

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

**REGULAR MEETING
December 7, 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, Vaseem Firdaus, Michael Dougherty, and Chairman Thomas

ABSENT: Joel Reiss, Robert Shepherd, and Faraz Khan

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

RESOLUTIONS:

- **Bank of America / ZBA-23-00011**

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

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

AGAINST: None

- **2024 Meeting Dates**

Ms. Bethea made a motion to approve the Resolution, as submitted. Ms. Firdaus seconded the motion, and the roll was called as follows:

FOR: Ms. Bethea, Mr. Reiss, Mr. Rich, Mr. Rosenthal

AGAINST: None

HEARINGS:

- **SOMERSET PROPERTIES / ZBA-23-00016**

D(1) Variance, Preliminary & Final Site Plan w/C Variances, Minor Subdivision in which the Applicant proposed to subdivide the property into two (2) lots and construct a 61,190 sq. ft. warehouse including seven (7) loading stalls at 415 Weston Canal Road and 91 Cottontail Lane, Somerset; Block 517.02, Lot 8.13, in the B-I Zone - **CARRIED to FEBRUARY 1, 2024 - with no further notification required.**

DL 02/28/2024

- **VENKATESWAR & PADMAJA VAKKALAGADDA / ZBA-22-00024**

Mr. Lawrence Sacks, Esq., Attorney, appeared before the Board on behalf of the Applicant, Venkateswar & Padmaja Vakkalagadda. The Application was for a "C" Variance in which the Applicant proposed to construct a new two (2)-story, four (4)-bedroom, single family home at 76 Battle Place, Somerset; Block 136, Lots 1-2, in an R-7 Zone - **CARRIED FROM NOVEMBER 2, 2023 - with no further notification required.**

Mr. Sacks indicated that they had been before the Board a few months prior, presented their witnesses, and at the conclusion of the hearing, stated that there were comments made by Board members regarding possible revisions that needed to be made to the plan. Mr. Sacks then spoke about the testimony previously given by Mr. Leber regarding Engineering and Planning regarding the surrounding neighborhood and introduced a tax map showing the size of the lots, with their lot being comparable to those in the area. He indicated that he showed photographs of some of the nearby homes, and that the home they were proposing would not be out of character for the home they were planning to build.

Mr. Sacks indicated that they were before the Board that evening to discuss the revisions that were made to the plan. He added that they eliminated one of the variances entirely, which was a lot coverage variance

Mr. Procanik then asked to be recused from the Application due to a conflict of interest with Mr. Sacks.

Mr. Leber, Engineer/Planner, East Point Engineering, 11 South Main Street, Marlboro, NJ, came forward and continued to be sworn in from the last hearing. The Board recognized his qualifications. Mr. Leber discussed the home that was originally proposed that was 20 ft. x 60 ft., along with the architecture and layout of the home. He then indicated that they had presented an exhibit depicting a home that had a footprint of 23 ft. x 48 ft. and a one (1) ft. overhang on the second floor on three (3) of the sides, excluding the rear of the home. He then stated that they explained that that would change the setback to Battle Place, which was previously 25 ft., and the setback to Davis Avenue, if measured to the overhang would be 18 ft. He then testified that that was a nicer shaped home. Mr. Leber then indicated that they resubmitted revised architectural plans that were sent in and should be in the Township's file. Consistent with that plan, he stated that he submitted a variance plan that was revised November 2, 2023, which did, in fact, depict a 23 ft. x 48 ft. dwelling with a one (1) ft. overhang on three (3) sides.. He then stated his original calculations stated that the building

coverage was at 22%, but that the one (1) ft. overhang was part of building coverage. He told the Board that the second floor would be 24 ft. x 50 ft., making the actual building coverage 24% with the zone only allowing for 20%. Mr. Leber then told the Board that they did eliminate the variance for impervious coverage. He then discussed the homes directly across Battle Place that were similar to what they were proposing and was similar to those prevailing on the block. He then discussed not reducing the size of the garage because they wouldn't be able to fit the stairs going into the house at the back of the garage. Mr. Leber then explained that to make the proposed home conforming to building coverage would be to take it out of the width of the home from the 48 ft. He discussed the floor plans and noted that reducing the size of the house would require the loss of 8 ft., for a width of 40 ft. He then discussed the impact that would make in reducing the size of the bathroom and bedrooms, which were not remarkably large and reminded the Board that the home across the street was the same exact size as the one they were proposing and was also on a corner lot. Mr. Leber then discussed that he didn't think the size of the home would even be perceptible by the travelling public, that it was permitted in the zone, and that they had discussed the statutory requirement for the granting of a dwelling in the zone on an undersized, existing lot. Mr. Leber then indicated that he felt that the new architectural designs were much more interesting than the original house.

Mr. Leber then discussed that the actual footprint of the proposed home was 22% building coverage and not the 24% noted if including the 1 ft. overhang. He added that to comply with the requirement of only 20% building coverage, they would have to lose 200 sq. ft. from the home. He then added that there was an increase in the variance required for front yard setback, which went from 20 ft. proposed (Davis Street) to 18 ft., where the minimum distance was 25 ft. Mr. Leber explained that this occurred due to changing the home from a rectangular shape that the Board had perceived as looking like a railroad car to a more proportional shape. He then indicated that the door to the home was moved from the corner of the home to the center of the home and so a sidewalk was added to connect that front door to the driveway. Mr. Leber then discussed how they were going to handle storm water, and indicated that at the last hearing they included a dry well for the roof run-off, which would suffice. He then testified that they would be able to comply with all the other comments in the Technical Review Committee (TRC) report.

Mr. Sacks then gave his closing statements, noting that they had some pre-existing, non-conformities with respect to the lot, and that being the lot area, where 9,000 sq. ft. minimum was required where 5,000 sq. ft. was existing/proposed. Additionally, the lot frontage was 90 ft. minimum required, with 50 ft. existing/proposed (Battle Place). He then discussed the option for buy/sell to pick up any additional land and he testified that those buy/sell letters were sent from his office after the last hearing and that he received no response from the property owner.

Mr. Healey then asked if the variances they were requesting would be under the C-1 Hardship variance or C-2 Better Zoning Alternative variance. Mr. Leber indicated that the lot was undersized and also was a corner lot that has two (2) front yards. He stated that the Lot Area and Lot Frontage variances were due to the undersized lot, which would be considered C-1 Hardship variances. As far as Front Yard Setback, they were meeting the requirement on Battle Place, but to conform on Davis Avenue, they would be left with a house that was 16 ft. wide, which he felt didn't seem feasible. Mr. Leber then indicated that the Lot (Building) Coverage, with the one (1) ft. overhang bringing that variance to 24%, where 20% was

proposed. Mr. Leber then indicated that the proposed lot was vacant now, and that it was always better to have a developed lot in a residential neighborhood that was a conforming use and that did not increase any truck traffic. Mr. Leber indicated that the benefits outweigh the detriments and that they satisfied the RSIS requirements for parking, to include two (2) off-street parking spaces and offers sound planning to provide a developed lot even with a de minimus variance for building coverage.

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

Mr. Rich made a motion to approve the Application with Variances, with all the conditions that were discussed during the hearing and a lot consolidation. Ms. Bethea seconded the motion, and the roll was called as follows:

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

AGAINST: None

- **STEIN ASSISTED LIVING, INC / ZBA-23-00020**

Mr. Larry Kalli, Esq., Attorney, appeared before the Board on behalf of the Applicant, Stein Assisted Living, Inc. Minor Subdivision w/"C" & "D" Variances in which the Applicant proposed to subdivide into two (2) lots the property at 360 DeMott Lane, Somerset; Block 386.07, Lot 54.06, in an R-20 Zone - **CARRIED FROM NOVEMBER 02, 2023 - with no further notification needed.**

Mr. Kalli stated that they had gotten an approval approximately six (6) years ago for a two (2)-story office/administrative structure. He added that adjacent to it was the existing six (6)-story independent living structure on the property. Mr. Kalli explained that they were both on the same lot but had two (2) separate addresses. He then indicated that the problem was that the Applicant would not be able to sell or finance one of the properties without the other, so their proposal was what was known as a financial subdivision lot line that they were hoping to create. He further explained that doing so would create a situation where the office/administrative building would be on one (1) lot and the six (6)-story independent living building was on another lot. Mr. Kalli stated that there was no construction proposed, no new development proposed, no different uses proposed and no new parking proposed. He indicated that that is where the Application was seeking relief because the lot would no longer technically front on a publicly improved roadway. He went on to explain that the invisible lot line effectively land locks the independent living structure. Mr. Kalli then stated that there would be easements and they would be able to get in and out forever no matter who owned it or what happened on the property and required a statutory variance and why they were before the Board. Mr. Kalli then told the Board that there was now also a coverage variance, not because they were adding new impervious surfaces, but solely because of the fact of where they were drawing the lot line and coverages go up and started to impart the storm water controls as well as the allocation of parking.

The Technical Review Committee (TRC) report noted that since the proposed subdivision reduced the land area associated with a use that was subject of a prior D(1) variance, the

subdivision technically required a “D” variance. The following “C” variance were also required as well:

- Bulk Variance for Minimum Frontage, where 100 ft. were required and 0 ft. was proposed for Lot “B”.
- Bulk Variance for Impervious Coverage, where 25% was the zone maximum and 32.5% was proposed for Lot “A” and 34.3% was proposed for Lot “B”/
- Off-Street Parking, where 80 parking spaces were required for Lot “B” and only 57 were provided.

Mr. William Lane, Engineer employed with Menlo Engineering, 261 Cleveland Avenue, Highland Park, NJ, came forward and was sworn in. The Board accepted his qualifications. Mr. Lane then walked the Board through the technical details of what was there today, what was changing and the technical relief it created. Mr. Lane referred to the Minor Subdivision Plan and indicated that the property, as a whole, was a 10 acre parcel with 200 ft. of frontage on DeMott Lane with a private drive called Levinson Boulevard came into the property with a length of about 600 ft. long which serviced the two (2)-story, 12,000 sq. ft. office building to the north with 60 parking spaces there, to the south was the six (6)-story senior apartment complex that had 57 parking spaces. Mr. Lane then reiterated what Mr. Kalli previously explained by stating that the Applicant was proposing to do was to strike a new property line, divide the properties in half just north of the 57-car parking lot where the senior living facility was located. He then explained that the lot to the north where the office building was located would be 5.4 acres and the lot to the south with the senior living facility apartment complex would be 4.6 acres. He then added that the Levinson Boulevard would be extended down to the property line where the senior housing complex was and would have a continuous roadway out of the facility to the frontage on DeMott Lane. Mr. Lane then told the Board that the 57 parking spaces for the senior apartment complex were intended to stay, where 80 were required for the now reduced-size lot. He then discussed the impervious coverage changes, where the northerly lot would be at 31.5%, which would be a little bit of reduction from the 33.2% overall, and the apartment complex lot would go to 35.3%. Again, Mr. Lane reiterated Mr. Kalli’s testimony that nothing would be changing because there were no site improvements planned.

Mr. Thomas asked if they had to stipulate formally that both properties would have access to Levinson Boulevard to get out to DeMott Lane, especially if part of the property had to be sold in the future. Mr. Kalli indicated that the idea was to be able to divest the ownership between the office/administrative building and the senior living building which don’t really have any singular connection to one another but were two separate structures and the reason that one would see these financial subdivisions as they were called. Mr. Kalli then explained that the access easements would run in perpetuity with the land and were recorded documents that were reviewed by the Township staff and Council to make sure that there would always be access from DeMott Lane to and from those lots. Ms. Firdaus then opened a discussion about the maintenance of the private road for things such as snow removal, and Mr. Kalli indicated that the overall campus still manages that for first response reasons and would be part of the private agreement and it might work to the access agreement as to who had responsibility for snow removal obligations. Mr. Lane added that Levinson Boulevard led to another access easement that lead to the assisted living facility back in 1998. Mr. Rich asked if there might be future development, and Mr. Lane indicated that the lots were fully developed with parking associated with both.

Ms. Rebecca Maioriello, Acting Board Attorney, suggested that they could explain the prior approvals for the Board to better understand what was on the property now. Mr. Kalli explained that the independent living senior apartment complex had been on the property for years and the two (2)-story office/administrative building had been approved, after a number of iterations since 2013, in 2017 and serviced the various components of the Wilf Campus.

Mr. John McDonough, Planner, 101 Gibraltar Drive, Parsippany, NJ, came forward and was sworn in. The Board accepted his qualifications. Mr. McDonough explained that the relief that was being sought was very common in a campus-like setting, a business-type setting, a corporate park, a shopping mall, a retail center or industrial park. He then discussed how the interior components of such a campus acted and functioned as an integrated whole with cross easements that Mr. Kalli discussed to ensure that circulation and functionality utilities would continue to operate as one. He went on to explain that creating the two (2) separate lots and striking an invisible lot line would not interfere with the functionality of what was presently there on the campus. Mr. McDonough then explained that there would clearly be no adverse impacts on the negative side in terms of the balancing that the Board would have to apply for the Applicant's relief. He then noted that the clear positives would be that it would add to the efficacy of the center that was there now as well as the financing benefits from a mortgage standpoint, an insurance standpoint and having the property as two separate lots was just a better set-up from a management and financing standpoint. He then explained that it was a technical subdivision, but nothing would be changing from a functional and physical standpoint. Mr. McDonough then went on to explain the variances that have already been enumerated to include a D-2 variance to expand a non-conforming use even though it was not a true expansion as nothing was changing. He added that all of the "C" variances were all related to the lot dimensions, but that nothing physical would be changing and that the parking supply would continue to meet demand. Mr. McDonough explained that the campus would remain a community asset and function appropriately and would have no alteration over that which presently existed and, therefore, he stated that the relief was on the positive side without any substantially adverse impacts on the negative side..

Mr. Healey then explained that he believed that the situation here was probably the definition of a grouping of technical variances.in that they were not proposing any physical changes to the property. He added that every variance was being created by placing an invisible lot line through the property and went in detail related to this. He then stated that if the Board was inclined to approve the Application for variances, he stated that he would recommend they include compliance with the TRC report in any Resolution. He then discussed the associated easements that include cross-access easements, parking easements, and utility and storm water easements that would require changes and that Township staff would want to review those before the filing of the subdivision. A discussion ensued related to items in the TRC report, to include filing of deeds and confirming 911 street addresses. Mr. Kalli indicated that they would comply with all comments/concerns in the TRC report as a condition of approval.

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

Mr. Rich made a motion that they approve the Application, and Ms. Firdaus seconded the motion. The roll was called as follows:

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

AGAINST: None

MEETING ADJOURNED:

Mr. Rosenthal made a motion to adjourn the meeting at 9:15 p.m. The motion was seconded, and all were in favor.

Respectfully submitted,

Kathleen Murphy, Recording Secretary
January 23, 2023