Chairman Thomas asked if the Board could have a clarification/confirmation of some kind from the Township Engineer because everything in the report showed that everything was satisfied. Mr. Healey indicated that since the Board was relying upon his conversation with the Engineering Dept. and because the neighbor had brought up some significant drainage issues, they might want to hear from the Township Engineering Dept. A discussion ensued regarding Mr. Phillips' exhibit and photos regarding the drainage issues. Mr. Healey stated that he felt Mr. Phillips' testimony was correct in that his property initially drained onto Mr. Singh's property, but that a platform of sorts needed to be created in order to obtain the building site for the home, which caused the water to back up. Mr. Healey indicated that the information that needed to be obtained was whether Mr. Singh had done everything he needed to do to rectify that situation. A discussion ensued among the Board. Mr. Shepherd as well as Ms. Bergailo agreed that they would like to see a letter generated from the Township Engineer's office showing that all required work had been done and that the Engineering Dept. was satisfied.

Mr. McCracken then wanted to ask a question of Mr. Phillips, so the Chairman opened the meeting up to the public for his questioning. Mr. McCracken asked Mr. Phillips to explain one of the photographs in his exhibit. Mr. Phillips indicated that there was some discussion between Mr. Vega, Township Engineering, Mr. Singh and himself was to put in a formal storm drain in that corner of the property that would affect 21 Den Herder and 5 Buell Street and address the overflow of water from 25 Den Herder Drive onto 23 Den Herder Drive and then onto 3 Buell Street appropriately. Mr. Phillips indicated that he dealt exclusively with Mr. Vega up until September, when he came to the Township Engineering Dept. and found out that he was no longer employed there. Mr. Phillips then stated that the drain was not at the lowest part of the swale and that Mr. Singh's property height was much higher than Mr. Phillips because he brought more dirt onto the property than he was allowed. Mr. Phillips then stated that the Township Engineering Dept. told him that a 12 inch pipe was supposed to be placed based upon the standard engineering chart that he provided in his exhibit and that was not what was done.

The Board discussed having the Township Engineering Dept. give clarification regarding whether all remediations for the drainage system were completed, utilizing the photographs #23, #24, #25 and #26 from Mr. Phillip's exhibit as well as providing an updated review letter showing that all work had been completed to their satisfaction.

Mr. Lanfrit then asked if Mr. Healey could notify he and the Singh's if Township Engineering was going to be going out to the site so that the Owner/Applicant or his engineer could be present to answer questions. Mr. Lanfrit then also suggested that Mr. Healey could have a

Zoning Inspector visit the home to investigate the use of the home as a single family home and not anything else.

Acting Board Attorney, Mr. Peter Vignuolo, asked whether it would be permissible to allow Mr. Phillips to be in attendance during the inspection of the storm water management system. Mr. Lanfrit stated that he did not have any objections, but suggested that Mr. Phillips might want to have his own engineer present to answer any questions for him to protect his interests.

It was agreed to carry the hearing until **FEBRUARY 15, 2018 – with no further notification required**. Mr. Lanfrit agreed to give the Board an extension of time to act upon the matter, if necessary.

- **FRANKLIN GREENS FIELDSTONE PROPERTIES / ZBA-17-00029**

Mr. Peter U. Lanfrit, Esq., Attorney, appeared before the Board on behalf of the Applicant, Franklin Greens Fieldstone Properties. Mr. Lanfrit explained that they were there before the Board that evening for some sign variances and some flag pole variances. He indicated that a “C” Variance was being requested for replacement of existing freestanding signs at 1 JFK Boulevard, Somerset; Block 385, Lots 2.04, 2.05, 2.06, 21, 35, 36, in the GB Zone.

Mr. Healey’s Planning report indicated that the following variances were required:

1. Sign Area (JFK sign): 25 sq. ft. permitted – 32+ sq. ft. proposed. (Applicant needs to identify the square footage of the wall, as the entire structure counts towards sign area).
2. Sign Setback (JFK sign): 25 ft. required – 14.8 ft. existing – 14.8 ft. proposed.
3. Number of Commercial Flags: 1 permitted – 2 proposed.
4. Setback for Flags: 25 ft. required – 6.5 ft. proposed.

Mr. Lanfrit testified that they were not planning on adding any additional signs and that the existing signs were currently in variance as will the proposed signs be in variance. He did note, however, that the flag poles would be new to the site. Mr. Lanfrit then indicated that the ordinance allowed for three (3) flag poles and that they were proposing four (4). He added that the ordinance allowed for one (1) commercial sign and three (3) flagpoles, with two (2) of them being an American flag and/or a New Jersey State flag. Mr. Lanfrit stated that they were proposing four (2) flag poles, two (2) with American flags and New Jersey flags and two (2) of them with identification flags.

Mr. Philip Evans, 9 Walnut Street, Hopewell, NJ, employed with Fieldstone Properties as a Consultant, came forward and was sworn in. Mr. Evans explained that he was a consultant for Fieldstone Properties for their locations at various locations within New Jersey. He stated that Fieldstone Properties had purchased the subject apartment complex approximately 18 months ago, with 646 apartment units. Mr. Evans then added that since purchasing the apartment complex, Fieldstone Properties had undertaken a renovation and modernization project at the complex, both on the outside as well as within every single apartment unit. He then stated that they were spending between \$12,000-17,000 on each unit. Mr. Evans then offered a report that detailed a total marketing scheme to renovate at least ten (10) of the older apartment complexes that they own. He testified that they were adding a \$1.8 million club house to the

subject site, and had already applied for permits to start construction, hopefully in the spring. Mr. Evans then entered the renovation report into the record as Exhibit A-1.

Mr. Evans then discussed the two main entrances to the apartment complex, with one located on JFK Boulevard and the other one located on Winston Drive., and the current signage at those two locations. He noted that the signs were very dated, and that part of the modernization was to replace the existing signs with newer signs as part of the marketing image. Mr. Evans indicated that one new sign will be in the exact location of the current sign and the other new sign was proposed to be located a few feet offset from where that existing sign now stood. Mr. Evans then testified that there were no flag poles at the present time at the site and that they were looking to place four (4) flagpoles at the main entrance on JFK Boulevard. He went on to state that two (2) of the flagpoles would contain a flag (not a banner) identifying the complex and the other two flag poles would contain either a New Jersey State flag or an American flag or two American flags. Mr. Evans then testified that they were asking for the four (4) flag poles instead of the three (3) that were allowed was because of the symmetry of two flag poles on each side of the entrance.

Ms. Bergailo asked if they were going to have the required lighting for the American flag. Mr. Evans stated that if the American flags were up at night, they would have the appropriate LED lighting for them.

Mr. Joseph Staigar, Engineer and Planner employed with Dynamic Engineering, 245 Main Street, Chester, NJ, came forward and was sworn in. The Board accepted his qualifications. Mr. Staigar testified that his firm prepared the plans for the new signs and flag poles and would be referring to Exhibit A-2, a Site Improvement Plan. He noted, for the record, that what the Board was looking at was Sheet 3 of the plan that shows the depiction of the two driveways, with the signs being located. Mr. Staigar then discussed where the newly proposed sign would be located and how far back it would be placed. He testified that the JFK Boulevard sign would be located in the exact same location as the current sign, set back 14.8 ft. from the right-of-way and approximately 10 ft. back from the travel way of JFK Boulevard. He added that the new sign would be replacing the current sign in that same location. Mr. Staigar did state that the proposed sign exceeded the zoning ordinance at 32 sq. ft., where 25 sq. ft. was proposed, but only exceeded the existing sign by 2 sq. ft. Mr. Staigar then described the entrance at the JFK Boulevard side of the complex and indicated it was known as a "boulevard" entranceway, with a landscaped boulevard down the center of it and an entrance drive on one side and an exit on the other side of the landscaped "boulevard". He then added that the symmetry of the entrance on JFK Boulevard was the look they were going for, with two (2) flag poles in the peninsulas on either side of the entrance and exit driveways and the sign located in the center on the landscaped "boulevard", for a total of four (4) flag poles. He noted that the flag poles were proposed to be set back from the property line at 6.8 ft. and required a variance. Mr. Staigar then testified that the flag poles did meet the height requirements of the ordinance and that they were going to have flags that were permitted pursuant to the ordinance. He then stated that the only other variance they needed was for two (2) signs, where one was permitted, to allow for a second sign at the Winston Drive driveway. He then discussed the flag poles and signs have any negative effect on the sight triangles at either location. Mr. Staigar answered that they would not have a negative effect in that way. He then indicated that the flag poles were small, about 4 inches in diameter and don't create a barrier for sight distances, per the standard methodology for determining the sight triangles.

Mr. Healey then asked Mr. Staigar to address the sight triangle issue more for the Winston Drive sign as was brought up in the Technical Review Committee's (TRC) report, dated January 11, 2018. Mr. Healey stated that there was 12.5 ft. existing and 6 ft. was proposed for the sign setback. Mr. Lanfrit stated that they were just going through the JFK Boulevard entrance first and would get into a discussion regarding the variance required at Winston Drive.

Mr. Shepherd expressed his concern that at some point there would be lost interest in having the flags up, especially when they start looking shabby. He asked if they could impose a condition that they take the poles down if the flags were not regularly flown.

Mr. Evans came back up and testified that Fieldstone Properties did not have anything shabby looking on their sites and that they would have brand new American flags put up every three (3) years. He added that the other flags would be changed out when they start looking bad; otherwise it would be a reflection on Fieldstone Properties. He added that they would be agreeable to a condition that they would always have flags up and that they would be in good condition always.

Mr. Healey asked what the square footage of the stone monument for the sign on JFK Boulevard would be. Mr. Evans stated that the wall was 22 ft. wide with a circular top section, the apex of which was 5.5 ft. high. He added that if they squared off the extremes, the size would be 121 sq. ft.

Mr. Staigar then addressed the proposed sign at the Winston Drive driveway. He showed the Board, utilizing Exhibit A-2, where the existing sign was located. He added that the current sign was further from the right-of-way than the proposed sign would be, the distance of which was approximately 4.5 ft. He did then testified that they were moving the proposed sign forward more than where the existing sign was located, with a setback of 6.5 ft. Mr. Staigar explained that the reason for doing that was because they wanted to put an ornamental hedge behind the two-pole sign so that there would be a backdrop to the sign. He stated that it was similar to how they designed the stone wall as a backdrop to the JFK Boulevard sign. He also added that they pushed the Winston Drive sign forward was also to get it out from under the existing canopy of trees there so the hedge could survive. Mr. Staigar testified that they were not planning to disturb any trees or remove any vegetation to accommodate the newly proposed sign. He noted that the size of the sign was 25 sq. ft., which conformed to the ordinance and did not require a variance. Mr. Staigar also stated that they were out of the sight triangle. He added that they didn't believe it would be very visible if they placed the sign back 25 ft.

In speaking as a Planner, Mr. Staigar testified that the setback variance was justified to improve or enhance traffic safety on Winston Drive because of better identification. He testified that he had the same reasoning for the granting of the sign variance on JFK Boulevard. He then stated that he saw no negatives to granting the variances for the signs and/or flag poles.

Chairman Thomas noted that there was no public in the chambers that evening to open the meeting to, so they would waive the public portion.

Mr. Lanfrit then gave his summation, asking for the grant of the appropriate variances based upon the testimony given that evening.

Mr. Shepherd made a motion that they grant the Applicant the variances needed to erect the two monument signs (JFK Boulevard and Winston Drive) and allow them to erect four (4) flag poles with flags at the JFK Boulevard entrance with the appropriate variances, include the number of flag poles, number of commercial flags, with the stipulation that the Applicant would remove the flag poles at the time when they no longer continue to fly flags at the JFK entrance to the site. Mr. McCracken seconded the motion and the roll was called as follows:

FOR: Mr. McCracken, Mr. Rich, Mr. Shepherd, Mr. Caldwell, Mr. Rosenthal, Ms. Bergailo and Chairman Thomas

AGAINST: None

DISCUSSION:

- **Appointment of Board Attorney – Resolution**

Ms. Bergailo made a motion to appoint Mr. James Kinneally as Zoning Board Attorney. Mr. Shepherd seconded the motion.

Mr. Vignuolo, Acting Zoning Board Attorney, discussed his knowledge and information of Mr. Kinneally, stating that his partner, Mr. Clarkin, had a good relationship with Mr. Kinneally in their dealings with one another. He did state that he did not know the first applicant. Mr. Vignuolo also added that he appeared before two of the boards that Mr. Kinneally represented and found him to do an exceptional job.

After discussion, Chairman Thomas asked for the Board's vote and all were in favor.

WORKSESSION/NEW BUSINESS

There was no new business

MEETING ADJOURNED

Mr. Shepherd made a motion to adjourn the meeting at 10:10 p.m. The motion was seconded and all were in favor.

Respectfully submitted,

Kathleen Murphy, Recording Secretary
February 5, 2018