

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

**REGULAR MEETING  
February 21, 2019**

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

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**PRESENT:** Anthony Caldwell, Laura Graumann, Donald Johnson, Bruce McCracken, Alan Rich, Robert Shepherd (arrived at 7:35 p.m.), Gary Rosenthal, Joel Reiss, Cheryl Bergailo, Cheryl Bethea and Chairman Thomas

**ABSENT:** None

**ALSO PRESENT:** Mr. James Kinneally, Zoning Board Attorney, Mark Healey, Planning Director, and Christine Woodbury, Planning & Zoning Secretary

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**MINUTES:**

- **Regular Meeting – December 6, 2018**

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

**FOR:** Mr. Caldwell, Mr. Johnson, Mr. McCracken, Mr. Rich, Mr. Rosenthal and Chairman Thomas.

**AGAINST:** None

**HEARINGS:**

- **REV. URSULA CARGILL / ZBA-16-00025**

The applicant seeks Certification of Pre-Existing Non-Conforming Use. The applicant contends that the one-bedroom apartment in the finished portion of her basement was constructed at the time the house was constructed (with the house being constructed prior to enactment of the Township Zoning Ordinance) at 160 Bennington Parkway, Franklin Park; Block 38 Lots 6-7 in zone R-20 - **THIS APPLICATION WAS WITHDRAWN BY THE APPLICANT.**

- **ADICHUNCHANAGIRI CULTURAL & SPIRITUAL FOUNDATION OF USA, INC. / ZBA-18-00014**

D(3) Conditional use Variance, "C" Variance and Site Plan in which the Applicant was seeking approval to construct a new one-story house of worship with 80 parking spaces at 216 Weston Road, Somerset; Block 512, Lot 12.01, in the Agricultural (A) Zone - **CARRIED TO MARCH 7, 2019 – with no further notification required.**

**DL - 3/27/2019**

- **CORPORATE COMMUNITY CONNECTION, INC. / ZBA-17-00001**

Mr. Peter U. Lanfrit, Esq., Attorney, appeared before the Board on behalf of the Applicant, Corporate Community Connection, Inc. In December, 2017, the Applicant was granted a Use Variance, Preliminary and Final Site Plan to construct a 46,000 sq. ft. mixed use building. The Applicant is returning to the Board now to amend that approval for the construction of (8) parking spaces at 610 Franklin Boulevard, Somerset; Block 233, Lots 1, 7-14, 29-36, in the HBD Zone.

Mr. Lanfrit explained that the Applicant was able to acquire an additional piece of property adjacent to the property that was approved by the Board. With the original Application, they were required to provide a little over 100 parking spaces and were only providing about 60% of those required spaces, but utilizing shared parking to accommodate for that shortfall. Mr. Lanfrit then indicated that Reverend Soaries was able to acquire the adjacent site to provide for more parking. He then passed out to the Board members the architectural renderings of the proposed building that was presented at the December, 2017 hearing for the Board's edification. Mr. Lanfrit then told the Board that the shape, location or look of the building would not change and was still a 4-story building, with two (2) floors of offices and two (2) floors of residential apartments. He indicated that they were going to add some additional parking for the site.

Mr. Michael Ford, Engineer employed with Van Cleef Engineering, 32 Brower Lane, Hillsborough, NJ, came forward and was sworn in. The Board accepted his qualifications. Mr. Ford told the Board that he was the original engineer who testified under the original application, ZBA-17-0001. He then informed the Board that the first exhibit he was going to show was the existing conditions plan, an enlarged version of the plan set (Exhibit A-1). He then went through what the existing conditions on the site were for the Board's edification, pointing out the location where the existing building was razed and the associated parking that would be used for the new building. Mr. Ford then told the Board that there was an addition to the plan, the subject of the evening's meeting, which was the addition of one property on Martin Street that currently had an existing residence there. Mr. Ford then showed the exhibit of the plan that was previously approved by the Board and showed that the current access to the site from Martin and Lewis Street, which would remain. Mr. Ford then discussed what they were proposing, noting that there would be an addition of eight (8) parking spaces and green space (or lawn) now located on the additional piece of property that had just been acquired. He noted that the eight (8) parking spaces would be located opposite the handicapped parking spaces and closer to the building. Mr. Ford then testified that there would be a very large buffer of landscaping and lawn between the subject property (new lot)

and the next residential lot. In discussions with staff, Mr. Ford indicated that there was an opportunity to relocate the dumpster on the property per the Township Engineer's suggestion, showing the Board where it was originally placed and then where it was relocated. He told the Board that it would now be placed closer to the building and further away from the property line, eliminating one of the prior variances and opening up space to make available three (3) additional parking spaces along the access drive from Lewis Street, for a total of eleven (11) additional parking spaces on-site. Mr. Ford then entered the exhibit just shown into record as Exhibit A-2.

Mr. Ford then indicated that he had reviewed all the other staff reports and testified that they would be able to comply with all of the comments in all the staff reports and those comments provided from the County. Mr. Lanfrit then informed the Board that there was a request from Mr. Healey that the Applicant provide fencing along the property line where there were still residential properties abutting the subject site. Mr. Ford then indicated that the Applicant was agreeable to provide fencing in that area.

Mr. Ford summarized by saying that they had reduced the parking deficiency and had eliminated the variance concerning the dumpster placement. Mr. Ford added that all of the original approvals and conditions from the original hearing have not changed and would remain.

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

Mr. Lanfrit gave his final summation and a motion was made by Vice Chair Graumann. Mr. Caldwell seconded the motion and the roll was called as follows:

FOR: Mr. Caldwell, Vice Chair Graumann, Mr. Johnson, Mr. McCracken, Mr. Rich, Mr. Shepherd and Chairman Thomas.

AGAINST: None

- **RUKH Cedar Grove Lane Properties LLC / ZBA-18-00022**

Mr. Peter U. Lanfrit, Esq., Attorney, appeared before the Board on behalf of the Applicant, RUKH Cedar Grove Lane Properties, LLC. Applicant seeks D(1) Use Variance, Site Plan and associated variance approval for construction of a 1,070 sq. ft. patio with 40 seats. Applicant requires D(1) Use Variance approval as outdoor seating was prohibited in the Board's original grant of use variance approval. Variances also required with respect to parking, front yard setback and building coverage for the property located at 16 & 18 Cedar Grove Lane, Somerset; Block 424.02, Lot 21.01, in an R-40 Zone - **CARRIED FROM JANUARY 17, 2019 – with no further notification required.**

Mr. Lanfrit explained to the Board that the original Application was submitted to the Zoning Board under Docket ZBA-09-0004, at which time he stated that they received a Use Variance and Site Plan approval to construct a hotel and free-standing restaurant. He reminded the Board that they came back in 2017 to submit an amended application so that they could redefine the restaurant – they made it a little bit taller and made some aesthetic improvements

and it was approved by the Board. He went on to state that a condition was imposed by the Board at the request of one of the neighbors that there be no outside dining. Mr. Lanfrit then indicated that the Application before the Board that evening was to provide for outside dining. He added that they had subsequently met with the neighbor, who was also at the last meeting, when they asked that the Applicant put up some additional screening on their property as well as on the Applicant's property. Mr. Lanfrit then testified that after they went over where they were going to place the outside dining and how it would operate, he told the Board that the neighbor had no objection to the outside patio

Mr. Joseph Sapphire, Architect and Principal of sapphire + albaran architecture, 12 N. Main Street, Pennington, NJ, came forward and was sworn in. The Board accepted his qualifications. Mr. Sapphire then testified that he was the architect of record, designed the restaurant and testified at the hearing in 2017. He then stated that he would be utilizing some of the exhibits used at the 2017 hearing as well as some new exhibits. The first exhibit presented was the interior view of the restaurant along with the inclusion of the proposed patio with 10 tables/40 seats. Mr. Sapphire noted that the patio area was planned for approximately 2/3 of the length of the side of the restaurant on the Cedar Grove Lane side of the structure, with the front door facing the hotel on the interior side of the restaurant. He then told the Board that with the inclusion of the outdoor seating area on the patio, there would be a slight reduction of seating within the inside of the restaurant (212 total seats to include bar seating) to accommodate for the patio door that would provide access outside. Mr. Sapphire testified that they had to remove one (1) table of four (4) to allow for the outdoor access. Referring to the next exhibit, Mr. Sapphire showed a 3D rendering of the rear of the building, which was the portion that would face Cedar Grove Lane. He pointed out the differences from the original rendering, noting that they designed a stationary patio awning that came out to the edge of the proposed dining space, covered approximately 1/2 of the patio area, and was made of the same material as the wrap around shallow standing seam awnings that were already on the façade of the building. Also noted was that the permanent awning would be supported by posts. Mr. Sapphire indicated that because they were proposing a permanent patio awning, they were required to obtain a variance. He did tell the Board that there was consideration for a retractable awning, but they wanted to be able to mount low level lighting so that that none of the lighting spilled out onto adjacent property lines. Also, Mr. Sapphire indicated that they wanted the flexibility to place outdoor heating components. He also stated that a retractable awning did not last very long and would not look nice for very long. Moving on to the next exhibit, Mr. Sapphire showed the original elevations that were presented, along with those that include the patio awning showing it at the same elevation height and same building height as the other awnings, but with a different slope that extended out further from the building. He then spoke about the proposed low, bollard lights that would be included on the patio that would light the floor area. Mr. Sapphire stated that there were no taller lights and none that would project out past the building edge proposed. He then told the Board that the outdoor heating units would be placed on the underside of the awning to be used in the spring and fall.

Mr. Reiss then asked for clarification about the inclusion of the patio at the last hearing in 2017, and Mr. Lanfrit explained that the patio area was not allowed at all with the approval that they acquired then.

There were some questions from Board members, but Mr. Lanfrit asked them to wait for the appropriate witness.

Chairman Thomas then opened the meeting to the public for questions and comments of the Architect. Seeing no one coming forward, the meeting was closed to the public.

Mr. Scott Yaeger, President of Radius Hospitality management company, 437 Silver Ridge Drive, Copley, OH 44321, came forward and was sworn in. Mr. Yaeger explained that his company, Radius Hospitality, was the management company for the Imperia, Springhill Suites and the restaurant on the site as well as Fairfield Suites on Davidson Avenue in Somerset. He then told the Board that he testified in the 2009 hearing for the site and didn't have much of an idea at that time what they were going to be doing with the restaurant. Mr. Yaeger then discussed trying to attract a national chain restaurant to the property, but ultimately made the decision to build the restaurant by themselves without any interest from a chain restaurant. He then discussed testifying at the last hearing about the increase in building height for the restaurant and how it would operate. He noted that 60-70% of their volume of business would come from food (American fare), with the balance of that coming from beverages, specifically craft beer. Mr. Yaeger then discussed the growing trend of providing outdoor spaces at restaurants that was not as prevalent when they first conceived the plan. Mr. Yaeger then drew the Board's attention to the parking situation on site, noting that they received a variance for parking at the last hearing. He explained that they had the Springhill Suites do a parking analysis regarding the number of spaces occupied from October 2, 2018 to February 16, 2019, and Mr. Lanfrit provided copies of the study to the Board and Mr. Healey. They then discussed the 180 parking spaces that were allocated and included in the Site Plan granted for the site. Mr. Yaeger then explained that the site was attached to the Imperia, which was owned by the same owner, and that there was a shared parking arrangement with the Imperia. Along with the 180 provided parking spaces on the site, there was also parking available to be utilized on the Imperia site. Mr. Yaeger testified that the parking lot at the Imperia has never been full since they've managed the property, even when they were having a major event. He then addressed Mr. Johnson's question about music outside, and Mr. Yaeger indicated that they did not plan for any live music on the patio but that there might be some piped in, low level background music provided under the canopy. He then described his vision for the outdoor space and testified that, based upon the parking study provided for the hotel on-site, that the addition of the restaurant would not create a parking problem since the parking lot for the hotel had never been full. He noted that the busiest days of operation would be Friday and Saturday nights.

Mr. Shepherd then asked for when the parking counts were done and at what time of day they were taken. Mr. Yaeger indicated that their night auditor did the parking counts between 11 p.m. and 7 a.m. for the hotel operations.

Mr. Reiss then discussed the distance from the Imperia parking lot and the restaurant parking, stating that he thought a shuttle might be necessary. Mr. Yaeger indicated that they would be providing employee parking in the space between the hotel and the Imperia catering hall to free up the parking spaces up front near the restaurant.

Mr. Healey then indicated that when passing by the site, he had noticed that the hotel patrons were parking in the area where the restaurant customers would want to park. Mr. Yaeger discussed that issue, noting that the parking would be on a first come, first serve basis. Mr. Healey then spoke about the parking count report, noting that even during times of full hotel occupancy, the parking was at a fraction of what would be expected. Mr. Yaeger indicated that it was due to a phenomenon called "Uber" where many hotel patrons do not drive into the

property anymore and utilize local conference center shuttles or are picked up by someone and then stay at the hotel.

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

Mr. F. Mitchel Ardman, Engineer, employed with the Reynolds Group, 575 Rte. 28, Raritan, NJ, came forward and was sworn in. The Board accepted his qualifications. Mr. Ardman testified that he had been the engineer of record on the project since day one. He then described for the Board the location of the property and the surrounding land uses as well as the zoning in the area. He noted that there was only one residential property adjacent to their property, with rest being commercial uses. Mr. Ardman then showed the Board an exhibit that showed the proposed improvements to the site. He then noted that the restaurant and patio area were approximately 2-3 ft. below the roadway (Cedar Grove Lane) and would be providing a mixture of plantings, including shade trees and evergreens as well as shrubs and plantings, to screen the patio area. He then discussed the plantings that would be placed on the neighboring single family residential property, as the home owner had requested, as well as evergreens to screen the end of the patio area that faces their property. Mr. Ardman did note that the restaurant was 113 ft. from the property line, with the patio area 152 ft. to the property line and the nearest residential home even further than that. He discussed the various outdoor restaurant spaces that he had been involved with in areas that were near roadways and within mall parking areas that were very well landscaped and very successful. Mr. Ardman then discussed the 4 ft. high tubular steel-type fencing that would be placed around the outdoor seating area, for the patron's protection and to direct people to enter the restaurant first at the front door. He added that there was also a guardrail that was placed between the restaurant and Cedar Grove Lane. Mr. Ardman then discussed the parking for the restaurant, noting that with 100% occupancy for the hotel, the needed parking spaces totals 70 parking spaces. Mr. Ardman told the Board that with the 109 remaining parking spaces on-site, there would be adequate parking for the restaurant since it only required 84 parking spaces.

Mr. Healey then discussed the Township parking requirements as opposed to Mr. Ardman's assessment of what was utilized and what would be needed. Mr. Ardman testified that they have provided 180 parking spaces where 195 were required, but that the parking demand was only about 160 parking spaces for the site. Mr. Ardman then discussed the shared parking situation with the hotel, noting that many hotel patrons would already be parked at the hotel and would walk over to the restaurant and that many hotel patrons utilize Uber for their transportation needs while they are staying at the hotel and would also walk over to the restaurant. Mr. Healey corrected Mr. Ardman by saying that the Township parking requirement was actually 194 parking spaces. Mr. Lanfrit agreed that they were 14 parking spaces short, pursuant to the ordinance. Mr. Lanfrit indicated that it also didn't take into account the available spaces on the Imperia lot where the restaurant employees would park.

Mr. Caldwell then inquired as to how many employees would be working at the restaurant, and Mr. Lanfrit answered that there would be 20 employees on-site at the busiest time. In answer to Mr. Caldwell's question about how many hotel staff were on-site at the restaurant's busy times of Friday and Saturday nights, Mr. Lanfrit stated that there would only be two (2) employees on-site at night at the hotel.

Mr. Rich then asked if the outdoor seating would be able to be seen from Cedar Grove Lane, and Mr. Ardman indicated that motorists would be able to see the 10 ft. high awning, but that the rest of the patio area would be well landscaped. Mr. Ardman indicated that that went for the lighting as well and it would be low to the ground

Mr. Ardman then spoke about the variance for the front yard setback to the awning, where 55 ft. was required and they were providing for just under 28 ft. from the right-of-way of Cedar Grove Lane for the awning width of 30 ft. The restaurant was previously approved at 41.5 ft. from the window awnings. Mr. Ardman then drew the Board's attention to the lot (building) coverage variance, where 10% was permitted, 14.57% was approved and 14.86% was now being provided. He also wanted to point out that they were under the prior approval for impervious coverage.

Mr. Lanfrit brought up the minor comments that were made in the most recent TRC (Technical Review Committee) report, dated January 8, 2019. Mr. Ardman indicated that they could comply with all of the suggested minor changes in that report and don't materially affect what was being presented that evening.

Mr. Johnson asked what safety measures they were putting in place to protect the outdoor patrons from the roadway, and Mr. Ardman indicated that they were placing a roadway guard rail. Chairman Thomas asked if they could make the guardrail more aesthetically pleasing than just a galvanized metal rail, and Mr. Ardman indicated that they would work with the County.

Mr. Healey then brought up the agreement to place landscaping at the end of the patio and on the neighboring property. He asked Mr. Ardman to discuss the numbers, species and sizes of those plants, which he did. He included two (2) additional evergreen trees, 5-6 ft. in height. Mr. Lanfrit agreed, as a condition of any approval, to make part of the record that they would be placing landscaping on the adjoining property to the satisfaction of the neighbor.

Mr. Healey then opened a discussion regarding adding a continuation of sidewalk to directly in front of the restaurant so as not to leave a gap. Mr. Ardman spoke with the Applicant, and they were agreeable to do that. Mr. Healey indicated that if adding the sidewalk would put the impervious coverage over the prior approval percentage, then it would definitely be a C(2) variance because it was addressing pedestrian safety.

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

Mr. Kevin O'Brien, Planner employed with Madison House, Madison Avenue, Rahway, NJ, came forward and was sworn in. The Board accepted his qualifications. He indicated that he was familiar with the subject property and surrounding land uses as well as the zone boundaries. Mr. O'Brien then detailed the variances they were seeking and rendered his opinion of the same. He spoke about the D(1) Use Variance and Amended Site Plan that was required, the parking variance as discussed earlier in the hearing, front yard setback to the dining canopy and a building coverage variance. Mr. O'Brien then gave proofs to support the D(1) Use Variance that was rooted in the Municipal Land Use Law (MLUL) that included the positive and negative criteria. He testified that he did not see any negative impacts to the

surrounding neighborhood based upon the screening and substantial landscaping being provided. He then discussed the provisions to support the necessary bulk variances..

Chairman Thomas then made a motion to open the meeting to the public for questions and comments.

Mr. Vincent Dominach, Franklin Township Economic Development Director, came forward. Mr. Dominach expressed his praise to the owner of the property, Mr. Patel, who has built some fine establishments in the Township and has now provided a much needed and requested additional restaurant in the Township. He noted how much of a good neighbor he is that he spent a significant amount of time trying to satisfy the adjoining residential neighbor with substantial landscaping buffering. After saying all this, Mr. Dominach urged the Board to approve the Application.

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

Mr. Lanfrit then gave his summary remarks.

Vice Chair Graumann asked about the type of food that would be served, and Mr. Yaeger indicated that it was pub fare with a wide range of offerings.

Mr. Shepherd made a motion to grant a D(1) Variance as well as all the bulk variances they need to construct an outdoor patio on their premises. Along with this approval, there will be a condition that there would be no live outdoor entertainment and that the property owner would work with the resident that was discussed that evening to create a landscaping plan that would be to the satisfaction of the neighbor and they would work with the County to build a guardrail on Cedar Grove Lane that was more rustic than the typical metal guardrails seen on highways in other locations. Vice Chair Graumann added that they would be required to build a sidewalk along their frontage according to Township standards and, if it created additional impervious coverage and required another variance that it would be approved along with the Application. Mr. Caldwell seconded the motion and the roll was called as follows:

FOR: Mr. Caldwell, Vice Chair Graumann, Mr. Johnson, Mr. McCracken, Mr. Rich, Mr. Shepherd and Chairman Thomas.

AGAINST: None

- **SURINDER & RANO SINGH / ZBA-17-00020**

Hardship Variance in which the Applicant was seeking a variance due to his going 1,070 sq. ft. over the previously approved impervious coverage at 3 Buell Street, Somerset; Block 83, Lot 1.04, in an R-20 Zone - **CARRIED TO FEBRUARY 21, 2019 – with no further notification required.**

Mr. Lanfrit indicated that the hearing that evening was a continuation of a hearing that was held on January 18, 2018. He reminded the Board that Mr. Singh was the owner of the property on Buell Street. Mr. Lanfrit indicated that Mr. Singh applied for a building permit to construct a single-family dwelling on the property, with other improvements such as driveways



and walkways. Mr. Lanfrit then told the Board that Mr. Singh obtained the building permit, constructed the house and constructed the driveway. He continued by saying that when Mr. Singh went to submit the As Built Survey, the house was constructed according to the plans that were approved. It was discovered, however, according to Mr. Lanfrit, that the Township erred in issuing the permits because the zone requirements for coverage for the building was 15% and the house was constructed, as approved, at 21.5%. Mr. Lanfrit then went on to state that Mr. Singh also received an approval for 32.09% of impervious coverage, where the ordinance only allowed for 25%. Mr. Lanfrit then reminded the Board that Mr. Singh also added some additional walkways to get from the driveway to the house, which brought the impervious coverage up to 37.4%. He went on to state that at the original hearing, Mr. Singh testified to getting the permits for the house, and he built the house in accordance with the permits. Also, at the original hearing, there was a neighbor, Mr. Phillips, who had some concerns regarding water issues and, as a result of that concern, they adjourned the hearing and the Township Engineering Dept. came out to the property on more than one occasion to determine how to address the water issue and there were certain pipes that were, in fact, installed under the direction of the Township Engineering Dept. Mr. Lanfrit then stated that he had a report dated May 21, 2018 indicating that all of the requirements that were requested to be performed by the Engineering Dept. were, in fact, satisfied and performed. He entered the report into the record as Exhibit A-1 with that night's date. Mr. Lanfrit had a number of copies and passed them out to the Board members. He then went on to state that at the hearing in January of 2018, he indicated that they concluded all of their testimony. Subsequent to that hearing, in addition to doing all of the work that was requested by the Engineering Dept., they also took the runoff from the subject property as well as the runoff from Mr. Phillips' property out to Buell Street where there was a catch basin. He stated that they had some meetings, both at the site and at the municipal building with Mr. Phillips' attorney, Mr. Linnus, Mr. Perez and Mr. Phillips and Mr. Phillips' engineer. Mr. Lanfrit then testified that they felt that they had done everything required to address the water issue and presented all of the testimony that they intended to present at the January, 2018 hearing. Mr. Lanfrit noted that he believed that Mr. Phillips was going to present testimony that evening, whereby he wanted to reserve the right to recall Mr. Singh, cross examine Mr. Phillips or both. Mr. Lanfrit indicated at that time that it took extra time between the hearing in January and their appearance that evening because they had to wait for significant rainfall to prove that the runoff would go off the property to the intended area.

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

Mr. Healey interjected by stating, regarding impervious coverage, that the Applicant did not build to the permits entirely. He did say that Mr. Lanfrit's testimony was correct when he said that they were approved for more impervious coverage than was permitted. He added that the approved plans allowed for 32.9%, and they constructed 37.4%. Mr. Healey indicated that the driveway was a little wider than what was on the approved plans and they added some sidewalks that also were not on the original plans.

Vice Chair Graumann asked if there was ever a request to reduce the impervious coverage. Mr. Lanfrit answered in the negative, stating that the issue was whether they could handle the drainage. He stated that the driveway was constructed and then added to because there was no parking allowed on Buell Street and he needed the extra parking space to accommodate his family's four (4) cars. Mr. Lanfrit added that there was the driveway, but no walkways

were approved to get from the driveway to the house. He then marked into evidence as Exhibit A-2, which included copies of six (6) photographs.

Ms. Bergailo asked whether the mitigation measures that were taken were designed for the full request of impervious or just the approval. Mr. Healey stated that his understanding was that the mitigation measures were done for the full 37% impervious coverage.

Mr. Richard Phillips, 23 Den Herder Drive, Somerset, NJ, came forward and was sworn in. Mr. Phillip was prepared with a digital version of his digital slide presentation that included things that were presented at the January, 2018 meeting as well as an update.

Mr. Healey then explained that when they concluded the hearing in January of 2018, there was an agreement that there were two things that the Board wanted to see, one being a review by the Township Engineering Dept., which resulting in that department's May, 2018 memo. He noted that the second item that the Board was looking for was the Applicant's agreement to allow reasonable accommodations for Mr. Phillips to address his drainage issues. Mr. Healey went on to state that most of what has occurred over the past year was to consider that issue. Mr. Lanfrit then stated that they were agreeable to allow for that accommodation for Mr. Phillips' drainage issues and met at the site in December of 2018 to discuss them.

Mr. Phillips discussed the flooding issues that he had in early 2016. He proceeded to present a slide showing the grading on the two properties. He then presented slides that showed the various stages of flooding and how it was improved with each upgrade or "fix" to the drainage system by Mr. Singh. Afterwards, Mr. Phillips then told the Board that Mr. Singh put in a fence and was told that it had to be placed 3 inches above grade, but put it flush with the grade, now acting like a dam and keeping the water on Mr. Phillips' property. Also, he stated that based on the location of the fence, it turns out that Mr. Singh placed the fence on Mr. Phillips' property instead of on his own. Mr. Phillips stated that he had a supportive letter from his engineer stating that the fence was on his property and that it impedes any drainage into the swale which Mr. Lanfrit, in testimony, said even helps the drainage on Mr. Phillips' property. Mr. Phillips testified that he was there that evening to oppose the Applicant's effort to sidestep the law by applying for a hardship variance. He added that there were supposed to be two drywells in the front of his property with two access manholes that he had never seen on the property so he did not know if they even exist since he had not gotten any certification from the Engineering Dept. that they were there. Mr. Phillips' position was that because the home and driveway and walkways had already been built, the Singh's were now claiming a hardship. Mr. Phillips then passed out an exhibit that showed a page that was referenced from Mr. Singh's Engineering report that takes into consideration the calculation for the drainage that would go into the swale

Mr. Shepherd asked Mr. Phillips if he had any photographs from 2018 showing the extent of flooding, and Mr. Phillips indicated that it had not rained that much. He told Mr. Shepherd that he did not have any photos with him that evening from 2018, but that there was still flooding between the two properties and within the swale and the fence had exacerbated the problem. Mr. Phillips stated that since #3 and #5 Buell Street were built, there was no longer any natural drainage going to South Middlebush Rd. any longer. Mr. Phillips then explained that he also had an exhibit from the County showing that the water was high on the Den Herder side and low on the Buell Street side with the construction of the new homes. He then

discussed various ideas he and his Den Herder neighbors had to mitigate the problem with the use of storm drains. He explained his frustrations to the Board in the fact that he is being asked to pay for and solve the drainage problems on his property that were a direct result of actions taken by Mr. Singh and the Township. Mr. Phillips then passed out a letter from his Engineering firm confirming that the fence that was installed by Mr. Singh was placed on Mr. Phillips' property and was not placed three (3) inches above grade as requested. Mr. Lanfrit has indicated that their position was that the fence was where it was supposed to be and received a permit to place a fence in that location.

Mr. Healey clarified the situation by saying that Mr. Singh was not instructed to put the fence three (3) inches above grade, it was suggested that he do so that the drainage could continue to go under the fence to the swale. He explained that he was suggesting to the Board to make it a condition of approval to raise the fence three (3) inches above grade, but wanted to make it clear that there was no zoning requirement that says that the fence has to be a certain distance above grade. Mr. Lanfrit stated that when they met in December, 2018 at the site, the Applicant agreed to raise the fence even though they were legally not required to do so.

Chairman Thomas then asked Mr. Phillips to show the Board the problems that still exist on his property today. A discussion ensued, and Mr. Phillips showed a photo that was taken in August of 2018 showing the water on his property.

Mr. Dominach, Franklin Township Economic Development Director, came forward and stating that when the situation first started with the flooding on Mr. Phillips' property, he indicated that he was the Senior Zoning Officer and was there at the meeting where Mr. Singh was told that he had to mitigate the situation created by the totality of the impervious coverage on his property. From what was stated on the report that was handed out, from the Township's perspective, he has addressed all the drainage issues for his property. In addition, Mr. Dominach stated that it was the Township's position that part of the drainage issue that Mr. Phillips' has talked about was being addressed and will be further addressed when Mr. Singh moves the fence. Mr. Dominach indicated that it was also the Township's position that the drainage issue that was occurring on Mr. Phillips' property was due to the drainage issues on his own property and not the adjacent property. He noted that Mr. Singh has addressed everything that the Township had asked him to do and would allow additional water to go through his property in an easement, and Mr. Phillips was not able to come up with a solution that was anywhere near feasible for the Applicant. Mr. Dominach then stated that they were not provided any survey that showed that Mr. Singh's fence was on Mr. Phillips' property. He told Mr. Phillips that if he could provide a survey showing that the fence was on his property and not on Mr. Singh's, they would issue a zoning violation. A discussion ensued.

Mr. Lanfrit then addressed Mr. Phillips' assertions that the drywells, as part of the original approval and building permit, were not installed. He put into evidence as Exhibit A-3 the As-Built Survey which showed the drywells that were installed by Mr. Singh at the front of the property and inspected by the Township. At that time, Board Attorney, Mr. Kinneally indicated that he had marked Mr. Phillips' two documents as Exhibit O-1 and Exhibit O-2.

Mr. Lanfrit then stated that in June, 2018, they had a meeting in the municipal building with Mr. Linnus, Mr. Healey and Mr. Dominach and that he told Mr. Linnus at that time that they would be willing to work with him and assist him in trying to remedy that problem. Mr. Lanfrit asked Mr. Linnus to come up with a solution and they would try to solve it. He went on to

state that at the end of September, 2018, he received a letter from Mr. Perez who was working in Mr. Linnus' office at the time, that was marked into evidence as Exhibit A-4, basically saying that they were going to by-pass Mr. Singh's property and do something on someone else's property provided that Mr. Singh compensated them with \$50,000. The letter further indicated that if they paid the \$50,000, they would drop their objection to the Application.

Mr. Lanfrit then reminded the Board that they had met at the site in December, 2018, as indicated earlier in the evening's testimony, with Mr. Phillips, his engineer, Mr. Duran, Mr. Healey and Mr. Dominach. At that time, Mr. Lanfrit recalled that they had said to Mr. Duran that if there was a way to solve the problem by the Applicant granting Mr. Phillips an easement through his property so that there could be a pipe running from Mr. Phillips property out to Buell Street to the inlet, they would be willing to do so. He added that they were not going to do that for Mr. Phillips, but that they would allow him the opportunity to do so through an easement. Mr. Lanfrit indicated that they never received a response from that offer.

Mr. Lanfrit then gave his closing remarks. He added that despite what the Board might rule that evening, Mr. Singh was still willing to grant an easement to Mr. Phillips and come up with a plan to help mitigate the problem.

Mr. McCracken asked whether the drywells were operating, and Mr. Healey stated that there had been a request in November, 2017 to set up an additional appointment for the Township to inspect the west drywell and by May of 2018, that had been accomplished.

Mr. Phillips summed up his presentation and indicated that he was willing to meet with Mr. Lanfrit and Mr. Singh to talk about an easement and possible solutions, but the addition of the fence on Mr. Singh's property did not allow for easy access to any easement. He added that if the fence was removed, he would connect to Mr. Singh's swale and put the proper piping and drainage in place at his cost with the approval of the Township.

Mr. Dominach stated that whatever was to be done on the property, he indicated that whatever was done needed to have an approval from the Township because the drywell and the pipes have a certain capacity, so the Township would have to make sure that the pipes and drywells don't go over the capacity. Mr. Lanfrit then told the Board that they were willing to work with Mr. Phillips, but he didn't think it should be a condition of approval that they do so and that the Application should stand on the merits of the work that they had already done. A discussion ensued. Mr. Healey agreed that they would be willing to be involved to help reach a solution.

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

Ms. Judith DeFrancesco, 25 Den Herder Drive, Somerset, NJ, came forward and was sworn in. Ms. DeFrancesco told the Board that she had lived at that address for 48 years, and that there had never been flooding like there had been since Mr. Singh's house was built. She stated that she felt it was a hardship on Mr. Phillips that the situation had gone on so long.

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

Mr. Kinneally indicated that he was looking at Mr. Linnus' letter from September, 2018 that was entered into the record as Exhibit A-4 that referenced the quote that was given by Mr. Phillips. He said that since Mr. Lanfrit handed him the quote as well as a separate document, he would mark that quote into the record as Exhibit A-5.

Vice Chair Graumann made a motion to approve the Application conditioned upon the fence being raised by three (3) inches in accordance with recommendations by staff within 90 days. Mr. Shepherd seconded the motion and the roll was called as follows:

FOR: Mr. Caldwell, Vice Chair Graumann, Mr. Johnson, Mr. McCracken, Mr. Rich, Mr. Shepherd and Chairman Thomas.

AGAINST: None

### **WORK SESSION/NEW BUSINESS**

There was no work session or new business discussed.

### **MEETING ADJOURNED**

Mr. Shepherd made a motion to adjourn the meeting at 10:00 p.m. and was seconded. All were in favor.

Respectfully submitted,

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Kathleen Murphy, Recording Secretary  
March 13, 2019