

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

**REGULAR MEETING  
December 6, 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 Chairman, Robert Thomas, at 7:30 p.m. The Sunshine Law was read and the roll was called as follows:

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

**ABSENT:** Robert Shepherd

**ALSO PRESENT:** Mr. James Kinneally, Zoning Board Attorney, Mark Healey, Planning Director, and Christine Woodbury, Planning & Zoning Secretary

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**MINUTES:**

- **Regular Meeting – October 18, 2018**

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

**FOR:** Mr. Caldwell, Vice Chair Graumann, Mr. Johnson, Mr. McCracken, Mr. Rich, Mr. Rosenthal, Mr. Reiss, Ms. Bergailo and Chairman Thomas.

**AGAINST:** None

- **Regular Meeting – November 1, 2018**

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

**FOR:** Mr. Caldwell, Mr. Johnson, Mr. McCracken, Mr. Rich, Mr. Rosenthal, Mr. Reiss and Chairman Thomas.

**AGAINST:** None

## **OATH OF OFFICE**

- **Cheryl Bethea**

Board Attorney, James Kinneally, administered the Oath of Office to Ms. Cheryl Bethea and she was welcomed to the Board by all the other members.

## **RESOLUTIONS:**

- **2019 Calendar**

Vice Chair Graumann made a motion to approve the 2019 Calendar as submitted. Mr. McCracken seconded the motion and the roll was called as follows:

FOR: Mr. Caldwell, Vice Chair Graumann, Mr. Johnson, Mr. McCracken, Mr. Rich, Mr. Rosenthal, Ms. Bethea, Mr. Reiss, Ms. Bergailo and Chairman Thomas.

AGAINST: None

## **DISCUSSION:**

- **Payment of Invoices**

Mr. Healey explained to the Board members that it had been brought to his attention at a department meeting that the State had apparently changed the law whereby the Township did not pay a vendor within two (2) months of receiving a bill; the Township would then be subject to paying interest on that invoice. He went on to further explain that it would cause some problems for the Township, not only in the payment of interest, but also an administrative issue that he did not want to bear. He explained that most of the invoices that the Township receives were from paid from developer's escrows, so most of the bills that come in to the township the Board did not see. Mr. Healey then told the Board that smaller projects such as those that come in for homeowners or others that were not covered by escrows currently get put on the Board agendas, the Board approved them, and then the Township pays the bills. Sometimes, he stated, if meetings get cancelled, there is a long delay in having the invoices approved by the Board, so his suggestion was to give those types of invoices to the Board Chairman for him to approve so that the bills could be paid in a more timely manner. Mr. Healey added that they could put the invoices on a subsequent agenda so that the Board members would always be aware of the invoices that were paid. He then told the Board that if they were in agreement with his suggestion, they might have to make a small change to the Board's by-laws, which could be done at the reorganization meeting. A discussion ensued among the Board and it was agreed that they would discuss the matter at the reorganization meeting in order to make any changes to the by-laws to bring that into effect. Mr. Healey then reminded the Board that even after the Chairman's review and an "FYI" on the Board agenda at a subsequent meeting, the bill would also then go on the Township Council bill list to be reviewed.

## HEARINGS:

- **REV. URSULA CARGILL / ZBA-16-00025**

The Applicant seeks Certification of Pre-Existing Non-Conforming Use. The Applicant contends that the one-bedroom apartment in the finished portion of her basement was constructed at the time the house was constructed (with the house being constructed prior to enactment of the Township Zoning Ordinance) at 160 Bennington Parkway, Franklin Park; Block 38, Lots 6-7, in an R-20 Zone - **CARRIED TO JANUARY 3, 2019 – with no notifications required.**

**DL - 1/31/2019**

- **KATHLEEN KELLY / ZBA-18-00015**

“C” Variance for front yard setback in which the Applicant seeks to construct a covered porch in the front of the house at 65 Wilson Road, Somerset; Block 422, Lot 5; in an R-20 Zone - **CARRIED FROM NOVEMBER 1, 2018 – with notification required to newspaper only.**

Mr. Healey offered to give a brief overview, stating that the Applicant was proposing to place a small covered porch on the front of her house and that the reason for the variance was that the house was very slightly non-conforming. He noted that the required front yard setback in the zone was 25 ft. and the existing home was 24.7 ft, so anything placed in the front of the house would trigger a variance requirement. Mr. Healey then told the Board that the 2 ft. covered porch projected 2 ft. forward from the front of the house, and an exhibit showing the schematics of the proposed covered porch would be shown by the Applicant. He then told the Board that the request was for a variance of 22.7 ft. where 25 ft. was required.

Ms. Kathleen Kelly, Applicant, came forward and was sworn in. Ms. Kelly explained to the Board that originally her proposal was going to be exclusively for a living room renovation, and when they had gone through the drawings and what the requirements would be for the living room, the idea of adding the covered porch became a possibility. Ms. Kelly also indicated that her neighbors were all in support of the covered porch project, which would enhance the look of the home and ties together the three (3) existing rooflines that currently look disjointed.

Mr. Rosenthal noticed that the survey attached to the Application was from 2004 and asked if there had been any changes to the property since that time. Ms. Kelly stated that she had removed damaged trees and replaced trees due to hurricanes/storms and that there was currently a living room renovation that was approved by the Township that was ongoing, with no change to the footprint of the home at all.

Chairman Thomas then opened a discussion regarding what was proposed, noting that it did not appear to be a large overhang. Ms. Kelly added that the overhang was going to be placed over the existing porch with three (3) support beams.

Mr. Healey then discussed the exhibit brought by the homeowner that showed the existing structure and the proposed changes to include the porch overhang. He added that he agreed

with the Applicant when she stated that adding the covering to the porch improves the look of the home and ties the three (3) other rooflines together for a more cohesive look. He then told the Board that the exhibit was part of the original application submission.

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

For the record, Mr. Healey stated that they could probably identify the variance required as both a C-1 and a C-2 variance, for the record.

Vice Chair Graumann made a motion to approve the Application with Variance. Mr. McCracken seconded the motion and the roll was called as follows:

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

AGAINST: None

- **MARCUS SIRMANS / ZBA-18-00016**

Mr. Francis P. Linnus, Esq., Attorney, appeared before the Board on behalf of the Applicant, Marcus Sirmans. He stated that the Applicant was seeking a "C" Variance for side yard setback for an existing garage at 37 Millstone Road, Somerset; Block 142, Lots 1, 2 & 11, in an R-7 Zone.

Mr. Linnus indicated that Mr. Sirmans was seeking a variance for an existing masonry garage on the property. He then stated that the Applicant was before the Board that evening to correct a number of non-conformities on the property that were recently brought to his attention. He explained to the Board that the property currently consisted of the single family dwelling that had been on the property since 1950. Mr. Linnus then added that there was also a second residential dwelling on the property that burned down in February of 2018, which triggered an investigation of the property. He told the Board that the investigation found that there was too much impervious coverage on the property and that the second dwelling should not have been there at all, so they were there that evening to preserve the existing home that was built in 1950 along with the masonry garage that needed a 3.5 ft. setback variance because the zone required 8 ft. Mr. Linnus then told the Board that the Applicant would be demolishing the existing shed as well as the existing one-story framed dwelling. He added that the Applicant would also be removing impervious coverage so as to reduce the existing coverage from 46% to 30%, which was allowed by the ordinance. He noted that the existing 1-1/2 story framed dwelling unit that was built in 1950 would remain on the property. Mr. Linnus then told the Board that Mr. Sirmans' remaining parent died in 2015, and that he now owned the property free and clear. He also stated that there were pre-existing, non-conforming conditions related to the lot located in the R-7 zone and was a corner lot that required 9,000 sq. ft., but only consisted of 8,668 sq. ft. He then noted that there was a front yard setback for the pre-existing, single family dwelling built in 1950 that varies from between 23.1 ft. and 24.8 ft. at the Millstone Rd. frontage and 1.6 ft. at the Stodhoff Avenue frontage. Additionally, Mr. Linnus told the Board that there was a variance requested for the side yard

setback of the existing garage, with both side yards having a setback of 3.6 ft. where 8 ft. was required.

Mr. Marcus Sirmans, Applicant, 37 Millstone Road, Somerset, NJ, came forward and was sworn in. Mr. Sirmans indicated that the property had been in the name of his family for 54 years (since 1964-substantially all of his life). Currently, he said he has lived on the property for the past 12 years. Marked into the record as Exhibit A-1, he presented a document from the Tax Assessor's office showing that the 1-1/2 story home was built in 1950. Mr. Sirmans stated that his first memory of what was included on the property was from when he was 12 years old. He told the Board that the 1-story dwelling on the property burned down on February 20, 2018, which triggered an investigation into what was built on the property and the excess of impervious coverage, including a garage that was 20.1 ft. x 18 ft., with a 3-1/2 ft. setback. Mr. Sirmans agreed that he was working towards removing the remains of the 1-story home, removing the shed and was reducing the impervious coverage down to 30%.

Vice Chair Graumann asked whether his father built the additional 1-story home on the property, and Mr. Sirmans' answered in the affirmative, noting that it was never rented, but used for his family to live there.

Mr. Rich then inquired as to whether the garage had a bathroom in it. Mr. Sirmans indicated that that garage had a toilet/sink in it, but no kitchen, and was used as a "man cave" ..

Mr. Rosenthal asked whether the taxes were up to date, and Mr. Sirmans indicated that he owed approximately \$700, which he planned to pay off.

Mr. Healey asked whether the Applicant had an opportunity to read the report from the Technical Review Committee (TRC), and Mr. Linnus indicated that they would comply with all of the comments. Mr. Healey brought up comment #2 in the report, stating that it spoke about the removal of the structures and the walkways and driveways to make the site otherwise compliant, obtaining permits for the garage and consolidating the lots noted in comment #4. He asked if there was a reasonable timeframe the Applicant could commit to complying with the requirements in the report should the Board act favorably on the Application.

Mr. Sirmans indicated that he had already notified public service and that they had disconnected everything from the 1-story dwelling, but that he was just waiting for a letter from them. He also stated that he had taken out an application for demolition, but hadn't filed it yet and planned to do so. Mr. Sirmans then told the Board that he was going to start removing the extra impervious coverage on the property and would probably take about two (2) weeks. Mr. Healey indicated that he suggested in his report a period of no more than three (3) months, weather permitting, to remove a driveway, walkways and a building and the associated permits to do so. Mr. Linnus suggested a period of six (6) months, weather permitting and Mr. Healey felt that that was reasonable. Mr. Healey then stated that if the Board approved the Application heard that evening, that the TRC was recommending that there be an As-Built Survey completed after the fact, documenting that everything was taken care of on the property as agreed. Mr. Linnus stated that they would comply with that condition.

The Chairman also felt that there should be a condition placed on the garage, since there were some facilities within it, that it should not be used as a rental property, but for use by the

residents of the home for storage or for use as a “man cave”, as testified to by the Applicant. Mr. Sirmans agreed to that condition.

Ms. Bergailo inquired as to whether plumbing permits were ever pulled for the garage, and Mr. Sirmans stated that he didn't know since the garage with the bathroom was approximately 40 years old. Ms. Bergailo asked that the Board be able to see the construction permits before the six-month period of time. Mr. Linnus indicated that they had agreed to provide an As-Built Survey and would have to apply for an “after the fact” construction permit as part of any approval. He added that after he applied for that construction permit that an inspection would have to be done showing that the garage would indeed qualify for a permit. He went on to explain that if it was deemed to necessary to have any plumbing or ancillary permits they would have to be pursued as well. A discussion ensued.

Mr. Caldwell asked whether the garage was heated, and Mr. Sirmans answered in the negative.

Mr. Raymond Holmes, Planner and Land Surveyor, 7 Stratford Place, New Brunswick, NJ, came forward and was sworn in. Mr. Holmes gave the Board the benefit of his background, and his qualifications and experience were accepted. He noted that he prepared the variance report that was before the Board that evening. Mr. Holmes then entered into the record as Exhibit A-2, which was a board showing the existing conditions on the property, including the 1-1/2 story home, the remains of the 1-story home, the garage, a tool shed, associated walkways, and a patio. Currently, he indicated that the impervious coverage was up to 46%, with the zone allowing for a maximum of 30%. Utilizing Exhibit A-2, Mr. Holmes showed the Board how they were going to reduce the impervious coverage from 46% to 30%. Mr. Holmes then entered into the record as Exhibit A-3, which showed what the property would look like after the removal of those items testified to earlier in the hearing. He added that he was undertaking the “clean-up” of the property to accommodate for zoning requirements and impervious requirements and had never had any complaints from his neighbor regarding his property. Mr. Holmes then showed the Board, utilizing Exhibit A-3, how the Applicant would be retaining the patio and part of the asphalt driveway to allow four (4) cars to park in that space. Mr. Linnus then detailed the variances they were seeking, including the setback variance for the garage, continuation of the pre-existing lot size that was deficient as a corner property in the R-7 zone, and front yard setback for the pre-existing home. Mr. Holmes then spoke about the justification of the location of the garage on the property, noting that aesthetically and functionally he did not see any issues with its location.

Mr. Healey jumped in by saying that if the garage was placed in the narrower portion of the lot, complying with the 8 ft. setback, there would be no ability to get four (4) cars into the driveway. He added that there would be the ability to allow for two (2) cars in the driveway, and the others would have to park on the street. Mr. Holmes agreed with Mr. Healey's remarks, noting that the location of the garage currently complied with the front and rear yard setback requirements.

Mr. Holmes then discussed the special purposes of the Municipal Land Use Law (MLUL) and that the location of the 1-1/2 story home and garage on the property would provide for the lower density required by the R-7 Zone on a deficient lot size for a corner lot. Mr. Holmes stated that he felt that the benefits outweighed any detriments and that they would comply with all of the comments in the TRC report. He also testified that he didn't feel that the

placement of the garage did not impact the neighborhood in a negative way. A discussion ensued among the Board members, and Mr. Holmes testified that the 1-1/2 story home on the property was a single family dwelling.

Chairman Thomas then opened the meeting to the public for anyone wanting to ask a question or make a statement regarding the Application. Seeing no one coming forward, the Chairman closed the meeting to the public.

Mr. Linnus then gave his closing statements, noting that he felt they were asking for a C-1 Hardship variance for the garage location. He also told the Board that they were cleaning up the property after it was noted that there were deficiencies when those came to light after the February 20, 2018 fire that destroyed the 1-story home on the property.

Chairman Thomas asked whether the Applicant understood that the property would be at the maximum allowed for impervious coverage of 30% and that he would have to come back before the Board to add any additional structures to the property.

Mr. Rich inquired as to how Mr. Sirmans kept the plumbing from freezing in the winter without any heat in the garage. Mr. Sirmans indicated that he had a plumbing heater in place and that it was winterized each year.

Vice Chair Graumann made a motion to approve the Application, with the construction permits be completed within the agreed upon 6-month period of time, weather permitting. Mr. McCracken seconded the motion and the roll was called as follows:

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

AGAINST: None

- **ROBIN SUYDAM / ZBA-18-00020**

Applicant was seeking a "C" Variance for setbacks, lot and impervious coverage to construct two porches on the existing home at 54 Skillmans Lane, Somerset; Block 85, Lot 61.02, in the A Zone.

Mr. Healey proceeded to provide an overview for the Board, noting that it was similar to the first application that they heard that evening with an additional twist. He stated that the Applicant was proposing to put porches on the east and west side of their existing home and drew the Board's attention to Page 3 of the Technical Review Committee (TRC) report that showed the located of both of the proposed porches. In total, Mr. Healey stated that they comprise 566 sq. ft. He added that the appearances of the porches were shown in the architectural plans that were provided by the Applicant and were in the Board members' packet. Mr. Healey then informed the Board that the entire house was non-conforming because it was an older home on a smaller lot placed close to the street and was in the A-Agricultural Zone which required 6 acres. Adding the two covered porches was thereby triggering additional variances as a result. According to Mr. Healey, was that also complicating the issue was the fact that the zoning had been changed as recently as 2007

from Cluster Residential that had smaller setbacks to the A-Agricultural Zone that had larger setbacks. He then told the Board that the number of variances and the extent of the variances had been increased by virtue of that relatively recent zone change.

Ms. Robin Suydam, Applicant, 29 Skillmans Lane, came forward and was sworn in. Ms. Suydam stated that she wanted to point out that there were existing porches on the east and west side and on the west side, they were just going to line up that porch with the addition that was put on in 2002 to make a clean line across the front of the house which could be seen in the drawings. She indicated that it would improve the look of the house to bring that porch out about 1-6 ft. from what it was prior. She noted that the porch on the east side was connecting two porches together to make a clean line across the east side of the house. She then told the Board that the original portion of the house was from 1725, with the middle portion of the home being from around 1816 along with an addition that was put on in 2002. Ms. Suydam then indicated that in approximately 2007, the six (6)-acre lot was turned into a 1-acre lot, with the other five (5) acres dedicated to the preservation that went with the rest of Suydam Farms. She then told the Board that the property was owned by Suydam Limited Partnership Associates, with all the contingent lots were all under Suydam Limited Partnership Associates.

Mr. Healey stated that comment #2 in the TRC report outlined all of the justification of the variance, noting that the porches would not extend any closer to the road than the existing house, it was largely triggered by the re-zoning, the architectural plans demonstrate that the proposed porches would blend well with the character of the existing home, there would be no substantial detriment to the surrounding properties since the porches would be set back in excess of 55 ft., would be screened by intervening vegetation, and since surrounding properties contain no nearby residences and it was understood that all surrounding properties were under the same or similar ownership as the subject property.

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

Mr. Reiss made a motion to approve the Application with variances. Vice Chair Graumann seconded the motion and the roll was called as follows:

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

AGAINST: None

## **WORK SESSION/NEW BUSINESS**

There was no work session or new business discussed.

## **MEETING ADJOURNED**

A motion was made to adjourn the meeting at 8:15 p.m. and seconded. All were in favor.



Respectfully submitted,

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Kathleen Murphy, Recording Secretary  
December 31, 2018