

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

REGULAR MEETING  
October 1, 2015

This special 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:

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PRESENT: Raymond Betterbid, Bruce McCracken, Alan Rich, Robert Shepherd, Anthony Caldwell, Gary Rosenthal, Joel Reiss, Cheryl Bergailo and Chairman Thomas

ABSENT: Laura Graumann and Donald Johnson

ALSO PRESENT: Patrick Bradshaw, Board Attorney, and Mark Healey, Planning Director and Vincent Dominach, Senior Zoning Officer

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**MINUTES:**

- **Special Meeting – September 10, 2015**

Mr. McCracken made a motion to approve the Minutes as submitted. The motion was seconded and the roll was called as follows:

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

AGAINST: None

**RESOLUTIONS:**

- **Simply Yoga / ZBA-14-00018**

Mr. McCracken made a motion to approve the Resolution as submitted. Mr. Caldwell seconded the motion and the roll was called as follows:

FOR: Mr. McCracken, Mr. Caldwell, Mr. Rosenthal and Chairman Thomas

AGAINST: None

- **Choma / ZBA-15-00004**

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

FOR: Mr. Betterbid, Mr. Shepherd, Mr. Rosenthal, Mr. Reiss, Ms. Bergailo and Chairman Thomas

AGAINST: None

- **Rishay Group / ZBA-15-00007**

A motion was made to approve the Resolution as submitted. The motion was seconded and the roll was called as follows:

FOR: Mr. Betterbid, Mr. Shepherd, Mr. Rosenthal, Mr. Reiss, Ms. Bergailo and Chairman Thomas

AGAINST: None

**DISCUSSION:**

***Vouchers:***

- **Patrick Bradshaw –October Retainer - \$833.33  
--Resolution Review**

Mr. McCracken made a motion to approve the Vouchers as submitted. Chairman Thomas seconded the motion and the roll was called as follows:

FOR: Mr. Betterbid, Mr. McCracken, Mr. Rich, Mr. Shepherd, Mr. Caldwell, Mr. Rosenthal, Mr. Reiss, Ms. Bergailo and Chairman Thomas

AGAINST: None

**HEARINGS:**

- **AI HOLDINGS, INC / ZBA-15-00012**

Mr. Peter U. Lanfrit, Esq., Attorney, appeared before the Board on behalf of the Applicant, AI Holdings, Inc. He explained that they were there that evening to request a Use Variance w/waiver of Site Plan in which the Applicant was asking permission to set up a vocational school in the building at 80 Cottontail Lane, Somerset; Block 530.04, Lot 2.03, in a CB Zone - **CARRIED TO OCTOBER 15, 2015 – with no further notice required.**

Mr. Lanfrit indicated that his Planner was held over at a hearing in Scotch Plains and asked that the hearing be carried to the next meeting on October 15, 2015. Mr. Lanfrit indicated that he would grant an extension of time for the matter to be heard until the end of November, 2015.

**DL 11/30/2015**

• **EDWARD & MAUREEN MATSON / ZBA-15-00014**

Mr. Peter U Lanfrit, Esq., appeared before the Board on behalf of the Applicant, Edward & Maureen Matson. Mr. Lanfrit indicated that they were there that evening to obtain a Hardship Variance in which the Applicant was proposing to construct a single family dwelling, with an attached garage, at 114 Hollywood Avenue, Somerset; Block 432, Lots 1 & 2, in the R-20 Zone.

Mr. Dominach's Zoning report indicated that the Applicant was proposing to construct a home in the R-20 Zone and that the following variances were required:

1. Lot area: 26,000 sq. ft. minimum, 5,000 sq. ft. existing/proposed
2. Lot frontage: 130 ft. minimum, 50 ft. existing/proposed (Hollywood), 100 ft. existing/proposed (Twelfth)
3. Front yard setback: 35 ft. minimum, 17.9 ft. proposed (Twelfth)
4. Side yard setback: 15 ft. minimum, 8 ft. proposed
5. Impervious coverage: 25% maximum, 29.3% proposed
6. Lot coverage: 15% maximum, 18.6% proposed

Mr. Lanfrit stated that they were seeking a "C" variance on an undersized lot in the R-20 Zone. He testified to the Board that the Application was prepared by Ms. Matson and indicated that the Owner and Applicant was Matson Construction, Inc. In reviewing the matter with his client during the past week, Mr. Lanfrit ascertained that Ms. Matson was, indeed, the Applicant, but was not the owner of the property, but a contract purchaser. He further went on to explain that Ms. Matson would be acquiring the property from the Estate of Kenneth Kanter, pursuant to a court order. Mr. Lanfrit then asked that the Application be amended to read, on the record, that the owner of the property was Kenneth Kanter. He noted that he did have the contract in his possession, which, he indicated, was signed by Joseph Conti, JSC, retired, and who was the administrator of the Estate of Kenneth Kanter, which made the Application contingent upon a subdivision approval. Mr. Lanfrit then indicated that if the Board Attorney, Mr. Patrick Bradshaw, required written consent, he stated that he would provide it after the hearing.

Ms. Maureen Matson, Applicant and Contract Purchaser, came forward and was sworn in. Ms. Matson testified that she was a representative of Matson Construction, Inc., which was the contract purchaser of the aforementioned property. Ms. Matson indicated that the contract to purchase the property from the Estate of Kenneth Kanter was signed in December of 2014. She also added that the contract required Matson Construction, Inc. to obtain the necessary approvals to construct a single-family dwelling on the property. She then described the property as a 50 ft. x 100 ft. lot, which was undersized in the zone. Ms. Matson then testified that because it was an undersized lot, she first reached out through a regular letter on April 14<sup>th</sup> of 2015 to Jacqueline Taylor, who owned the adjacent property on Twelfth Street, behind

the subject property. Ms. Matson indicated that Ms. Taylor contacted her by phone and told her that she was interested in purchasing the subject property and offered \$2,000.00. Ms. Matson indicated that she told Ms. Taylor that she would get an appraisal of the property to estimate its value, but stated that she did not hear back from Ms. Taylor for the rest of the summer. Ms. Matson then stated that she sent another letter to Ms. Taylor (both a regular letter as well as a certified letter) approximately two and a half weeks ago (September 18, 2015) when she again expressed interest in purchasing the property and indicated that she might also get her own appraisal. Mr. Lanfrit marked both letters, as Exhibit A-1 and Exhibit A-2, respectively. Ms. Matson told the Board that she did not hear back from Ms. Taylor, but that she sent another letter, with a copy of the appraisal, and placed it in Ms. Taylor's mailbox, but that she hadn't heard anything further from her. Ms. Matson indicated that she had multiple discussions with the adjacent neighbor facing Hollywood Avenue, owned by Mr. Leveque and Ms. Sannon as to whether she could obtain additional property from them and to inquire as to whether they wanted to purchase her lot. She also indicated that she had sent a certified letter to Mr. Leveque and Ms. Sannon, dated September 18<sup>th</sup>, 2015, with no reply. Mr. Lanfrit entered that letter into the record as Exhibit A-3. Mr. Lanfrit then entered into the record as Exhibit A-4, the green return receipt card showing that Ms. Taylor signed for the certified letter as well as the receipt for the sending of both certified letters to Ms. Taylor and the one to Mr. Leveque and Ms. Sannon, for which she never received the green return card.

Board Attorney, Mr. Patrick Bradshaw, asked whether there was anyone from the public who wanted to address the buy/sell issue before they moved on with the hearing.

Mr. Ray Garcia, 32 Twelfth Street, Somerset, NJ, came forward and was sworn in. Mr. Garcia wanted to know what the property was appraised for. Mr. Lanfrit entered the appraisal report prepared by the Otto Group and dated June 22, 2015, into evidence as Exhibit A-5. Mr. Lanfrit indicated that the property was appraised, as required by law, as a building lot for \$70,000.

Mr. Carl Leveque as well as Ms. Rhiana Sannon, 120 Hollywood Avenue, Somerset, NJ, came forward and were sworn in. Mr. Leveque indicated that he believed the property was sold in an estate sale and was most likely sold for much less than it was appraised for. He went on to further state that had he known about the estate sale, he would have been interested in the property at that time at the price they were asking. He stated he was not interested in purchasing the property for the price it was appraised for.

Ms. Matson then described the type of home she wished to build on the property should the variance be granted. She described the proposed home as a colonial style home with vinyl siding having measurements of 24 ft. x 40 ft., with approximately 1,700 sq. ft., with a living room, dining room and kitchen on the first floor and would also include three bedrooms and 1-1/2 bathrooms as well as a one-car garage. She added that they might include a basement as well. Ms. Matson indicated that the plans for the proposed home were included in the plan set that was submitted with the Application and that the home would front Hollywood Avenue.

Mr. Healey asked Ms. Matson what effort was made to purchase land from adjacent property owners, and Ms. Matson indicated that she did try to purchase Lot 3, facing Hollywood Avenue (Mr. Leveque's property), to make the lot 75 ft. x 100 ft. She indicated that she did have several conversations with Mr. Leveque, but that he did not want to sell Lot 3 to her. Mr. Healey expressed his concerns with the shallow front yard setback, especially since the lot was so narrow.

Mr. Shepherd inquired as to whether Ms. Matson would agree to a condition of approval that the house shown in the plans submitted would be the same house that Matson Construction would build on the property. Ms. Matson testified that she would wholeheartedly agree and had no plans to change anything regarding the home plan.

Mr. Caldwell and Mr. McCracken inquired as to the price discussed with the neighbors for the purchase of the subject property. A discussion ensued.

Chairman Thomas then opened the meeting up to the public for questions of Ms. Matson.

Mr. Carl Leveque, 120 Hollywood Avenue, Somerset, NJ, came forward and continued to be sworn in. He asked Ms. Matson whether she inquired about the zoning laws before she purchased the subject property. Ms. Matson stated that before signing the contract to purchase the property, she was aware of the zoning in the area. Mr. Bradshaw, Board Attorney, explained to Mr. Leveque and for the benefit of the rest of the public, the laws governing isolated pieces of property.

Mr. Ray Garcia, 32 Twelfth Street, Somerset, NJ, came forward and continued to be sworn in. Mr. Garcia wanted to know if Ms. Matson was planning to live in the proposed home or sell the home and property. Mr. Lanfrit indicated that Ms. Matson was a builder and had every right to build the home to sell. Mr. Garcia was concerned that there was an overabundance of properties for sale in the neighborhood and wanted to know if the home would be rented if it couldn't be sold. Ms. Matson stated that she had never had that problem before.

Mr. Stephen M. Fisk, Professional Planner and Land Surveyor, 631 Union Avenue, Middlesex, NJ, came forward and was sworn in. The Board accepted his qualifications. Mr. Fisk explained to the Board that he was retained by the Applicant to prepare a plot plan in conjunction with the Application and also to present planning testimony in support of the bulk variances. Mr. Fisk indicated that he did a title search and researched the history of the property. He stated that the subject property was obtained by Franklin Township in 1970 in a foreclosure and held it until it was sold to a private party named Lehrer in 1979. He then indicated that it was held until 1999 until it was acquired by the present property owner, Kenneth Kanter. Mr. Fisk added that as far as he can tell, back to 1970, the property was never part of either of the adjoining properties. He then described the types of home located in the neighborhood, noting that the adjoining properties were also undersized. He then discussed the building envelope (measured at 0 ft. by 50 ft.), indicating that nothing could be built on that property without obtaining bulk variances as well as a variance for lot area. He did testify, however, that the lot lines were set back from the edge of the pavement on both Hollywood Avenue and Twelfth Street by approximately 13-15 ft. Mr. Fisk then discussed the required bulk variances that they were seeking with the Application and noted the many properties in the surrounding area that also did not comply with the zone requirements. Mr. Fisk entered into the record as Exhibit A-6, a photograph, taken by Mr. Fisk on September 29th, 2015, of the lot at the corner of Willow Avenue and Ninth Street, a.k.a. Lot 2, Block 446 (50 ft. x 100 ft. lot with existing home). A discussion ensued among the Board regarding the square footage of the homes on some of the undersized lots in the neighborhood. Mr. Fisk entered into the record as Exhibit A-7, which was a copy of the tax map of the Township of Franklin, with Mr. Fisk's notes regarding the square footages of the homes as listed in the tax rolls. Mr. Fisk then testified that they were putting in a smaller house than others in the neighborhood, based upon the smaller lot size. Mr. Fisk then discussed the required bulk

variances and entered into the record as Exhibit A-8, showing lot areas and distances to adjoining properties of the homes in the neighborhood. Mr. Fisk entered into the record as Exhibit A-9 and Exhibit A-10, two photographs of homes that were actually 15 ft. from the right-of-way in the neighborhood. He then entered into the record as Exhibit A-11, which was a photo of the property in question, taken by Mr. Fisk on September 29, 2015, showing a substantial fence that provided a very nice buffer between the subject property and Lots 32-34 on Twelfth Street. He noted the many trees on the property, and the Applicant would be trying to preserve as many trees on the property as she could to provide additional buffering. He also added that the Applicant was planning on providing additional landscape buffering in that area to mitigate the request of a variance in that area. Mr. Fisk also wanted to clarify that the revised impervious coverage variance they were seeking would be 29.3% and a building coverage of 18.6%, to accommodate for a covered porch and cement pad for the air conditioning unit. Mr. Fisk then told the Board that the home would be serviced by public sewer and a private well, which did not receive any comment from the Health Dept. Mr. Fisk asked for a waiver to provide curbs and sidewalks since the rest of the neighborhood did not have either.

Mr. Fisk then addressed the staff reports, noting that they could comply with all the comments on the Township Engineer's report and even suggests that they could request a waiver to provide curbs and sidewalks in the area since there were none in the area. He then indicated that they had addressed all of the comments and concerns in Mr. Healey's Planning report, as well. Mr. Fisk stated that the granting of the variances would not significantly alter the characteristics of the neighborhood.

Mr. Dominach told the Board that they could request payment in-lieu of providing curbs and sidewalks. Mr. Lanfrit stated that the Applicant would be agreeable as a condition of any approval.

Mr. Healey then drew the Board's attention to Exhibit A-8, noting that he felt it was a good example showing that the neighborhood was very varied in terms of lot area and lot width as well as shows the size and dimensions of the lot in comparison to the neighborhood. He felt it also showed that the Applicant had proposed a house that was proportionate to the size of the lot. He felt that they should revisit the idea of purchasing Lot 3 from the adjacent neighbor, and if that were not possible, buffering the area with landscaping. He also suggested that they ask the architect to add windows to the side of the house facing Twelfth Street to avoid a long blank wall.

Mr. McCracken asked about whether they would be including a basement. Mr. Fisk indicated that the inclusion of a basement would be dependent upon the soil testing and ground water.

Chairman Thomas made a motion to open the meeting to the public for any further questions or comments.

Mr. Ray Garcia, 32 Twelfth Street, Somerset, NJ, came forward and continued to be sworn in. He expressed concern for planting shrubs on the corner of the property making it hard to see when the shrubs grew to maturity. He also spoke of the crowded nature of the area with the addition of an 800-unit development nearby. He requested that the Township purchase the land and keep it as open space.

Mr. Carl Leveque, 120 Hollywood Avenue, Somerset, NJ, came forward and continued to be sworn in. Mr. Leveque indicted that their real estate agent told them that the lot was too small to be built on and that was why they purchased the house next door. He didn't understand how someone could build a home on such an undersized lot.

Mr. Healey asked whether Mr. Fisk had a deed that transferred the property from the Township to a private owner. Mr. Fisk stated that he did and entered it into the record as Exhibit A-12, noting that it did not have any specific language restricting what could be built on the property, just that they would have to conform to the zoning ordinances.

Mr. Carl Leveque, 120 Hollywood Avenue, Somerset, NJ, came forward and continued to be sworn in. Mr. Leveque stated that he had been taking care of the property since he moved in and only found out after a hurricane brought down trees did he learn the two lots were not part of his property.

Mr. Betterbid opened a discussion regarding the validity of continuing what the Township allowed in 1979 by selling the property to a private owner when it was clearly too small to meet any zoning requirements. A discussion ensued among the Board.

Mr. McCracken brought up the fact that the taxes seem to be in arrears on the property. Mr. Lanfrit explained that the Estate of Kenneth Kanter had been put on notice regarding the outstanding taxes and was sure it would be taken care of.

Mr. Shepherd made a motion to approve the Application with Variances. Additionally, and as a condition of approval, was that the Applicant build the exact home that was pictured in the plans and grant the waiver requested from providing curbs and sidewalks, but need to make a contribution in kind to the Township fund. He added that they would replace any trees that were removed from the property and add some windows to the side of the home facing Twelfth Street. Mr. Rich seconded the motion and the roll was called as follows:

FOR: Mr. McCracken, Mr. Rich, Mr. Shepherd, Mr. Rosenthal and Chairman Thomas

AGAINST: Mr. Betterbid and Mr. Caldwell

## **WORKSESSION/NEW BUSINESS**

There was no new business

## **MEETING ADJOURNED**

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

Respectfully submitted,

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Kathleen Murphy, Recording Secretary  
November 18, 2015