

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

**VIRTUAL MEETING
January 06, 2022**

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, Richard Procanik, Joel Reiss, Alan Rich, Gary Rosenthal, Robert Shepherd, Elizabeth Clarkin, Vaseem Firdaus, and Chairman Thomas

ABSENT: None

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

OATH OF OFFICE:

- **Robert Shepherd**

Board Attorney, Francis Regan, administered the Oath of Office to Mr. Shepherd.

REORGANIZATION:

- **Nomination/Selection of Chairperson – Robert Thomas**

Mr. Joel Reiss nominated Mr. Robert Thomas for Chairperson, and Mr. Shepherd seconded the motion. Hearing no other nominations, the roll was called as follows:

FOR: Ms. Bethea, Mr. Procanik, Mr. Reiss, Mr. Rich, Mr. Rosenthal, Mr. Robert Shepherd, Ms. Firdaus, Ms. Clarkin and Mr. Thomas

AGAINST: None

- **Nomination/Selection of Vice Chairperson - Robert Shepherd**

Mr. Reiss nominated Mr. Robert Shepherd for Vice Chairperson, and the motion was seconded by Ms. Firdaus. Hearing no other nominations, the roll was called as follows

FOR: Ms. Bethea, Mr. Procanik, Mr. Reiss, Mr. Rich, Mr. Rosenthal, Mr. Robert Shepherd, Ms. Firdaus, Ms. Clarkin and Chairman Thomas

AGAINST: None

- **Board Attorney Interviews • Appointment of Board Attorney - Francis Regan**

Mr. Healey explained that a Request For Proposals (RFP) went out and they had received one (1) proposal from the Decotiis Law Firm for which the current Board Attorney, Mr. Regan was employed. The Board then interviewed the prospective attorney. Chairman Thomas asked Mr. Regan if he wished to continue on as Board Attorney and that his schedule had not changed so that he would be able to maintain the current Board Meeting schedule as in the past. Mr. Regan answered in the affirmative to both inquiries.

Mr. Reiss made a motion to appoint Mr. Regan as Board Attorney for 2022. Ms. Bethea seconded the motion and the roll was called as follows:

FOR: Ms. Bethea, Mr. Procanik, Mr. Reiss, Mr. Rich, Mr. Rosenthal, Mr. Robert Shepherd, Ms. Firdaus, Ms. Clarkin and Chairman Thomas

AGAINST: None

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

Board Attorney, Mr. Frank Regan, administered the Witness Oath of Office for 2022, and Mr. Healey indicated that his Planner’s license was current and in good standing.

MINUTES:

- **Regular Meeting – November 4, 2021**

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. Procanik, Mr. Reiss, Mr. Rich, Mr. Rosenthal, Vice Chair Shepherd, Ms. Firdaus, Ms. Clarkin, and Chairman Thomas

AGAINST: None

RESOLUTIONS

- **2022 Calendar**

Vice Chair Shepherd made a motion to approve the 2022 Calendar. Mr. Reiss seconded the motion, and the roll was called as follows:

FOR: Ms. Bethea, Mr. Procanik, Mr. Reiss, Mr. Rich, Mr. Rosenthal, Vice Chair Shepherd, Ms. Firdaus, Ms. Clarkin, and Chairman Thomas

AGAINST: None

- **Saharose, Inc / ZBA-20-00026**

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

FOR: Ms. Bethea, Mr. Procanik, Mr. Reiss, Mr. Rich, Mr. Rosenthal, Vice Chair Shepherd, and Chairman Thomas

AGAINST: None

HEARINGS:

- **1784 Capital Holdings, LLC / ZBA-21-00009**

D(1) Use Variance; Preliminary & Final Major Site Plan w/C Variances in which the Applicant was seeking approval for construction of a 125,335 sq. ft. self-storage facility at 1613 Route #27, Somerset; Block 85, Lots 58 & 59.02, in the GB Zone – **CARRIED TO FEBRUARY 3, 2022 – with no further notification required.**

DL 02/28/2022

Christine Woodbury, Board Secretary, brought up the instructions on how to attend the next hearing for 1784 Capital Holdings, LLC.

Chairman Thomas then gave a general notice to the public. He indicated that he personally saw a petition on-line called Sign Here and encouraging people to attend that night's Zoning Board meeting at 7:30 p.m. to express their concerns regarding an application at the K-Mart Plaza which they had heard rumors about. He then stated that the Zoning Board did not accept open public discussion, but only have discussions on applications that were being heard at a scheduled Zoning Board meeting. He told any of the listening public that if they were encouraged to participate and call in that evening related to any other concerns other than the scheduled hearings, they would not be listening to them concerning that application that evening. He also told the listening public that they had not received any paperwork related to that potential application and were not aware that it had even been officially scheduled for a hearing.

- **ANITA C. KHAN / ZBA-21-00023**

C Variance in which the Applicant proposed to build a 14' x 31' one(1)-story accessory structure with one-car garage and craft room at 34 Laurel Avenue, Kingston; Block 2, Lot 1, in an R-10 Zone.

Ms. Anita Khan, Applicant, came forward and was sworn in.

Mr. Dan Fortunata, Architect, Skillman, NJ, came forward and was sworn in.

Mr. Healey gave a brief overview of the Application by stating that they were discussing a triangular shaped property with frontage on Laurel Avenue and Church Street with a side property line. He stated that the property was currently developed with a residence, and the Applicant was proposing a 14 ft. x 31 ft., approximately 400 sq. ft. one (1)-story accessory structure that would consist of a garage and a small craft room behind the garage. He went on to explain that there were two (2) variances that were required to include a front yard setback off of Church Street (13.5 ft. from property line) and a side yard setback that required 8 ft. and a proposal of 4 ft. Mr. Healey then indicated that the Applicant had already appeared before the Township Historical Preservation Commission because the property was located in an historic district and that the Application had been revised to be consistent with the recommendations of the Historic Preservation Commission.

Ms. Khan then described her proposal to the Board, noting that she bought the property in August of 2021. Ms. Khan stated that she would be replacing a shed on her property with the proposed garage/craft space. Because the property was triangular shaped, she could not find any other space on the property that the garage could be placed that would make it more conforming. She then stated that she and Mr. Fortunata, Architect, went before the Historic Preservation Commission in October of 2021 and were asked to revise their plans by bringing down the roof of the proposed garage to match the garage next door as well as to match the look of the proposed garage with the aesthetic of the residential home. Additionally, Ms. Khan indicated that they were asked to match the garage door to the front door of the residential home. Ms. Khan stated that they submitted the revised plans to the Historical Preservation Commission in December of 2021, and they were approved at that time.

Vice Chair Shepherd then asked if Ms. Khan was going to remove the shed that she noted was on the property, and Ms. Khan answered in the affirmative.

Chairman Thomas confirmed with Ms. Khan that the shape of the property was the reason why they could not move the proposed garage anywhere else on the property. Ms. Khan confirmed that there was also a Japanese blossoming tree that would be affected if they moved the proposed garage elsewhere to be more conforming. Mr. Fortunata, Architect, explained that they worked with Mr. Dominach in order to obtain the best location on the property for the proposed garage/craft room. He also stated that the location of the proposed garage allowed for a car to pull straight into the garage instead of having to make a bend around the current home.

Mr. Rich asked if there were any concerns from the neighbors, and Ms. Khan answered in the negative. He then asked if there would be utilities in the proposed garage/craft space, and Ms. Khan indicated that she would just be running electrical service to the space.

Ms. Bethea opened a discussion regarding the lowering of the roof pitch, with Mr. Fortunata stating that they lowered the roof pitch to match the neighboring garage.

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

Vice Chair Shepherd made a motion to approve the Application, with variances, and subject to the design and roofline shown in the plans that were approved by the Historic Preservation Commission. Ms. Firdaus seconded the motion and the roll was called as follows:

FOR: Ms. Bethea, Mr. Procanik, Mr. Reiss, Mr. Rich, Mr. Rosenthal, Vice Chair Shepherd, and Chairman Thomas

AGAINST: None

- **MALGORZATA SERAFIN / ZBA-21-00025**

Mr. Francis P. Linnus, Esq., Attorney, appeared before the Board on behalf of the Applicant, Malgorzata Serafin. Mr. Linnus explained that they were before the Board that evening to obtain Certification of Pre-existing Non-conforming Use for a “two (2)-family main home and a detached single-family dwelling to the rear of the rear of the property” at 18 Home Street, Somerset; Block 181, Lots 24 & 25, in an R-7 Zone.

Mr. Linnus explained that the Applicant needed to prove what was set forth in comment #1 in the Technical Review Committee (TRC) report, dated November 30, 2021, that the use had existed prior to the zoning ordinance in October of 1958. He went on to explain that they would also have to prove that the uses would have to have remained uninterrupted and to have existed since that time. Mr. Linnus reiterated that the two uses were a two(2)-family dwelling and a detached single-family dwelling. He then told the Board that what brought them before the Board that evening was a partial fire in the rear structure, where some interior work needed to be done and a construction permit was requested.

Mr. David Bekus, Expert in dating of older structures, Ms. Margaret Serafin/Mr. Ted Serafin, Applicants and Mr. Ed Rzewowski, 75-year old son of original owners of the property. Mr. Linnus indicated that the two (2) residential structures were built in 1935.

Mr. Rzewowski stated that he resided in Nazareth, PA. He told the Board that his family sold the subject property to Ms. Margaret Serafin in 2004 and described his family’s ownership of the property. Mr. Rzewowski indicated that his parents bought the subject property in 1958 and lived there for some 40+ years. He noted that the second house in the rear of the property was always rented out to an older woman for over 20+ years. He then explained that he and his parents lived on the first floor of the main home and rented out the second floor of that home. Mr. Rzewowski then testified that he was named administrator for his mother, Mrs. Helen Rzewowski, in 2004 when the property was sold to Malgorzata (Margaret) Serafin. He then added that the main home was used/sold as a two (2)-family home and the rear home was used as a single-family home.

Chairman Thomas opened the meeting to the public to ask questions of Mr. Rzewowski. Seeing no one coming forward, the meeting was closed to the public.

Ms. Bethea asked for clarification regarding the year his family purchased the home and Mr. Regan, Board Attorney, asked if the homes on the property were new in 1958 when the property was purchased by the elder Rzewowskis. Mr. Rzewowski answered in the negative.

Chairman Thomas asked Mr. Rzewowski whether the main home was already being used a two(2)-family home, and he answered in the affirmative.

Mr. Linnus then asked Mr. & Mrs. Serafin were asked where they currently live, and they indicated that they live at 11 Jefferson Avenue, New Brunswick, NJ. Mr. Serafin testified that they knew the elder Rzewowskis from church many years before they purchased the property. He also indicated that he was friends with someone who lived in the rear property when he was young. Mrs. Serafin then testified that the main house had been rented as a two(2)-family home since she purchased the property in 2004. She also stated that the rear, single-family home had also been rented consistently since 2004 as well. They then discussed the

fire that occurred in the rear dwelling. Mrs. Serafin stated that the fire occurred on March 19, 2021, and Mr. Serafin indicated that the fire damage was from smoke, water and heat. He told the Board that the fire started outside from a cigarette and came inside the structure. Mr. Serafin stated that the electrical wires, sheet rock, insulation and minor plumbing repairs needed to be done after the fire. He indicated that they subsequently applied for construction permits and were denied due to zoning issues. Mrs. Serafin indicated that the security deposit was returned to tenants of the single-family home and they were unable to live in the home at that time. She indicated that those same tenants were interested in coming back to rent the home after repairs were completed. Mr. Linnus confirmed with Mrs. Serafin that he told her that the property may have to be registered with the State as a multi-family property, and she stated that she would do what was required. She also told the Board that she was contacted by the State and asked how many families live in the main home and how many families live in the rear home. Mrs. Serafin then told the woman who called from the State that the fire occurred in the rear home and was told that nothing needed to be done to register the property. Mr. & Mrs. Serafin are now asking the Board to Certify the subject property as pre-existing, non-conforming uses.

Ms. Bethea opened a discussion as to what determines the existence of a two(2)-family home, and Mr. Healey indicated that there would be two separate dwelling units.

Mr. David Bekus, Expert of the dating of older structures with a building inspector license from the DCA which he still maintained, to include the inspection for building construction defects. The Board accepted his qualifications. Mr. Bekus went on to explain the analysis he made on the structures located on the subject property. Mr. Bekus discussed the two reports that he prepared, one being the original report and the other an updated report based upon he comments. He entered the report into the record as Exhibit A-1, entitled Type & Time of Occupancy – 18 Home Street, Somerset, NJ, dated September 28, 2021 and updated December 30, 2021. In his research of the property, Mr. Bekus utilized NJ Parcels which indicated that the property was developed in 1935. He then detailed his inspection of the property, noting that a back wall on the rear structure having a mix of construction, looking at it after the demolition from the fire. He showed photos of the different materials and discussed the types of construction materials and the framing type of different years. Additionally, he showed a photo of a chimney in the garage, along with lathe and plaster type walls, stating that garages were not typically heated back in the year the house was constructed. He then showed a photo within his report of tongue and groove flooring, which would also not be included in a garage-only structure. Mr. Bekus also stated that Mr. Serafin found a sheet of newspaper underneath the linoleum that was dated June 12, 1941. He noted that it was very common to separate linoleum flooring and the wood beneath it in the 1930's and 1940's. He also showed photos of the exterior wall that had some fire damage, but that had been covered in faux brick, an asphalt product, that was used commonly in the 1920's and 1930's. Mr. Bekus told the Board that his research and photographic evidence showed that the rear single-family building was built at least in 1941 and most likely shortly after the front two(2)-family home. He then showed photos taken of that front two(2)-family home, with many updates done over the years. Mr. Bekus testified that the giveaway was the knob and tube wiring in the basement, which he indicated disappeared starting in the 1940's. The next pictures showed three (3) electric meters for the two units in the front building and one (1) meter for the rear building.

Ms. Firdaus opened a discussion regarding whether there were any other multi-family homes in the neighborhood. Mr. Bekus indicated that he was not asked to research that, but did inspect a home across the street a few years back that was a multi-family home. A discussion ensued among the Board.

Mr. Healey discussed the evidence of the front building being constructed as a two(2)-family home, and Mr. Bekus stated that he was not inside the home to inspect, but earlier testimony given by Mr. Rzewosky during the hearing showed that the home was occupied in the 1950's as a two(2)-family home.

Mr. Linnus then addressed the TRC report, dated November 30, 2021. He discussed the four (4) review comments, noting that all comments were addressed either prior to the hearing that evening or by testimony given that evening. He discussed the fact that he didn't feel the property qualified as a multi-family dwelling in that there was a two(2)-family structure and a single-family structure in the rear of that property.

Mr. Linnus then gave his closing summation.

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

Vice Chair Shepherd made a motion to approve and certify the Pre-existing, Non-conforming uses on the property, which would include the two(2)-family main dwelling and the single-family dwelling and constructed and used before the first zoning laws were adopted in Franklin Township as well as were continued to be used in that manner to the present. Ms. Bethea seconded the motion and the roll was called as follows:

FOR: Ms. Bethea, Mr. Procanik, Mr. Reiss, Mr. Rich, Mr. Rosenthal, Vice Chair Shepherd, and Chairman Thomas

AGAINST: None

Mr. Healey discussed that well after the public portion of the hearing was closed, two hands were raised on Webex. He felt that they might be wanting to speak on the hearing that was carried to February 3, 2022 (1784 Capital Holdings, LLC). Mr. Healey also reminded the public that there was another application that the Board has not heard for the K-Mart property that was not noticed for that evening and not being heard that evening and tentatively scheduled to be heard two (2) weeks from that evening.

Chairman Thomas then opened a discussion regarding the fact that have no standards to accept Mr. David Bekus' credentials for an expert like this. A discussion ensued, and Board Attorney, Mr. Regan, indicated that he would look into this issue; however, Mr. Bekus did have a certification as a building inspector and has appeared previously as an expert. Mr. Healey indicated that they could ask if another expert of this kind has previously testified before other Boards.

MEETING ADJOURNED:

Mr. Reiss made a motion to adjourn the meeting at 9:02 p.m. The motion was seconded, and all were in favor.

Respectfully submitted,

Kathleen Murphy, Recording Secretary
February 27, 2022