

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

**REGULAR MEETING
May 4, 2023**

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 Thomas at 7:30 p.m. The Sunshine Law was read, and the roll was called as follows:

PRESENT: Cheryl Bethea, Richard Procanik, Alan Rich, Gary Rosenthal, Robert Shepherd, Vaseem Firdaus, Michael Dougherty, and Chairman Thomas

ABSENT: Joel Reiss and Faraz Khan

ALSO PRESENT: Ms. Rebecca Maioriello, Board Attorney, Mark Healey, Planning Director, and Christine Woodbury, Planning & Zoning Secretary

HEARINGS:

- **NILANJANA DAS / ZBA-23-00009**

Mr. Peter Laub, Esq., Attorney, appeared before the Board on behalf of the Applicant, Nilanjana Das. He explained that they were before the Board to request "C Variance approvals in which the Applicant constructed a 704 sq. ft. house addition without permits and was now seeking approval at 130 Drake Avenue, Somerset; Block 376, Lot 21, in an R-20 Zone. Mr. Laub told the Board that they used Eden Construction out of New Brunswick, who they thought was a reputable contractor. He noted that at the time of the addition, in 2018, there was an existing concrete slab that covered that portion and the addition utilized that same footprint. Mr. Laub then explained that in 2021, the Applicants made an application for a refinance for which an appraisal was required, and the Township was contacted by the appraiser. At that time, he indicated that the Township notified the Applicants that permits were required and they applied for them. However, Mr. Laub indicated that the permits were denied and that variances were required for the work that was already done.

The variances required are as follows:

- Side Yard Setback (1) – 11.25' existing where 15' was required.
- Total Side Yard Setback – 23.02' existing where 30' was required.
- Impervious Coverage – 36.2% existing where 25% maximum was allowed.
- Building Coverage – 20.9% existing where 25% maximum was allowed.
- Shed Side Yard – 1.68' existing where 5' was required.
- Shed Rear Yard – 4.39' existing where 5' was required.

Mr. Laub indicated that he reviewed and discussed the comments from the Technical Review Committee memorandum (TRC), dated April 18, 2023 as well as the report from Tara Kenyon, dated April 25, 2023 with the Applicants. He then told the Board that they had consulted with their civil engineer, Mr. Steve Parker, and had a discussion regarding the comments with him. Mr. Parker recommended, and the Applicants agreed, as a condition of any approval, to submit drywell plans to the Township Engineer (CME) for his review and agree to be subject to any conditions included in a resolution.

Mr. Laub then indicated that the granting of the Application for "C" Variances would outweigh any detriments to the public good and that the addition as constructed was a benefit to the neighborhood by increasing home values. He added that the Applicants were not aware of any complaints from neighbors and that the addition improvement had been on the property for five (5) years. He then indicated that they did supply the certified 200 ft. notification to those neighbors with proof of that notice to the Board. Mr. Laub then added that the Applicants did not knowingly and purposefully disregard the required zoning laws but relied on what they believed to be a reputable contractor, Eden Construction. He stated that they were there before the Board requesting the Board's approval for "after-the-fact" construction.

Mr. Rosenthal asked whether the Applicants had sued the contractor, and Mr. Laub answered that they had not, but would have to consider should the Board deny their request for variances.

Ms. Nilanjana Das, Applicant, 130 Drake Road, Somerset, NJ, came forward and was sworn in. Ms. Das indicated that they bought the property in December of 2013 and continue to own and live at the property presently. The Chairman asked what was on the property in the backyard when the property was purchased, and Ms. Das stated that there was a concrete patio constructed all the way up to the pool. She also stated that the pool and sheds were already on the property when they purchased the home.

Vice Chair Shepherd stated that he visited the property that day and no one answered the door when he arrived. He noted that there was a disabled car in the driveway and that the grass was a foot high, making the home look uninhabited. She said that they were trying to grow a lawn and were letting it grow to its full height before they mow it. Ms. Das also indicated that the disabled car in the driveway was her husband's and that he was planning to sell it off. Vice Chair Shepherd then asked Mr. Healey if a shed counted towards the impervious coverage and building coverage, and he replied in the affirmative that it counted towards both.

Mr. Rich then asked if the contractor discussed the required permits with the Applicants, and Mr. Laub indicated that the Applicants were not aware of the necessity of any permits or approvals and relied upon the contractor.

Mr. Shev Karr, Applicant, 130 Drake Road, Somerset, NJ, came forward and was sworn in. He stated that he works as an IT Director and relied upon the contractor, Eden Construction, to handle all aspects of the construction. He noted that the contractor told them that getting financing/loan would take some time and suggested that they do the construction first and then go through that process. He added that it was when they went through the appraisal process when applying for re-financing that they were made aware by the Township that permits were not applied for. Mr. Karr stated that they contacted Eden Construction, but that

they weren't returning their calls. He noted that they got another contractor to get the permits and record all the work with the Township, however, they were denied the permits due to having to obtain variances instead.

Mr. Rich asked Mr. Karr if the original contractor mentioned anything about permits or inspections. Mr. Karr stated that nothing was mentioned about permits or inspections for the living room addition. Mr. Rich then asked Mr. Healey about how they could make the contractor have some liability. Board Attorney, Ms. Maioriello, interjected and indicated that there were business practices that need to be followed and that there were consumer bureaus in NJ that the Applicant could contact. She then opened a discussion with Mr. Healy, regarding the permitting process.

Ms. Firdaus then asked about whether these issues should have come up when they purchased the property, and Mr. Healey explained that the concrete patio slab would not contribute to building coverage or setback coverages, but that adding living space in that area would.

Mr. Karr explained that the addition was constructed over the existing concrete pad. A discussion ensued. Mr. Laub stated that adding the enclosed living room space over the existing concrete slab did not increase the impervious coverage but would have been an existing condition. He added that if the financing was applied for before the construction commenced, then having to come to the Board for variances might have had the Board requiring dry wells for the approval which was what they were submitting to the Board that evening.

Mr. Healey indicated that they have a program where they can view an aerial photograph of the property prior to construction, and he stated that it looked like the addition was 80% of the length of the patio but extended out toward the pool into the yard about 3 ft. more but was not the full length of the two-story portion of the house.

Vice Chair Shepherd then asked what the shed was used for, and Mr. Karr stated it was for the lawn mower. The Vice Chair suggested that the removal of the shed would reduce the building coverage and impervious coverage and removes two (2) variances as well (Shed Side Yard Setback and Shed Rear Yard Setback).

Chairman Thomas then opened a discussion about the requested variances and how the grant of those variances would benefit anyone but the homeowners and not the neighborhood. Mr. Laub then explained that the grant of the C-2 variances was a balancing act, asking whether there would be a negative impact to the surrounding neighbors. He testified that there hadn't been any complaints from the neighbors in the five (5) years the addition was constructed on the property. He also added that he believed that the variances could be approved, subject to the addition of the dry wells, without any substantial detriment to the neighborhood or public good or negatively impact the purposes of the zone plan or zone scheme. Mr. Laub explained that the primary concern listed in the TRC report and the memorandum from Ms. Kenyon of the Township Environmental Commission was impervious coverage, which was why they felt the addition of dry wells would be the best solution.

The Board Attorney, Ms. Maioriello, asked if there were ever any Open Public Records requests (OPRA) submitted to the Township, and a discussion ensued. Mr. Karr stated that

he understood that should the variances be granted, they could not make any other additional structural improvements on the property.

Chairman Thomas then opened the meeting to the public. Seeing no public present, the Chairman closed the public portion of the meeting.

Mr. Laub then gave his closing summation.

Chairman Thomas then asked Mr. Healey the process that would occur when drywells are installed, and he did state that inspections would be part of that process, and since permits were not granted, the entire project, including drywells, would have to be inspected and go through the construction review process and be approved. Mr. Laub agreed with the Chairman when he stated that there might be something that would have to be added or adjusted should any portion of the addition not meet the construction code requirements. Mr. Karr agreed that he would be responsible to make sure that the addition was up to building code requirements and would have to bring that into compliance should there be anything not correctly done during the construction.

Vice Chair Shepherd made a motion to approve the Variance for the continuing usage of the unpermitted addition of a living room on the property, subject to the need for the Applicant to apply for and install a drywell to allow for the discharge of storm water due to the overage on the impervious coverage and building coverage. Mr. Rich seconded the motion, and the roll was called as follows:

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

AGAINST: None

The Board members made comments after their vote, noting that there were some pre-existing situations prior to the Applicant's purchase of the property and the fact that their contractor did not complete their due diligence in obtaining permits, etc. The Board members were all in agreement that there ought to be some accountability to the people who do the work. Mr. Healey indicated that there was nothing in the Zoning Dept. that would have any checks/balances that would avoid contractors not doing their due diligence with the permitting process. He stated that there very well may be something in the Construction Dept. process that would fine contractors who do not fulfill those obligations during the course of business. He then stated that he would discuss that with the Construction Dept. the following day.

MEETING ADJOURNED:

Vice Chair Shepherd made a motion to adjourn the meeting at 8:19 p.m. Ms. Bethea seconded the motion, and all were in favor.

Respectfully submitted,

Kathleen Murphy, Recording Secretary
June 26, 2023