

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

**VIRTUAL MEETING
September 3, 2020**

This Regular Meeting of the Township of Franklin Zoning Board of Adjustment was held virtually 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: Anthony Caldwell, Bruce McCracken, Alan Rich, Gary Rosenthal, Robert Shepherd, Joel Reiss, Cheryl Bethea, Richard Procanik, and Chairman Thomas

ABSENT: Laura Graumann and Kunal Lakhia

ALSO PRESENT: Daniel Lagana, Board Attorney, Mark Healey, Planning Director, and Christine Woodbury, Planning & Zoning Secretary

MINUTES:

- **Regular Meeting – July 16, 2020**

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

FOR: Mr. Caldwell, Vice Chair Graumann, Mr. Rich, Mr. Rosenthal, Mr. Shepherd, Mr. Reiss, Ms. Bethea, Mr. Procanik, and Chairman Thomas

AGAINST: None

HEARINGS:

- **JOSEPH McGUIRE / ZBA-20-00014**

“C” Variance in which the Applicant wants to erect a 36’ x 23’ patio at the rear of 14 Sherman Circle, Somerset; Block 401, Lot 24, in an R-20 Zone.

Mr. Joseph McGuire, Applicant, 14 Sherman Circle, Somerset, NJ, came forward and was sworn in. Mr. McGuire stated that he wanted to remove an existing concrete patio that was approximately 384 sq. ft. and put in a permeable paver patio that was about 828 sq. ft. He indicated that he was asking for a variance for impervious coverage because they were already at 26% where 25% was permitted and 31% was proposed.

Mr. Healey stated that the Technical Review Committee (TRC) did not have any comments. He then explained to the public how they would be able to participate in asking questions and making comments on the Application, depending upon the method with which they were attending the meeting that evening.

Mr. Rich stated that he saw that the proposed patio was double the size of the one he was removing and wondered why it needed to be that large. Mr. McGuire explained that they wanted to enlarge the patio to also encompass a swim spa that they already had a permit approval for from the Township. He further explained that the reason that they already had impervious coverage that was over the limits was because a previous owner had put on an addition to the home.

Mr. Healey then asked Mr. McGuire about the eco-friendly permeable pavers that they were planning to use to construct the proposed patio. Mr. McGuire explained that they saw that impervious coverage was an issue on the property and they were using a product called Techo Bloc that has the ability to have the water percolate on the top and drain off the sides as he understood it. He added that their property was very flat and that they did not have any run-off issues that would affect the neighbors.

Mr. Rosenthal asked Mr. McGuire if he had talked to his neighbors, and Mr. McGuire stated that he spoke with every one of them. He told the Board that they had delivered 18 letters to neighbors within the 200 ft. radius of their property and spoke to them about their proposal. He added that no one had any issues with what they were proposing.

Ms. Bethea asked whether the use of the Techo Bloc pavers change the impervious coverage ratio. Mr. Healey indicated that it did not change the impervious coverage ratio as far as the ordinance was concerned; however, using eco-friendly pervious pavers did allow the water to permeate through the blocks and into the ground in which the Board might consider to be a mitigating measure.

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 to approve the Application with Variance, with the condition that the Applicant use eco-friendly pervious pavers (Techo Bloc) described in his testimony. Mr. Caldwell seconded the motion, and the roll was called as follows:

FOR: Mr. Caldwell, Mr. McCracken, Mr. Rich, Mr. Rosenthal, Mr. Shepherd, Mr. Reis, Ms. Bethea and Chairman Thomas

AGAINST: None

- **ANANDA MANDIR, INC. / ZBA-20-00015**

Mr. Peter U. Lanfrit, Esq., Attorney, appeared before the Board on behalf of the Applicant, Ananda Mandir, Inc. The Applicant was asking for a temporary use permit to conduct events partially outdoors for specific dates at 269 Cedar Grove Lane, Somerset; Block 508.02, Lot 5.03, in an R-40 Zone.

Mr. Lanfrit explained that the Applicant had been before the Board on numerous occasions since 1999. He added that the Board, in their Resolutions of approval, has always imposed a condition that there shall not be any outdoor activities on the property. As the Board was aware, Mr. Lanfrit spoke about dealing with the pandemic which had put certain restrictions upon everyone, including houses of worship. He went on to explain to the Board that Ananda Mandir had their high holy days in October and November, with this particular year being on October 21st through October 25th and then again on November 14th. Because of the pandemic and the Executive Orders issued by the Governor's office (152, 156, 161 and 173), the temple and associated hall was restricted as to the number of people that can be in the temple at any given time. In the past, the high holy days had brought many people to the property and they had to make sure there were adequate police to control traffic coming in and out of the site and to make sure the event functioned properly. Because they were in a very different situation this year, Mr. Lanfrit stated that they were before the Board that evening to seek permission to put a tent in the parking lot for the five (5) days in October so that members of the congregation who come to the facility would have a place to go to wait to be called into the temple if they were unable to enter the temple building or the associated hall when they first arrived. He added that the arrival of congregants would be carefully monitored. He stated that there would be no music or noise outdoors

Mr. Anjan Lahiri, 8 Shady Brook Lane, Cranbury, NJ, came forward and was sworn in. Mr. Lahiri stated that he was a member of the congregation and Board of Trustees of Ananda Mandir and was tasked by that Board to establish some protocols so that they could have their high holy days function in an orderly fashion, which they provided as part of their Application. He added that the protocols were reviewed by the Technical Review Committee (TRC) in early August and then a second report was issued. Mr. Lahiri then explained the protocols that would include controlling the number of people attending and making sure that social distancing practices were abided by and registrations for attendance, with time slots chosen, would be done online. Mr. Lahiri went on to describe the process of having 25% of the hall (100 people) available for people to come in to formalize their registration, get their temperatures taken and a place for elderly people to wait for their time to go to the temple, which could accommodate 38 people at a time (25% capacity). He went on to state that there would be no communal food served, and only dry packaged food would be available. He also told the Board that the outside tent would serve as an extra holding place for people if it were raining. Mr. Lahiri then stated that the hours of the event would be from 9:00 a.m. to 2:00 p.m. and then from 5:00 p.m. to 9:00 p.m. (October 21st to October 25th) and then it would be ongoing later in the evening on November 14th (5:00 p.m. to 11:00 p.m.)

Mr. Lahiri then spoke about the comments in the TRC report and told the Board that they would be able to comply with all the comments.

Mr. Shepherd then asked about the serving of food, and Mr. Lahiri reiterated that they would be handing out dry, prepackaged food. He then asked about the protocol of allowing up to

10% walk-ins, but Mr. Lahiri indicated that they have abandoned that idea due to comments from the TRC.

Chairman Thomas then asked if there would be any music or noise coming from within the outside tent. Mr. Lahiri stated that there would just be normal conversations going on in that area.

Mr. Rosenthal asked if they would mandate wearing masks, and Mr. Lahiri indicated that it would be required to wear a mask at all time, inside or outside.

Mr. Caldwell then asked how social distancing would be carried out within the tent. Mr. Lahiri stated that they would have a 20' x 40' tent and then described the chair set-up in the tent to accommodate family units and still social distance away from other families.

Mr. Rich asked if the request they are asking for would be for every year going forward, and Mr. Lanfrit indicated it was a Temporary Permit just for the current year. Mr. Rich stated that he felt that 11:00 p.m. end time on November 14 was problematic. Mr. Lanfrit stated that those hours for high holy days were part of the condition of approval in the Resolution and were tied into the lunar calendar. Mr. Rich then asked Mr. Healey if there had been any violations for Ananda Mandir in the past or anything the Board should know about. Mr. Healey indicated that there were some problems in the past, but that they had cleaned up the site in recent years.

Mr. Healey asked Mr. Lanfrit to address the five (5) remaining questions in the second TRC memorandum. Mr. Lanfrit indicated that they had already discussed requesting the Temporary Food License Permit and that they will request the permit for the canopy. He stated that they already have plans in place for people who arrive who have not registered and that they would be turned away. He indicated that they would have ample space to turnaround in the few handicapped parking spaces that were located there and would not be able to go into the site to disturb anyone there and would also be able to enter the site sufficiently so as not to back-up traffic on Cedar Grove Lane. Mr. Lanfrit also stated that he would have discussions with Mr. Hauss, the Fire Prevention Director, and if he was not satisfied, that they would work things out. Mr. Lanfrit went on to state that there were 317 parking spaces on the property, and there was more than ample parking to accommodate the cars that were coming onto the site at their registered time. A discussion ensued among the Board.

Chairman Thomas then opened the meeting to the public.

Carol, 16-year Valley Wood Drive resident, Somerset, NJ, came forward. Carol then read an e-mail she sent to the Board Secretary since she did not know if they would be able to participate in the virtual meeting. The e-mail she read expressed her and her husband's concerns regarding the erection of a temporary tent on the parking lot that was just adjacent to their property on Valley Wood Drive. She described the noise and bright lights that would spill over into the homes nearby. Carol, the resident, stated that the temple had not always adhered to the Township ordinances in the past, and they had to call the municipality on a number of occasions to report excessive noise and lighting that extended into the night. She added that these violations have started as early as 4:00 a.m. and as late as 1:00 a.m. on both weekdays and weekends, including but not limited to garbage trucks, construction

vehicles, workers and temple members blasting music as well as cutting across lawns to gain access to the temple. She added that most recently, racing cars in the temple parking lot.

Mr. Lanfrit admitted that there had been some issues in the past related to events and functions. Because of those problems, he indicated that many of the protocols had been changed. Mr. Lanfrit noted that the racing in the parking lots was not due to temple members, and that the Board approved the ability to put up a gate that they were in the process of constructing that could be closed and locked. Mr. Lanfrit then explained that the hours of operation during high holy days were approved in the Resolution, dating back from 1999 - 2017, which was the last approval. He then discussed the 10-15 minute holding times where people would only be talking to each other under the tent and that they sited it behind the temple as far away as possible from the residents on Valley Wood Drive so it would have as little intrusion as possible. He added that it was possible that one (1) additional light would be placed inside the tent for safety reasons, with no additional illumination other than the lights in the parking lot that he said they were entitled to have on during their approved events. A discussion ensued.

Mr. Dhvani Dave, 42 Valley Wood Drive, Somerset, NJ, came forward and was sworn in. Mr. Dave asked that his privacy be respected and that these events do not become the norm throughout the year.

Mr. Raj Sabho, 18 Valley Wood Drive, Somerset, NJ, came forward and was sworn in. Mr. Sabho stated that many members of the temple park in front of his house and walk through his yard to access the temple because GPS seems to take them there. He had similar complaints to the other residents of Valley Wood Drive regarding light and noise.

Mr. Kuczinsky was having microphone issues, so typed his question, "I hear them say what their rights are, but what are their responsibilities?" Mr. Healey answered that the Applicant had to abide by the laws of the Township and the State and whatever conditions the Board happens to impose. Mr. Lanfrit addressed Mr. Kuczinsky's concerns and agreed with Mr. Healey's assessment. He also stated that they were responsible to provide enough parking and Police presence to control the crowds. He did reiterate, though, that this year would be set up differently due to COVID-19 concerns, and that they would have a limited crowd. He added that they would be taking these concerns into consideration for future events. Mr. Lanfrit then discussed that all the lights on the property were back shielded and were downward facing with no light spillage onto other properties. Mr. Lanfrit then told the Board and listening public that should a problem arise, they should reach out to the temple administrators so that they are made aware and so they do not continue to occur.

Carol, resident of Valley Wood Drive, stated that she was shocked to hear that people have the right to drive and park along Valley Wood Drive since it is a public roadway. She added that the residents and their guests should not have to compete for parking space along the roadway with members of the temple. She also described more in depth of the lighting and noise issues, including beating drums early in the morning on a Sunday. She also stated that residents have moved out of Valley Wood Drive precisely because of the complaints coming from the residents that evening.

Chairman Thomas opened a discussion regarding conditions that have been imposed upon the Applicant in the past. He also reminded the public that the hearing that evening was for a

Temporary Permit for the two events and then it will expire. A discussion ensued among the Board, and Ms. Bethea stated that she believed the concerns were based upon trust issues between the residents and the temple. Mr. Reiss suggested that someone from the temple be stationed on Valley Wood Drive to direct members to the temple driveway instead of allowing them to park on that residential roadway.

Mr. Raj Sabho, 18 Valley Wood Drive, Somerset, NJ, stated that during festival times, in particular, he has had temple members wander onto his property.

Hearing no one wanting to come forward to speak, Chairman Thomas then closed the meeting to the public.

Mr. Lanfrit then explained again how the current year's events will be restricted as to how many people come to the property and when they come to the property. He also suggested that any of the three residents of Valley Wood Drive who spoke that evening wanted to meet with representative of the temple, they could reach out to him and he would set up a meeting. Chairman Thomas then indicated that the way they were handling the high holy days this year would provide a more controlled and organized function.

Mr. Shepherd made a motion to approve the Temporary Use Permit to allow them to erect a tent in their parking lot following the protocols that had been developed with the Township Technical Review Committee (TRC). Chairman Thomas seconded the motion, and the roll was called as follows:

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

AGAINST: Mr. Caldwell,

Mr. Lanfrit asked for a 5-minute recess so that he could properly set up and get his files organized for the next hearing. The Board agreed to a short recess.

- **DADA BHAGWAN VIGNAN INSTITUTE / ZBA-19-00040**

Mr. Peter U. Lanfrit, Esq., Attorney, appeared before the Board on behalf of the Applicant, Dada Bhagwan Vignan Institute. D(3) Conditional Use Variance, "C" Variance and Site Plan in which the Applicant was asking to construct a 21,083 sq. ft. place of worship with parking lot and 5' monument sign at 60 South Middlebush Road, Somerset; Block 37.02, Lot 46.03, in the "A" Zone.

Mr. Daniel Lagana, Board Attorney, indicated that they had two (2) counsel that evening for the neighboring properties. He stated that one of the counsels for one of the neighbors submitted correspondence today (September 17,2020). Mr. Lanfrit then stated that he was provided a copy of the correspondence.

Mr. Gregory Asadorian, Esq., Attorney, on behalf of the interested parties, John Warwick, and Mary Ellen Warwick, and who wrote the correspondence that was submitted that day, gave a summary of his letter for the Board's edification. Mr. Asadorian stated that he believed that

the Board lacked the jurisdiction to hear the Application at that time. He directed the Board's attention to the Variance Application that was filed on behalf of the Applicant, stating that the basis was that the Application solely sought a D-1 Variance and no other variances. He then went on to tell the Board that the notice that was published and sent to the property owners asked for a D-3 variance and not a D-1 variance. Similarly, Mr. Asadorian indicated that the Site Plan Application stated that the proposed temple was going to be 25,344 sq. ft., but that the notice identified the proposed structure as 21,083 sq. ft. He also testified that the notice stated that the existing dwelling on the property was going to remain; however, the Applicant, by mental assessment report, stated that the residential structure would be demolished. He added that, based upon the discrepancies in the Application and the notice, he indicated that the nature of the Application was unclear and confusing. He went on to state that, pursuant to the Municipal Land Use Law (MLUL), the Application must be set forth so that a member of the public can understand what would be heard by the Board and could then make a decision as to whether they choose to be heard or not. Mr. Asadorian then reiterated that they had conflicting information with respect to whether the Application was for a D-1 or D-3 Use Variance, conflicting information regarding the size of the proposed structure, and conflicting information as to whether the existing structure would remain or would be demolished. He again indicated that it was unclear to the public as to the nature of the Application was. He added that there was a bit of confusion as to whether the existing structure would become an accessory structure, assuming it was not demolished. If the Application was approved, the proposed house of worship would become the principal structure on the property and would then make the existing residential structure an accessory structure; and, pursuant to the Application, in part it stated that the residential structure would remain and would be used by the clergy for residential purposes. Mr. Asadorian then indicated that if that were true, a D-1 Variance Application would be needed for the existing accessory structure because the municipal ordinance stated (Section 112-16d) "that no accessory shall be used for residential purposes in any zone." He added that if the existing structure remained on the property and was used for residential purposes, it would require a D-1 Use Variance, which was neither noticed for nor submitted in either the Variance Application or the Site Plan. Finally, if the Board checklist required that an Letter of Interpretation (LOI) be submitted, we further argue that the Application was deficient because, although an LOI has been provided, that LOI had expired and there was no current or valid LOI at that time. Mr. Asadorian further stated that if an LOI should have been part of the submission package, and no waiver was requested, then the Application was deficient on those grounds as well.

Mr. Lanfrit stated that the Application that was submitted in this case did reference a Conditional Use Variance and that houses of worship were a permitted conditional use in the Agricultural (A) Zone. He went on to explain that if an Applicant or Application did not meet all the conditions of a Conditional Use Variance, then it would be considered a D-3 Variance. Furthermore, he indicated that a legal notice requested a D-3 Variance, and Mr. Healey when reviewing the Application as the Zoning Officer and Planner, issued a report that indicated that it was considered a D-3 Variance. Mr. Lanfrit then addressed what Mr. Asadorian spoke about what the statute stated regarding what a notice must provide, and he then referred the Board to the Pearlmark vs. Lacey Township Planning Board case, 295NJ super 234 and an active 1996 case. He went on to tell the Board that the court stressed that the information that would inform the public of the nature of the Application in a common sense manner such that an ordinary layperson could intelligently determine whether to object or to seek further information. Mr. Lanfrit then read into the record, the notice that he provided, which was rather lengthy and all-encompassing with plan details. Mr. Lanfrit then discussed what the

case law said and stated that the notice that they provided was more than clear and comprehensive so that anyone receiving that notice would know what they were proposing. He then stated that there was no requirement that the notice be 100% accurate, but what they noticed for was the square footage for the footprint of the building, but that there was a basement to the building which would contain the water/fire suppression system and indicated that the notice for the size of the building was in fact, accurate. Mr. Lanfrit then stated that the accessory structure, the existing residence, was included in the notice that they were seeking approval for that accessory structure as a residence for the clergy. He added that it was common to use a residential structure for houses of worship as a residence for clergy and was determined to be a permitted accessory structure and included under the D-3 Variance. He added that he did not believe that there was a separate D-1 Variance needed for the accessory structure. Finally, Mr. Lanfrit stated that for all the reasons listed above, he indicated that the notice has met the statutory test, the case law test and clearly indicated to anyone who might read the notice what was being proposed. He testified that he believed the Board did have jurisdiction in the matter before them.

Mr. Mark Healey, Township Planning Director/Sr. Zoning Officer, came forward and was sworn in. Mr. Healey then testified that he had read the notice that was provided and that he completed the Planning review letter, dated May 21, 2020. He then gave his opinion regarding the objections made by Mr. Gregory Asadorian on behalf of his clients, John Warwick and Mary Ellen Warwick, regarding the Board's jurisdiction to hear the matter that evening. Mr. Healey indicated that the notice was exceptionally long and with significant detail. He then reacted to Mr. Lagana's questioning regarding the existing residential structure on the property being used as a residence for clergy and whether that use would be prohibited and require a separate D-1 Variance. He stated that places of worship commonly have uses that were customary and incidental to the principal use of a house of worship. He added that in addition to worship areas, they typically have service areas, storage areas, associated office functions to go along with their mission and commonly, and without exception, clergy quarters on the properties. Mr. Healey then discussed the intent of the municipal ordinance (Section 112-16d) referenced by Mr. Asadorian, stating that it was to address residential areas and to make sure that there were no apartments above garages, detached garages being converted into apartments, pool houses being converted into apartments or putting residences in sheds, etc. He added that they had never applied the referenced ordinance to places of worship because the residential structures were always considered part of the principal use and included in the D-3 Variance, never a D-1. He then added that even if the section of the municipal ordinance could be applied, the full wording of that section said, "no accessory building erected in a required yard on any lot within any zone shall not be used for residential purposes, and the house was not within the required yard. He added that the setbacks are 200 ft. to the rear, 75 ft. to the side, and the existing house is well in excess of the required yards.

Mr. Lagana, Board Attorney, they brought up a discussion regarding the LOI, indicating that a letter was provided by NJDEP on December 11th and that it was expired and a waiver was not sought by the Applicant, making the Application incomplete. Mr. Healey indicated that the checklist requirement is that an Applicant had to have proof of submittal to obtain an LOI from NJDEP, if applicable, and not have an actual LOI. He added that they had proof that one was requested from NJDEP with a letter written by Mr. Mitchell Ardman, Engineer, dated October of 2019. Mr. Lanfrit stepped in and stated that they actually did have a valid LOI from NJDEP and will put it into evidence. Mr. Lagana reviewed all the testimony given by Mr. Lanfrit and

Mr. Healey, and reviewed the Pearlmark vs. Lacey Township case, noting that he believed Mr. Lanfrit's interpretation was accurate that the notice required a common sense understanding by the public who could intelligently determine whether to object or seek further information despite a typographical error indicating that the Applicant was seeking a D-1 Variance. He then deemed the notice sufficient and that the Application had been deemed complete and that the Board did have the jurisdiction to move forward on the case.

Ms. Martina Bailey, Esq., Attorney with the law firm of Miller, Porter and Muller, representing John and Grace Snyder. Ms. Bailey stated that she also had an objection to the jurisdictional issue which she felt was relevant to the Board's conclusion. She indicated that the Snyders own the 88-acre farm that wrapped around the entire northeast side of the Applicant's lot. She stated that she did not think the Board should be able to hear the Application that evening because the notice was lacking the required detail under the Municipal Land Use Law (MLUL) as well as under the Pearlmark case. Ms. Bailey told the Board that the notice was deficient because it failed to describe the facility that was being proposed and that only about 1/3 of the proposed footprint was dedicated to worship. She indicated that there was no detailed description as to why the other 2/3 of the building was dedicated to ancillary uses. She then told the Board that the notice was also deficient because there was no description of the use for the existing 2-1/2 story residential dwelling. Ms. Bailey then told the Board that if they chose to proceed that evening with the Application, she would have the Snyder's testify as to the negative impact this development would have on their property and the surrounding areas.

Mr. Lanfrit again indicated that he felt that the notice was clear as to what was being proposed, and that there was nothing in the case law or in the statute that says that the notice had to be perfect, but that it had to describe the project which he felt was very detailed. He again told the Board that he felt that they did have jurisdiction in the matter.

Mr. Lagana indicated that after hearing Ms. Bailey's objections regarding jurisdiction, he told the Board that he still believed that the Pearlmark case gave a very general reasonableness standard to what a common sense manner was required for the notice and that the notice given was sufficient. Mr. Lanfrit indicated that he did still want to proceed with the hearing that evening.

Mr. Lanfrit stated that he usually starts his testimony by describing the project to the Board and felt by reading the notice that he had already described what was being proposed. He left it up to the Board as to whether the hour was late and whether they should begin the hearing. A discussion ensued, and it was agreed between the Board and Applicant to carry the hearing - **CARRIED TO OCTOBER 01, 2020 – with no further notification.**

DL - 10/31/2020

WORK SESSION/NEW BUSINESS:

There was no work session or new business discussed.

MEETING ADJOURNED:

A motion was made to adjourn the meeting at 9:52 p.m. The motion was seconded, and all were in favor.

Respectfully submitted,

Kathleen Murphy, Recording Secretary
October 31, 2020