

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

**VIRTUAL MEETING
January 20, 2021**

This Regular Meeting of the Township of Franklin Zoning Board of Adjustment was held virtually at 475 DeMott Lane, Somerset, New Jersey and was called to order by Chairman Thomas at 7:30 p.m. The Sunshine Law was read, and the roll was called as follows:

PRESENT: Cheryl Bethea, Bruce McCracken, Joel Reiss, Alan Rich, Gary Rosenthal, Joel Reiss, Richard Procanik, Kunal Lakhia, and Chairman Thomas

ABSENT: Robert Shepherd

ALSO PRESENT: Daniel Lagana, Board Attorney, Mark Healey, Planning Director, and Christine Woodbury, Planning & Zoning Secretary

OATH OF OFFICE:

Mr. Daniel Lagana, Board Attorney, conferred the Oath of Office to the following regular members of the Zoning Board of Adjustment:

- Joel Reiss
- Cheryl Bethea
- Alan Rich

Mr. Lagana then conferred the Oath of Office to the following Alternate members of the Zoning Board of Adjustment:

- Richard Procanik
- Kunal Lakhia

REORGANIZATION:

- **Nomination/Selection of Chairperson**

Mr. Rosenthal made a motion to nominate Mr. Robert Thomas for the position of Chairperson. Mr. Reiss seconded the motion. Hearing no other nominations, the roll was called for the nomination of Mr. Robert Thomas, as follows:

FOR: Ms. Bethea, Mr. McCracken, Mr. Reiss, Mr. Rich, Mr. Rosenthal, Mr. Procanik, Mr. Lakhia and Mr. Thomas

AGAINST: None

- **Nomination/Selection of Vice Chairperson**

Chairman Thomas made a motion to nominate Mr. Robert Shepherd for the position of Vice Chairman. Mr. Rosenthal seconded the motion.

FOR: Ms. Bethea, Mr. McCracken, Mr. Reiss, Mr. Rich, Mr. Rosenthal, Mr. Procanik, Mr. Lakhia and Chairman Thomas

AGAINST: None

- **Board Attorney Interviews**

Mr. Healey indicated that, as per the Zoning Board of Adjustment's By-Laws, there was a request for proposals sent out, and that they had received one proposal from the firm of Decotiis Law, the current Board Attorney.

Mr. Rosenthal asked Mr. Lagana whether he would have any conflicts with being able to serve as the Zoning Board of Adjustment Attorney for the Township of Franklin. Mr. Lagana indicated that his schedule should not change, and he should be able to attend all Zoning Board meetings.

Chairman Thomas asked whether Mr. Lagana would be the attorney from his firm that would be attending the Zoning Board meetings during the year. Mr. Lagana indicated that he planned to be the attorney of record and would attend all meetings through 2021.

Mr. Healey then indicated that the Board members have a draft Resolution before them; however, there were some blanks within the document. He suggested that the hourly rate for the Board Attorney be filled in, on the second page of the document, based upon the proposal that was submitted for \$175.00/hour performed by attorneys, and otherwise be paid at the rates indicated for legal services on Page 22 of the attached proposal. Also, the section in the draft Resolution for the name of the Vendor would be filled in with the Decotiis law firm. With those two amendments, Mr. Healey suggested that a motion could be made.

- **Appointment of Board Attorney**

Mr. Reiss made a motion to approve the Resolution to name Mr. Daniel Lagana, of the Decotiis law firm, as the Zoning Board of Adjustment attorney for 2021. Ms. Bethea seconded the motion, and the roll was called as follows:

FOR: Ms. Bethea, Mr. McCracken, Mr. Reiss, Mr. Rich, Mr. Rosenthal, Mr. Procanik, Mr. Lakhia and Chairman Thomas

AGAINST: None

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

Mr. Lagana then conferred the Oath of Office to Mr. Mark Healey, Director of Planning, for the Township of Franklin.

MINUTES:

- **Regular Meeting – December 3, 2020**

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

FOR: Ms. Bethea, Mr. McCracken, Mr. Reiss, Mr. Rich, Mr. Rosenthal, and Chairman Thomas

AGAINST: None

- **Regular Meeting – December 17, 2020**

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

FOR: Ms. Bethea, Mr. McCracken, Mr. Reiss, Mr. Rosenthal, Mr. Lakhia, and Chairman Thomas

AGAINST: None

RESOLUTIONS:

- **RISHAY GROUP (Bottle Republic) / ZBA-20-00020**

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

FOR: Mr. McCracken, Mr. Reiss, Mr. Rosenthal, and Chairman Thomas

AGAINST: None

HEARINGS:

- **XIN LIU / ZBA-20-00022**

Mr. Peter U. Lanfrit, Esq., Attorney, appeared before the Board on behalf of the Applicant, Xin Liu. Certification of Pre-Existing Non-Conforming Use in which the Applicant contended that the detached building had been occupied as a residence at 166 Victor Street, Somerset; Block 143, Lots 15-17, in an R-7 Zone.

Mr. Lanfrit stated that there were two (2) separate structures on the property, with both of them being used as dwellings. He then told the Board that they were there that evening to prove to the members that the use of the property pre-existed zoning ordinances in Franklin Township (1958) and had been utilized as residential dwellings

Mr. Xin Liu, Applicant/Owner, 166 Victor Street, Somerset, NJ, came forward and was sworn in. Mr. Liu indicated that he purchased the property on November 1, 2020. He then described the existing conditions on the property, including two residential structures. He noted that the residential structure closes to Victor Street was a single-family residence in which he currently resides. Mr. Liu then told the Board that there was a second structure to the rear and left of the main house as one would look at the property from Victor Street, and that both structures were present on the property when he purchased it. He then went on to describe the layout of the secondary structure, that included roughly 500 sq. ft. that included a kitchen, living room, bedroom, storage area and a bathroom. Mr. Liu then testified that when he purchased the property, both the main house and the rear structure were occupied. He did tell the Board, however, that while he is occupying the main structure, the rear structure was not as he was rehabbing the building.

Mr. Rich then asked how the property was listed when Mr. Liu went to inquire about purchasing the property. Mr. Liu indicated that he did not go through a realtor to purchase the property but was just riding around the neighborhood and went through the sale directly with the owner.

Ms. Bethea asked whether the rear structure had a separate address, and Mr. Liu indicated that it did not.

Mr. David Bekus, Contractor/Building Inspector/Witness, 45 Hunt Lane, Skillman, NJ, came forward and was sworn in. Mr. Bekus indicated that he had testified before many Boards,

including the Franklin Township Zoning Board, regarding the age of specific dwellings with his extensive experience in constructing and renovating older buildings, specifically in New Brunswick, NJ. He told the Board that he had his H.H.S. license from the State of New Jersey as a Building Inspector.

Chairman Thomas asked Board Attorney, Mr. Daniel Lagana, what the standards they were to apply in the case to determine expertise. Mr. Lagana told the Chairman that they could accept a witness based on his experience if the information just given by the witness, Mr. Bekus, satisfied him that he had sufficient expertise in determining the age of structures. The Board accepted his qualifications.

Mr. Bekus then stated that he visited the property on August 12, 2020 and was also there on January 19, 2021. On his first visit to the property in 2019, Mr. Bekus indicated that he investigated the rear building and looked at it to determine if it was an existing structure, with the purpose of occupancy, or if it was converted from a garage or some other use. Based on his observations and the items he documented in his report, Mr. Bekus indicated that he determined that the building was designed, built, and used as an occupancy prior to 1959. Mr. Bekus then explained the steps he took to make his determination, noting that it had a front door, located on the side of the structure, a kitchen, and a now abandoned chimney. Secondly, he looked at the layout of the windows in the structure, showing that it was a building that was built to be occupied. He then added that there was a separate electric service for the rear structure on the property that included an old creosote-soaked post and what would have been a cover for an electric meter that was now abandoned that was clearly from an old structure. Mr. Bekus then told the Board that the bathroom had a 4-inch, cast iron sewer line, which would indicate its approximate age. In looking at the building materials, he noticed cement or partially asbestos siding with an imitation brick siding underneath that was quite common in the 1920's and 1930's in New Brunswick, NJ. Because of his findings on the property, he was able to conclude that the secondary structure was built prior to 1959 and meant to be a residential structure. He added that there was no indication that the structure was once a garage that someone converted at some point into a residence.

Mr. Bekus stated that he consulted the Township records regarding year of construction, which stated that the structure was constructed in 1950. He told the Board that the construction of the main building was remarkably similar, if not the same, as that of the secondary structure in the rear of the property, indicating that they were built at the same time. Mr. Bekus testified that the Township records show that the main building was also constructed in the 1950's. Mr. Bekus then shared photographs that he took on January 19, 2021 and entered into the record as Exhibit A-1, photographs of interior demolition. He indicated that once the existing flooring was removed, there were newspapers that were used as an underlayment between the sub-floor and the finished flooring as was the practice of the time. The next photo in the exhibit showed a close-up picture of a newspaper, with the date showing March 15, 1951, giving credence to the fact that the building was used and occupied as a residence from a few weeks after March 15, 1951.

Mr. Reiss stated that he had looked up the listing for the subject property, and none of the listings he found indicated that the property had two buildings.

Ms. Bethea then asked if there were plans to rent the rear structure, and Mr. Lanfrit stated that Mr. Liu was going to rehab the structure first, and that it had been rented just before he purchased the property.

Mr. Reiss opened a discussion with Board Attorney, Mr. Lagana, regarding whether there would be separate tax records for each structure. Mr. Lagana explained that the Board had a specific analysis to undertake on that kind of certification, i.e., the use of the structure pre-existing prior to the enactment of the zoning ordinance and that the use or structure remained uninterrupted to the current date.

Ms. Bethea brought up the topic of parking requirements, and Mr. Lanfrit had a discussion regarding the fact that there were no parking standards in 1950 as there were no zoning ordinances at that time. Ms. Bethea then asked if there were records showing that the structure was continuously used as a residential structure since it was built. Mr. Lanfrit told the Board that the continuous use was that there was never any change in the use to something other than what it was constructed for. A discussion ensued.

Mr. Rich questioned whether there were separate utilities being provided to the secondary structures, and Mr. Lanfrit indicated that Mr. Bekus testified that there was separate water, separate sewer and separate electricity being provided to that house.

Mr. Lakhia asked about notifying the tax assessor of the changes/upgrades being made to the secondary structure. Mr. Lagana indicated that there should be a reassessment by the Tax Assessor's office and should be given a value and included as an improvement to the land.

Mr. Healey then reiterated Mr. Lagana's testimony regarding the relationship between occupancy and use. A discussion ensued.

Chairman Thomas then opened the meeting to the public. While they were waiting to see if anyone was interested in asking a question or making a comment, Mr. Healey noted that Mr. Bekus' testimony indicated that he used 1959 as they year zoning ordinances came into being, and Mr. Healey stated that it was actually 1958, to clarify the record. He then assumed that Mr. Bekus' testimony was unchanged despite the misstatement, and Mr. Bekus agreed.

Seeing no one interested in speaking from the public, Chairman Thomas then closed the meeting to the public.

Mr. Lanfrit then gave his closing summation.

Ms. Bethea made a motion to approve the property as a Certification of Pre-Existing Non-Conforming Use. Mr. Rich seconded the motion, and the roll was called as follows:

FOR: Ms. Bethea, Mr. McCracken, Mr. Reiss, Mr. Rich, Mr. Rosenthal, Mr. Procanik, and Chairman Thomas

AGAINST: None

- **150 PIERCE STREET, LLC / ZBA-20-00017**

(D)1 Use Variance and Site Plan for a 16,744 sq. ft. addition to the charter school, parking expansion for the PharmScript use, and associated site plan modifications at 150 Pierce Street, Somerset; Block 468.08, Lot 2.02, in the M-2 Zone - **CARRIED TO FEBRUARY 4, 2021 – with no further notification required.**

DL - 2/16/2021

For those wishing to participate in the hearing via Virtual WebEx Meeting, the event address for attendees will be posted on the Township's website at:

<https://www.franklintwpnj.org/Home/Components/Calendar/Event/17581/2193>.

For those wishing to listen via telephone the call-in number is: +1-408-418-9388 and the access code is: 173 668 3801.

WORK SESSION/NEW BUSINESS:

There was no work session or new business discussed.

MEETING ADJOURNED:

Mr. Reiss made a motion to adjourn the meeting at 8:27 p.m. The motion was seconded, and all were in favor.

Respectfully submitted,

Kathleen Murphy, Recording Secretary
January 28, 2021