

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

**REGULAR MEETING
September 21, 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: Joel Reiss, Alan Rich, Gary Rosenthal, Vaseem Firdaus, Faraz Khan, Michael Dougherty and Chairman Thomas

ABSENT: Cheryl Bethea, Richard Procanik, and Robert Shepherd

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

RESOLUTIONS:

- **Amy Wilmot / ZBA-19-00021**

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

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

AGAINST: None

- **64 Casa Esencia, LLC / ZBA-21-00027**

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

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

AGAINST: None

- **Nilanjana Das / ZBA-23-00009**

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

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

AGAINST: None

DISCUSSION:

- **Extension of Approval - Praise Presbyterian Church / ZBA-17-00028**

Mr. James Stahl, Esq., Attorney, appeared before the Board on behalf of the Applicant, Praise Presbyterian Church. He indicated that they were before the Board that evening to obtain an Extension of Approval for a 2019 approval that the Applicant received D(3) variances and Site Plan approval for from the Zoning Board of Adjustment to expand the parking lot, construct a new stormwater basin, install an asphalt basketball court and use the previous residence for “religious purposes”. The Applicant was applying to the Board for an extension of the aforementioned approval as the same has expired. The Applicant had been unable to start construction due to delays in obtaining approval from the Delaware and Raritan Canal Commission. He added that it would also give the Applicant time to make some decisions within the internal portion of the church, funding, and to complete Resolution compliance. He asked for a six (6)-month extension.

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

FOR: Mr. Reiss, Mr. Rich, Mr. Rosenthal, Ms. Firdaus, Mr. Khan, Mr. Dougherty and Chairman Thomas

AGAINST: None

HEARINGS:

- **ODIN PHARMACEUTICALS, LLC / ZBA-22-00014**

Preliminary & Final Major Site Plan w/C & D Variances in which the Applicant sought approval to construct a two(2)-story expansion to the existing warehouse at 300 Franklin Square Drive, Somerset: Block 502.02, Lot 39.05, in the Business & Industry Zone (B-I) - **CARRIED TO A DATE YET TO BE DETERMINED – NOTIFICATION REQUIRED.**

- **FISCHER REALTY, LLC / ZBA-22-00018**

Mr. James Stahl, Esq., Attorney, appeared before the Board on behalf of the Applicant, Fischer Realty, LLC. He added that they were before the Board that evening to obtain Preliminary & Final Major Site Plan approval w/“C” & “D” Variances in which the Applicant was requesting permission to run a landscape business at 221 Bennetts Lane, Somerset; Block 85, Lots 24 & 25, in the R-40 Zone.

Ms. Maioriello then noted, for full transparency, that she went to high school with the Applicant, but didn't feel she had any conflict of interest in overseeing the Application as Acting Board Attorney. Mr. Stahl also agreed that he did not have any issue since the person Ms. Maioriello was referring to is an employee of the company and not a principal of the company.

Ms. Firdaus asked if there was a conflict of interest in her voting on the Application since she lived at 269 Bennetts Lane, very close to the Applicant's address. It was determined that she was not included on the list of residents who lived within 200 ft. of the property being discussed that evening.

Mr. Stahl then told the Board that they were there before the Board that evening because a landscape business was not a permitted use in the Zone.

Mr. Howard Fischer, Principal, residing at 10 Short Hills Lane, Scotch Plains, NJ, came forward and was sworn in. He noted that he was also a Principal, along with his wife, of a business known as Fischer Contracting, LLC. He noted that the business included landscaping, hardscaping, including decks, patios, and excavation, as necessary, connection with stepping stones and other enhancements. Mr. Fischer then noted that they did no paving as part of the business; however, there was some paving equipment on his property because they were paving Bennetts Lane for the Township through a company that was not located in Franklin Township and that the paving equipment has subsequently been removed from the property and that they agreed not to store paving equipment at that location. Mr. Fischer then testified that they had five (5) dump trucks, four (4) pick-up trucks, one (1) Bobcat, an excavator, a backhoe, and three (3) landscape trailers on the property there. He also added that the business there was for residential purposes and small, minor commercial projects. He then told the Board that they had six (6) employees to include three (3) drivers and three (3) laborers. Mr. Fischer then told the Board that he had more vehicles than drivers to allow those trucks to be sent out for maintenance or repair and to sub-out for additional, per diem workers for larger projects. He stated that their hours of operation were Monday – Friday, with an occasional Saturday, if the customer requires that, from 7:00 a.m. to 5:00 p.m. Mr. Fischer then stated that the employees enter the property and leave their personal vehicles and use the company vehicles to go to the job site. He also added that there were times when employees would come back to the property in the course of the day to refill mulch, top soil, stone and other supplies. At the end of the day, Mr. Fischer indicated that the employees come back to the property to return trucks and equipment and then leave the premises with their own personal cars. Prior to leaving for the day, he added that the employees prepare the trucks/equipment for the following day's work, to include filling up the equipment with mulch, top soil, stone, etc. for the work that would commence on the following day. Mr. Fischer then testified that there was no mulching and grinding operation on the site and that they took their own trucks to pick up material from vendors and no deliveries to the site of

such material. Referring to the home that was currently on the site, Mr. Fischer stated that they had not decided whether his daughter would reside there or if they would rent the home. He then indicated that they would agree to only light maintenance of the vehicles and equipment being permitted on the site carried out inside the building. He added that major maintenance and repairs would be handled by one of their vendors at a different location.

They then discussed the proposed 9,000 sq. ft. building and that they were going to look to reduce the height of the building to 25 ft. and include a sprinkler system. He added that they complied with all Fire Prevention requirements. Mr. Fischer then stated that they would have two (2) bathrooms in the building, a very small office for maintaining records for employees, as well as store material such as stone, stepping stones and other decorative materials that had a tendency to be vandalized or taken and as many vehicles that could be stored in the building for security purposes.

Mr. Fischer then introduced into the records as Exhibit A-2 through A-13, and were photographs that were taken two (2) years ago by his son, Brian Fischer, about the time he bought the property. He noted that the photographs depicted what was on the property at that time. He noted that they removed a lot of junk on the property at a cost of about \$150,000

Mr. Steven Parker, Engineer/Principal of Parker Engineering, 570 East Main Street, Somerville, NJ, came forward and was sworn in. The Board accepted his qualifications. Mr. Parker discussed the existing conditions and what was proposed to include where the equipment would be stored, where the storage of material would be maintained, and access to the site. He noted that the photographs that were entered into the record indicated what was existing on the property when Mr. Fischer purchased the property two (2) years ago. Mr. Parker stated that the changes to the site would be that the property would be cleaned up quite a bit and a new, 9,000 sq. ft. building would be constructed that was shown on the screen and included on the plans. Additionally, an addition was proposed to be added onto the existing home on the property and the home would be updated and upgraded from its current condition. Mr. Parker added that the Applicant was proposing some additional plantings on the property, some stormwater management dry wells proposed and most of the activity on the site was proposed on the left-hand side of the site. He added that the gravel drive would be used for site circulation, and equipment storage and material storage would be located in that area as well. He then indicated that part of the proposal was the construction of a new septic system, for both the house and the shop. Mr. Parker then discussed the band of wetlands on the property, noting that an application had been submitted to the NJDEP for the better part of a year and were just waiting for the Letter of Interpretation (LOI) to confirm what was being shown on the drawings. Mr. Parker then stated that from the streetscape, the property would look the same, with the driveway would remain in the current location, the existing home on the property from the front would look the same, with the addition to be located on the back of the home. Mr. Parker then introduced a photograph, dated 1979, and entered into the record as Exhibit A-1, found on a website called Historic Area Photographs and purchased from them and used as part of the application to the Delaware & Raritan Canal Commission (DRCC) because they wanted to see the condition of the property in 1980. He indicated that the photograph showed things like trucks, truck bodies, tractors, plows, bulldozers, etc., with the property being used rather extensively. Mr. Parker then explained that they would be utilizing concrete bins to store and organize materials to contain and confine those areas and sized appropriately for the needs of the business. He then pointed out the area where equipment that couldn't fit into the building would be stored outside.

Mr. Healey then asked for clarification that logs and larger stones would not be brought to the site for chipping and grinding operations. Mr. Parker agreed that all material brought to the site would be in its final state. He asked if the concrete bins spoken about could be detailed on the plan, and Mr. Parker agreed to do so. Mr. Healey then asked what the large gravel area would be for, and Mr. Parker stated that it was to assist in maneuvering the trucks and trailers on the site and provide access to the bay doors. Mr. Parker pointed out areas on the plan shown in the cross-hatched areas on the plan and utilized by the prior owner to store vehicles, etc. He testified that those areas would be restored to lawn or natural conditions. He then pointed to another cross-hatched area that had brush and some trees would be removed and graveled to add to the circulation on site of the vehicles and trailers. Mr. Parker then indicated that there would be a slight increase in impervious coverage but would be addressed by the addition of 5 dry wells, which he pointed out on the plans at the back of the site and one (1) located near the existing home. A discussion ensued, and it was agreed that it was considered a minor stormwater project and that they were addressing the increase in impervious coverage with the use of the dry wells. Mr. Parker then showed where trees would be planted in former gravel areas and would continue an existing landscape berm out to the road with the addition of new trees there.

Mr. Rich then asked if there had been any testing for contamination on the site. Mr. Fischer indicated that there had not been any testing, but that there was no smell or visible contaminations on the site and no reason to pursue that. Mr. Fischer indicated that they had hired an environmental company to do a wetlands evaluation but no Phase I testing on the property. A discussion ensued and Mr. Stahl agreed to encourage the Applicant to do Phase I testing, but didn't believe that it should be a condition of approval. Mr. Stahl added that they did not sell, either wholesale or retail, any of the materials that would be kept on-site, including topsoil, gravel, mulch, etc. and was only stored there for upcoming projects. Mr. Rich then asked what would be stored in the proposed building, and Mr. Fischer indicated that they would store a low boy that moves the machinery, paver bricks, a fork lift, seeds, fertilizers, 5 gallon cans of gasoline, small tabletop grinder, and box welder, etc.

Chairman Thomas asked if there was any waste from projects that would have to be removed from the job site. Mr. Fischer indicated that they bring a 20 yard dumpster back to remove any waste material, but no clippings or trimmings.

Mr. Khan opened a discussion regarding a large gravel area in the rear, and Mr. Parker reiterated his testimony that that gravel would be removed from that area and returned back to grass or a natural state with tree plantings. They then discussed returning the wetlands buffer areas back from gravel to grass.

Ms. Firdaus then asked about the northwest portion of the property, where it abuts preserved land, she had heard that there was a gas main that ran across there and maybe there was a concern for construction in that area. Mr. Stahl stated that he didn't believe that that gas main was on the subject property, and if it was, they would have to do a mark-out before any digging in that area.. Mr. Fischer indicated that that was a 50 ft. easement outside of his property. Mr. Parker then referred the Board to Sheet 1 on the plan and showed them on the screen. He then testified that the easement was nowhere near where the work would be done by several hundred feet and poses no problems. Mr. Healey indicated that in addition to that easement, he stated that the Township has an ordinance that there could not be a

habitable structure within a certain distance and that the property was about 400-500 ft. away from where the Applicant was proposing any development.

Mr. Parker then discussed Mr. Healey's report, dated September 5, 2023, He noted that the property consisted of two separate tax lots and that they would combine those into a single lot as part of any approval.

Mr. Parker then addressed the CME Engineering report of September 11, 2023, indicating that there was nothing within the report that they couldn't resolve/comply with.

Mr. Parker then addressed the May 2, 2023 Environmental Commission memorandum, noting that they could comply with all comments. He added that they looked into the feasibility for solar panels on the roof, a green roof, cool roof technology or a make solar ready roof and found that the size of the project does not make it economically feasible and would not be moving forward with this at this time.

Mr. Parker then addressed Mr. Hauss' Fire Prevention report, dated September 13, 2023, stating that they could comply.

In addressing the Health Dept. report, dated September 7, 2023, they agreed to provide the septic design plans before any construction permits would be granted.

Mr. Parker then stated that there was no comment from Traffic Safety Bureau or the Sewerage Authority.

Mr. Rich then asked about why they could not provide solar panels, and Mr. Parker stated that there would be no heat in the building, except for a small office area and that it would not be in a position to save very much since the electric usage was very low. He had the same comment for the existing home on the property. A discussion ensued, and the Applicant could look into it to see what the cost savings might be.

Mr. Joseph Krawiec, Architect/Principal of Joseph A. Krawiec, AIA, LLC, 5 Crescent Drive, Toms River, NJ, came forward and was sworn in. The Board accepted his qualifications. Mr. Krawiec described the type of building being proposed and the materials being used. He added that they had dropped the ridge of the roof down to 25 ft. from 33 ft. and the building would be sprinklered, per fire code. He stated that the proposed building would be a neutral colored, pre-engineered, steel buildings, with two (2) bathrooms, a small office area and maybe a more secure storage area location. He then indicated that there would be a second level addition and a rear addition put on the existing home on the property and would be approximately 2,400 sq. ft. after the additions were added. Mr. Krawiec showed the renderings of what the renovated home would look like, utilizing the floor plans to the home and the outside elevations.

Chairman Thomas then asked for more specifics as to who may or may not be living in the home on the property. Mr. Stahl indicated that the home would either be rented as a regular single-family home or Mr. Fischer's daughter will take it over. He added that it was not intended to be occupied by any group of people. The Chairman stated that his preference would be that someone connected with the ownership of the business would be living there. Mr. Fischer indicated that it would most likely be taken over by a family member as he didn't

want to rent it to just anyone since he would be sinking a lot of money into the home in renovations. A discussion ensued regarding what portion of the business side of the property would be visible from the street. Mr. Fischer stated that it would not be visible from the street, and that they had 15 ft. spruce trees on a berm shielding that view. In response to Ms. Firdaus' questioning, Mr. Fischer indicated that the neighbors would see nothing either since the area was so heavily wooded on a 10-acre property.

Mr. Kevin O'Brien, Planner, Madison House, Madison Avenue, Rahway, NJ, came forward and was sworn in. The Board accepted his qualifications. He then discussed the Use Variance and the C Variance being requested, as delineated below:

- D(1) Use Variance: Operation of landscaping business not a permitted use in the R-40 Zone
- Preliminary and Final Site Plan
- "C" Variances
 - Front Yard Setback: 40 ft. minimum required – 23.82 ft. existing – 15.32 ft. proposed (existing residence)
 - Side Yard Setback: 25 ft. minimum required – 5 ft. existing – 4.4 ft. proposed (residence addition)

For a "D-1" Use Variance, Mr. O'Brien indicated that they had to show that there were unique aspects to the Application (positive criteria) and that the Variance can be granted without substantial detriment to the public good and will not substantially impair the intent and purposes of the zone plan and zoning ordinance (negative criteria). He spoke of the history of the site and how the Applicant had cleaned up the site and eliminated a number of code violations on the property. He added that the predominant use in the area was residential homes with businesses behind them. Mr. O'Brien also testified that uses along Bennetts Lane also include preserved farmland, two (2) Christmas tree farms, three (3) landscapers, a fence company and an excavating company, most of which have residential uses in the front of them. He then described the proposed use as a less intensive use than a farm use, which was a permitted use in the zone and also conforms to the character of the neighborhood by resembling those properties around them with residences in the front and businesses in the rear. He then went on to discuss the "C" variances that were required. He noted that they were not moving anything or changing anything as it related to the existing home on the property. He said what was changing was the right-of-way, being extended by 8.5 ft. onto what was the Applicants property, which created the need for a Front Yard Setback Variance. As far as the Side Yard Setback, the existing home was not placed perpendicular to the road, but was slanted so the addition was also in that same situation and were asking for a 7 inch variance, which we feel was a de minimus exception to the ordinance, with no other structures coming close to that lot line for quite a distance. He then discussed the goals to the 2016 Re-examination of the Master Plan that were related, including preserved wetlands once the LOI was obtained and the redevelopment of land. Mr. O'Brien then discussed the purposes of the Municipal Land Use Law (MLUL) and enumerated the various goals that were applicable to the Application. Mr. O'Brien then discussed the negative impacts to the Application, in which he stated that he did not find any and he found that he believed the variances could be

granted without substantial detriment to the public good and without substantial impairment to the zone plan and zoning ordinance.

Chairman Thomas then opened the meeting to the public.

Mr. Joseph Cichowski, 100 Bennetts Lane, Somerset, NJ came forward and was sworn in. Mr. Cichowski was concerned that he sees 1-800 Junk trucks coming to the property and wanted to know if it would be continuing. Mr. Fischer stating that they were just helping to clean up the balance of the property and would be done in about 10 days. Mr. Cichowski indicated that he has seen car carriers carrying new cars on the property, and Mr. Fischer stated that they were trespassing on his property since he knew nothing about that.

Mr. Pagano, 193 Bennetts Lane, Somerset, NJ, came forward and was sworn in. Mr. Pagano asked about the activities that would occur on the property and asked how far away the proposed building would be to his property line, and Mr. Parker indicated it would be 26 ft. A discussion ensued about truck noises and the types of vehicles that would be entering and exiting the property. A discussion ensued related to water runoff from the proposed building and an additional explanation related to the dry wells was given. Mr. Fischer stated that there was no activity on the site in the winter because it is a seasonal business and he does not do snow plowing.

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

Mr. Stahl gave his closing statements.

Mr. Rich made a motion to approve the Application with Variances, including all the conditions that was discussed, with the inclusion of all of the vehicles listed in the testimony. Mr. Reiss seconded the motion, and the roll was called as follows:

FOR: Mr. Reiss, Mr. Rich, Mr. Rosenthal, Ms. Firdaus, Mr. Khan, Mr. Dougherty and Chairman Thomas

AGAINST: None

MEETING ADJOURNED:

Mr. Rosenthal made a motion to adjourn the meeting at 9:14 p.m. The motion was seconded, and all were in favor.

Respectfully submitted,

Kathleen Murphy, Recording Secretary
January 15, 2023