

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

**VIRTUAL REGULAR MEETING  
February 17, 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:

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**PRESENT:** Cheryl Bethea, Richard Procanik, Alan Rich, Gary Rosenthal, Vaseem Firdaus, and Chairman Thomas

**ABSENT:** Joel Reiss, Robert Shepherd and Elizabeth Clarkin

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

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**HEARINGS:**

- **SAINT SHARBEL MARONITE CHURCH / ZBA-20-00027**

D(3) Conditional Use Variances, Preliminary & Final Site Plan w/C Variance in which the Applicant proposed to demolish the existing church and daycare use, as well as four (4) of the single-family homes on the site and construct a new 35,699 sq. ft. place of worship at 526 Easton Avenue, Somerset; Block 261, Lots 1-6, in the OP & R-7 Zones - **CARRIED TO APRIL 21, 2022 – further notification is required.**

Christine Woodbury, Board Secretary, then read the instructions for the public to participate in the hearing at the meeting date noticed above.

- **MARCIN BAGINSKI / ZBA-22-00001**

C Variance in which the Applicant constructed a 12' x 18' shed without permits at 12 Crown Road, Somerset; Block 468.06, Lot 2, in an R-15 Zone.

Mr. Marcin Baginski, Applicant, came forward and was sworn in. Mr. Healey, Director of Planning, gave a brief summary of the Application. Mr. Healey indicated that the Applicant had already constructed a 12' x 18' shed (216 sq. feet) in the left-hand corner of his property, approximately 5 ft. from his property line on both sides. He indicated that those setbacks were what was required for accessory structures of 200 sq. ft. or less in the zone. Since the shed was 216 sq. ft., they were required to be placed at least 10 ft. from the side yard setback and 25 ft. from the rear yard setback in the zone. Mr. Healey went on to explain that Mr. Baginski was requesting to allow the shed to remain in its currently position. He went on to

explain that there were some images of the property in the Technical Review Committee (TRC) report as well as a copy of the survey showing the location of the shed on the property.

Mr. Baginski agreed with Mr. Healey's assessment of the situation. He indicated that it was his miscalculation when he built the shed, and that he was originally planning to place a 200 sq. ft. shed on the property. He added that it was not intentionally made larger, but that he just wanted a shed to store his gardening tools and his kids' toys. He indicated that he was a new homeowner and had no previous experience with permits and zoning ordinances, etc.

Chairman Thomas asked what kind of foundation the shed sat on, and Mr. Baginski stated that it was on a concrete slab and could not be moved at this point. Mr. Baginski indicated that he noticed properly for the hearing that evening, and that he did not hear from anything negative from any of his neighbors, and they were supportive of his request for variances.

Mr. Rosenthal asked again what he was planning to store in the shed, and Mr. Baginski reiterated his earlier testimony. The Chairman then asked how he was informed that he needed to apply for variances. Mr. Baginski stated that he received a letter in the mail from the Township, which he responded to immediately.

Ms. Bethea inquired further, and Mr. Baginski stated that he called the Township before construction and was told that he needed only 5 ft. side and rear yard setbacks for a 200 sq. ft. shed and thought he was complying.

Chairman Thomas then made a motion to open the meeting to the public.

Mr. Rich Pellis, 14 Crown Rd., Somerset, NJ, came forward. Mr. Pellis indicated that he had a fence that ran from the front to the back of his property between his lot at 14 Crown Rd. and 12 Crown Rd. He added that Mr. Baginski stated that the fence was his, but when they installed it in 2011, Mr. Pellis stated that the contractor told him that they were installing it one (1) ft. inside his property line to allow for maintenance and repairs. He told the Board that he was not bothered by the location of the shed on Mr. Baginski's property, except for when or if they sell their property in the future.

Seeing no one further coming forward, Chairman Thomas closed the meeting to the public.

Chairman Thomas then stated that he did not think that the location of the shed near the fence was not the issue here, but that the setbacks were not observed before constructing the concrete pad and placing the shed too close to the side and rear property lines.

Ms. Bethea and Mr. Rich both discussed the possibility of moving the concrete slab and shed to comply, but Mr. Baginski stated that trying to move the slab now would damage it, so it really would be a demolition project in order to accomplish that.

Mr. Baginski indicated that he thought it hard to believe that the line of fencing referred to by Mr. Pellis was his because it matched the same fencing that went around the rest of Mr. Baginski's property.

Mr. Healey then offered to bring Mr. Pellis back on to clarify his reason to believe that the shed's current placement would negatively affect any future sale of his home. Mr. Pellis

reiterated his earlier statement of concern that there might be problems when he goes to sell his property. Mr. Pellis also testified that the previous owner of Mr. Baginski's property liked the vinyl fence that he had constructed along the one property line and so that previous owner also continued that same fencing along the other sides of his property. Mr. Pellis did want to make clear that the vinyl fencing along their shared property line did, in fact, belong to him.

Mr. Regan, Board Attorney, explained to Mr. Pellis that he did not believe there would be any negative impact on his property should he want to sell in the future, from a legal perspective. Mr. Regan added that a survey would need to be done of Mr. Pellis' property in that case, which would clearly show the boundaries. A discussion ensued. Mr. Pellis stated that he was satisfied with the explanations given and greatly reduced his concern for any impact on a future sale of his property.

Mr. Rich stated that the only issue was that the shed was 16 sq. ft. too large for the 5 ft. setbacks that currently exist.

Mr. Rich made a motion to approve the Application with Variance. Ms. Firdaus seconded the motion, and the roll was called as follows:

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

AGAINST: None

- **MAUREEN & EDWARD MATSON / ZBA-21-00024**

Mr. James Stahl, Esq., Attorney, appeared before the Board on behalf of the Applicant, Maureen & Edward Matson. He explained that they were before the Board that evening to obtain a C Variance in which the Applicant was proposing to build a single-family home at 51 Arlington Avenue, Somerset; Block 263.01, Lots 52 & 53, in an R-10 Zone.

Mr. Stahl spoke about sending out buy/sell letters due to the subject property being an undersized lot (50 ft. x 115 ft.).

Ms. Maureen Matson, Applicant, came forward and was sworn in. Ms. Matson indicated that she knew the property was undersized for the zone, but also knew that there were other undersized properties in the neighborhood. Ms. Matson reiterated Mr. Stahl's testimony that buy/sell letters were sent out, with no one interested in either buying the subject property or selling her land to make her property compliant. Ms. Matson then described the proposed home as a two (2)-story structure, 1,992 sq. ft., with a family room, dining room/kitchen combination, and powder room on the first floor. She added that there would be three (3) bedrooms and two (2) full baths, a one (1) car garage and basement with a covered porch.

Mr. Rosenthal asked if she was a contract purchaser, and Ms. Matson indicated that she purchased the property four (4) years ago.

Mr. Michael Ford, Engineer/Planner, came forward and was sworn in. The Board accepted his qualifications. Mr. Ford then described the existing conditions on the property, noting that

it fronts on Arlington Avenue with public utilities within it. He then described the grading and drainage conditions on the property, stating that the property generally sloped from front to back. Mr. Ford reiterated Ms. Matson's testimony regarding the proposed home. He added that all of the surrounding properties were occupied by structures, and there was no vacant land adjoining the proposed property. He described the adjacent homes as being a two-story home with a front porch and a ranch home. Mr. Ford indicated that they had the smallest parcel in the fully developed neighborhood, which included parcels of 75 ft. wide and 100 ft. wide properties. Mr. Ford stated that the December 22, 2021 Technical Review Committee (TRC) letter asked that the two (2) lots be merged, which they agree to do. He indicated that they would be able to comply with all of the comments in the TRC report, including the housekeeping items that need to be done on the plan with their numbers, figures and calculations.

Chairman Thomas then asked if they had in the Application package evidence of the two (2) buy/sell letters sent to the neighbors. Mr. Stahl testified that the letters sent, and the one (1) response back was submitted with the Application. Mr. Ford then stated that those letters were posted on the Township website.

Mr. Ford then brought up on the screen the plot plans and architectural renderings. He discussed and pointed out the lot size, frontage, details of the home's footprint (27 ft. wide), the architectural renderings. He testified that they met all of the setback requirements. He noted that the existing non-conformities (lot width and lot area) of the property would require C-1 hardship variances due to the inability to rectify those. When including the 4' x 6' front, covered porch caused an additional 0.4% of building coverage which put the structure slightly over the maximum allowable 20% building coverage. Mr. Ford added that by adding the covered porch, it further advanced the conformity of the proposed residential structure with the home to the left of the subject home and provided shelter from the weather. He stated that it also added some architectural detail to the structure and that the Board could grant all three (3) variances without any substantial detriments to the neighborhood, the public good and the zone plan and municipal ordinance. Mr. Ford added that there was a parcel owned by the Township that was directly across the street from the subject property and designated as Open Space.

Mr. Stahl then confirmed that they had submitted the buy/sell letters and should have been included in the Board's packet.

Mr. Procanik then asked how the lots (Lots 31, 32 and 33) behind the subject property were developed. Mr. Ford indicated that those three 25 ft. wide lots were developed a single-family dwelling.

Mr. Rich asked for clarification on the variances the Applicant was seeking. Mr. Ford indicated that they included 1) lot width, where 100 ft was required and 50 ft. existed, 2) lot area, where 10,000 sq. ft. were required and 5,750 sq. ft. existed, and 3) building coverage maximum of 20%, where 20.03% was provided by including the covered porch. Mr. Rich then asked if the basement was considered another floor in the home, and Mr. Ford stated that it was a walk-out basement, and a portion of the basement was below grade which made it ineligible to be considered another floor. Mr. Rich then asked about storm water management, with Mr. Ford stating that they would deal with that issue at the time of the building permit. He added that they did soil testing and that it did not appear that it was

deemed suitable for any kind of on-site infiltration. Mr. Ford indicated that to the extent that that is not able to be addressed on-site, they would contribute to the Township as referenced in the TRC report.

Chairman Thomas then opened the meeting to the public. Ms. Woodbury then gave instructions on how the public can participate and ask questions of the Engineer/Planner.

Mr. Kashif Barlas 55 Arlington Avenue, Somerset, NJ, came forward and was sworn in. Mr. Barlas stated that he did receive a buy/sell letter, but that it did not mention that the person who owned the property was a builder, that there would be variances involved if they were to build a home there. He indicated that he did not show interest in the property because he already owned other lots in the area and did not need the extra property and thought the subject property was unbuildable. He thought that the Matson's should not be purchasing undersized lots that require variances.

Mr. Healey then asked Mr. Frank Regan, Board Attorney, to discuss how undersized lots were handled based up established case law on how Zoning Boards were supposed to treat such cases and what type of testimony applicants were supposed to provide. Mr. Regan stated that he was not prepared to provide that type of testimony right then, so Mr. Healey asked Mr. Stahl to describe the testimony that the Applicant needed to provide in such cases. He discussed the provision of buy/sell letters and responses for adjoining/adjacent properties. Based on Mr. Ford's Planning testimony, he would have to demonstrate and provide testimony that the granting of the requested variances would not have any substantially impairment or detriment to the zone or zone plan or would not negatively impact the adjacent properties or the neighborhood. Mr. Regan then joined in the discussion discussing case law *Jacque vs. Zoning Board of Adjustment*.

then stated that he still believed that the construction of a home on the subject property would affect his property values and did not feel it was an appropriate action.

Ms. Gayle Bradley, 74 Arlington Avenue, Somerset, NJ, came forward and was sworn in. She believed that a home being built on such a small piece of property was a detriment to the adjacent property owners and the neighborhood.

Ms. Gloria Vanausdall, 45 Arlington Avenue, Somerset, NJ, came forward and was sworn in. Ms. Vanausdall agreed with the other neighbors who spoke and mentioned that wildlife graze on the open property and that construction would push them onto other properties. She also expressed her concern that having a home on such a small property would affect the resale value of her property.

Ms. Bethea then asked if the proposed size of the home impacting the variances being requested. Mr. Healey stated that the Applicant was asking for a building coverage variance, so they are building out the home to the maximum. He did testify, though, that they conform to all of the setbacks for the zone. A discussion ensued, and it was determined that the covered porch took the coverage slightly over what was allowed. Mr. Healey also added that whatever a homeowner might want to add to their property, including a garden shed, etc., would require an additional variance.

Chairman Thomas then opened a discussion about scaling down the home to allow for the coverage porch and still be within the building coverage limits. A discussion ensued, and Mr. Stahl stated that his clients would most likely opt to eliminate the covered portion of the porch in order to keep the home size and configuration.

Ms. Firdaus then asked for clarification regarding the other lots on the street and their lot frontages. Mr. Ford then testified that the adjacent properties both had the 100 ft. frontages for their homes, which was the minimum required in the zone. He added that the original lots were 25 ft. wide, and many homeowners have combined three (3) to four (4) lots to amass the required 100 ft. frontage or the almost conforming 50 ft. and 75 ft. frontages that are represented in the neighborhood.

Ms. Bethea was wondering how it would affect the look and character of the neighborhood by trying to squeeze in an almost 2,000 sq. ft. home on an undersized lot. Mr. Ford then put up the architectural renderings of the proposed home for the Board's edification.

Mr. Stahl reminded the Board that there was a sizeable back yard that exceeded the required setbacks. Mr. Ford then commented about the placement of the driveways of the proposed home and the existing home to create more of an open space area. He then added that there were not exclusively residential uses on Arlington Avenue, as there were some commercial uses as you get closer to Easton Avenue.

Mr. Barlas added that many of the homes had undersize open lots between them, so filling in and constructing a home on an undersized lot would change the feel of the neighborhood.

Ms. Gloria Vanausdall then stated that her property came out only 10 ft. to the subject property so it would be very close to her property.

Seeing no one further coming forward, the public portion of the meeting was closed.

Ms. Matson stated that she built a home on 125 Runyon Avenue on the street behind this lot on Arlington Avenue that also had a 50 ft. frontage and that it was approved. Chairman Thomas reminded Ms. Matson by echoing her lawyer, Mr. Stahl, that each application stands on its own based on the characteristics of each property.

Mr. Regan, Board Attorney, then gave information for the Board's edification regarding a particular case, Delmyr vs. Lacey Township from 1987 where the law summarized what was required of the applicant for undersize cases. Those items included were that the applicant should carry the burden of proof for all cases as it pertains to 1) positive and negative criteria, 2) efforts were made to bring the property into conformity with the zoning ordinance by attempting to acquire adjacent property or by offering to sell the non-conforming property to adjacent owners, 3) submit detailed plans of the proposed home which describe its appearance and prove its compliance with building codes, 4) attempt, where applicable, to demonstrate compliance with the use, side yard and setback requirements and the location of the house among other homes on small tracts of land with similar frontages, 5) attempt to demonstrate that the proposed use does not violate any traditional zoning purposes such as light, air and open space. He then added that the court went on to say that the Board should 1) evaluate the testimony to determine whether it should elicit additional information to supplement the record, 2) make specific findings of fact, based on the record, to support its

conclusions, 3) consider, in lieu of denying an application, it can approve it subject to reasonable conditions which would modify the proposed and minimize any negative impact and 4) remember to be conscientious in its review of the facts since outright denial may amount to a confiscation, thus requiring condemnation by the municipality. A discussion ensued regarding the buy/sell option where there is no guidance as to the value of such property. Ms. Bethea discussed the possibility of making the home smaller to better fit on the undersized lot.

Mr. Stahl then discussed the case against making the proposed home smaller because he felt that the home would enhance the neighborhood. He then gave his closing summation.

Mr. Rich made a motion to approve the Application with variances. Mr. Rosenthal seconded the motion, and the roll was called as follows:

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

AGAINST: Mr. Rich and Ms. Firdaus

**MEETING ADJOURNED:**

Mr. Reiss made a motion to adjourn the meeting at 9:26 p.m. The motion was seconded, and all were in favor.

Respectfully submitted,

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Kathleen Murphy, Recording Secretary  
April 4, 2022