

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

**VIRTUAL MEETING  
May 20, 2021**

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:

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**PRESENT:** Cheryl Bethea, Bruce McCracken, Joel Reiss, Alan Rich, Gary Rosenthal, Richard Procanik, Kunal Lakhia, Vaseem Firdaus, and Robert Thomas

**ABSENT:** Robert Shepherd

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

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**MINUTES:**

- **Regular Meeting – April 15, 2021**

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

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

**ABSTAIN:** Mr. McCracken

**AGAINST:** None

**RESOLUTIONS:**

- **Dimitrakis General Contracting, Inc. / ZBA-20-00025**

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

**FOR:** Ms. Bethea, Mr. Reiss, Mr. Rich, Mr. Rosenthal, and Mr. Procanik

**ABSTAIN:** Mr. McCracken

**AGAINST:** None

- **Sharonda Copeland / ZBA-21-00004**

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

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

ABSTAIN: Mr. McCracken

AGAINST: None

**HEARINGS:**

- **SAI DATTA MANDIR, INC / ZBA-19-00037**

Preliminary & Final Major Site Plan w/C & D Variances in which the Applicant wanted to construct a 28,970 sq. ft. place of worship at 583 South Middlebush Road, Somerset; Block 36.01, Lot 6.03, in the Agricultural (A) Zone - **CARRIED TO JUNE 17, 2021 – no further notification required.**

Ms. Christine Woodbury, Board Secretary, read off the instructions for the public to participate in the upcoming hearing on June 17, 2021.

- **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 630 South Middlebush Road, Somerset; Block 37.02, Lot 46.03, in the Agricultural (A) Zone – **CARRIED FROM MAY 6, 2021, with no further notification required.**

Mr. Lanfrit then stated that he believed that the hearing that evening was the 7<sup>th</sup> since September of 2020. He indicated that during the past 7-8 months they had presented the testimony of their Architect, Site Engineer, the Applicant and Traffic Consultant. He also added that they would be presenting the testimony of their Planner that evening.

Mr. Kevin O’Brien, Planner, Shamrock Enterprises, Madison House, Suite B, Madison Avenue, Rahway, NJ, came forward and was sworn in. The Board accepted his qualifications. Mr. O’Brien then explained what a D-3 Variance was and what the standards were for a D-3 Variance. He stated that it held the highest burden of proof that had to be met because the variance would be to allow a use that was not allowed in a zoning district. He then explained that the Applicant had to go through the three (3)-prong burden of proof, which included special reasons, which were based on the goals in the Municipal Land Use Law (MLUL), the positive criteria, which was rooted in the Master Plan and the zoning ordinance, and then the negative criteria, which was the effect that the application had upon a neighborhood and the community at large. Mr. O’Brien then told the Board that they were

presenting a D-3 Conditional Use Variance to the Board and did not have to meet the same burden of proof just described because the governing body had already found that the use was allowed in the zone. He then added that if all the conditions in the ordinance were met, the application would be approved by right. In the night's hearing, the Applicant did not meet a few of the conditions and were before the Board to obtain a D-3 Conditional Use Variance. Mr. O'Brien then described the burden of proof in a conditional use variance, utilizing the Cox Book, which was New Jersey's Zoning and Land Use Administration, which was the book that the attorney or planner all use to look at Planning case law and the guidance that they rely on to present a case to a Board. He then read from page 746 of the 2020 edition, indicating what it had to say about a conditional use variance. Some of the points in the excerpt included that the Conditional Use Variance Applicant must show that the site would be able to accommodate the problems associated with the use even if the proposal did not comply with the conditions the ordinance established to address those problems. He then explained that they had to layout what the problems on the site were and state how they would be able to accommodate them. Mr. O'Brien then indicated that if they were successful doing so, then that would be part of their burden of proof that the Board would discuss.

Mr. Lanfrit then indicated that in addition to what Mr. O'Brien testified to, he noted that the Application involved a house of worship, so he asked Mr. O'Brien to discuss some of the issues the Board had to deal with when reviewing applications for houses of worship. Mr. O'Brien then stated that he felt there were two (2) very important aspects of a house of worship that the Board would be considering in the course of their deliberations. He noted that the first thing was that houses of worship, throughout the State of New Jersey, were considered inherently beneficial uses and, therefore, do not have to prove the positive criteria because it was assumed, through state law, that they were a benefit to the entire community and the state as a whole. Mr. O'Brien then testified that the D-3 conditional use burden and the inherently beneficial use burden showed that they already passed the positive criteria and that they were left with only the negative criteria to deal with. Mr. O'Brien then stated that as an inherently beneficial use, the negative criteria was dealt with by the Board members under a rule offered by the court in New Jersey called a "seek a balancing" test that was a four (4)-prong test to ascertain whether or not there was a negative impact and whether or not that impact could be addressed by the Applicant.

Mr. O'Brien then testified that he was familiar with the zoning ordinance of the Township of Franklin as well as the Master Plan of the Township of Franklin. He added that he had visited the property and had attended virtually all of the hearings that had taken place thus far and had listened to all of the testimony of all of the previous witnesses.

Mr. Lanfrit then reviewed the Conditional Use deviations. He noted that they did not meet the D-3 Conditional Use standards because the parking that was required under the ordinance needed to be determined by measuring the facility as if each and every space within the building was occupied and would necessitate 457 parking spaces. He reiterated that they were proposing 157 parking spaces, as testified to by Mr. Arden, the Site Engineer for the project. Mr. Lanfrit went on to state that, according to the Conditional Use standards, the majority of the parking should be located to the rear of the main structure and no more than 10% should be located at the front entrance. He then explained that with the temple being relocated to the rear of the property, the parking was now in front of the house of worship. Mr. Lanfrit added that when they originally applied, there was a Building Set-Back Variance (Side Yard), where 75 ft. was required, and 67.9 ft. was proposed. He then indicated that

modifications to the plan were put into evidence by Mr. Ardman, and that variance had been eliminated. He then explained that they still required a Rear Yard Setback Variance; however, with discussions with the neighbors and revisions to the plan, they were able to provide a 130 ft. setback to the rear of the property instead of the originally proposed 50 ft., where 200 ft. was required. Mr. Lanfrit next went on to address the Buffer requirement in the Conditional Use Standards, stating that “the ordinance required a 15 ft. buffer consisting of a double, staggered row of evergreen trees planted at a maximum of 10 ft. on center with a minimum planting height of six (6) to eight (8) feet, or approved equivalent; a mix of evergreen and deciduous shrubs, and a six (6) ft. high, solid, board-on-board fence or 25-ft. wide heavily landscaped buffer with triple, staggered row of evergreen trees planted at a maximum of 10 ft. on center with a minimum planting height of six (6) to eight (8) feet, or approved equivalent; and a mix of evergreen and deciduous shrubs.” He noted that in their case, the buffer requirements were not fully satisfied in certain areas (e.g., along the rear property line).

Mr. O'Brien then discussed the testimony that had already been presented and the Conditional Use deviations just reviewed by Mr. Lanfrit. He indicated that there were a number of unique aspects to the Application that Mr. Lanfrit just discussed, including the changes that had been made and the variances that were required. Mr. O'Brien added that when the variance first came before the Board in the previous year, the Application was variance free; however, that changed due to the changes made to the Site Plan in response to comments from the Township staff as well as interactions with the neighbors. He then listed the changes that had been made, and they include: adding a 10 ft. high berm with eight (8) ft. pine trees in two (2) rows at the rear to provide a screen for the proposed building to the farm and added a fence along the rear property line on two (2) sides adjoining the proposed building, per Mr. Snyder's request, to keep people from wandering onto his farm field. Additionally, they added a planted, evergreen hedge at parking lot towards front neighbor on South Middlebush Rd. to further block the view of the cars and any headlight impact and removed the current driveway to the property, along with the pipe at the street, and relocated the driveway 300 ft. from the Warwick's property and posted for No Parking. He went on to state that they agreed to provide additional plantings agreed to where existing driveway would be removed, with proposed street trees to be set back to ensure adequate sight distance along South Middlebush Rd. at the proposed new driveway. He then added that a sight distance line was also shown on the plans from the Snyder's driveway to confirm that the proposed street trees did not obstruct their view (shown on the revised overall plan, Sheet 1, prepared by Mr. Ardman and presented during his testimony at the last hearing he attended). He went on to add that the proposed new driveway would be used only as the construction entrance, the proposed parking lot lights would be put on a timer on separate circuits to be lit only when necessary, access to the existing home on the property would be accessed only through the proposed parking area closest to the house of worship. Mr. O'Brien then reiterated Mr. Lanfrit's testimony that the Application would now meet the 75 ft. Side Yard Setback requirement and the house of worship would now be shifted to be 130 ft. from the rear property line instead of the 50 ft. originally proposed. He went on to state that they added a note to the plan that the trees shown would remain in the areas specified at the house of worship and along the Snyder property line – a tree removal plan in the plan set would be updated accordingly and that they would abide by any standards regarding the tree-clearing limitations. Mr. O'Brien stated that the changes he just enumerated were made based on comments from the Township staff and neighbors and the reason why the parking was now located in front of the house of worship. He noted that the Township staff expressed concern that the Scenic Corridor along South Middlebush Rd. would be impacted by the sight

of a building from the road. Mr. O'Brien then quoted from Mr. Healey, Planning Director, memorandum, dated May 21, 2020, regarding the Scenic Corridor Ordinance, that stated "As indicated above, the site is located along a Township-designated scenic corridor – South Middlebush Road. Consistent with the design standards of the Scenic Corridor Ordinance (e.g., 112-201.G(1)(a) and (b)), the overall site layout places the proposed building and parking areas within the forested area of the site, thereby preserving the open field vista/aesthetic along South Middlebush Road. In particular, in my opinion, the overall site layout is consistent with Section 112-201.G(1)(b), which states in part:

"Building location – The establishment of building envelopes and building sites in open fields shall be avoided. Existing tree lines, woodlands and hedgerows that frame open fields shall be preserved and used to effectively screen new buildings from view, or used to blend new development into the scenic landscape. . ."

Mr. O'Brien indicated that the original plan placed the house of worship in the middle of the open farm field and the parking was placed behind the building, which would have made the parking compliant. He explained that they had many competing interests, including the house of worship ordinance with certain conditions as well as a Scenic Corridor ordinance. He noted that it was recommended that the house of worship be placed where it was now located, which caused the deviations that have occurred as a result that included the parking in the front yard and rear yard setback. Mr. O'Brien added that there would be no variance required for rear yard setback if the house of worship was allowed to be placed in the open farm field as originally proposed.

Mr. O'Brien then drew the Board's attention to the buffer requirement. In reviewing Mr. Ardman's (Site Engineer) testimony, he spoke of mature trees being located near the adjoining property lines and environmental constraints on the property in the rear, right corner. He spoke about complying with the ordinance and providing a double-row of evergreens and a board-on-board fence along the neighboring property lines as causing them to have to remove a significant number of the mature trees already in place. Mr. O'Brien agreed with Mr. Ardman's assessment that it would be more prudent, and in the spirit and intent of the ordinance, to leave the mature trees in place and supplement that area with additional plantings with additional plantings put in place in front of the parking area. He then referred to Mr. Ardman's exhibit, Sheet 1 dated April 2, 2020, which was a superimposition of the Site Plan over the aerial depiction, where the Site Engineer had filled in some gaps within the existing, mature trees, with additional landscaping both behind the residences facing South Middlebush Rd. as well as supplementing the landscaping along the driveway leading to the rear of the property to the proposed house of worship. Regarding the wetlands located in the rear of the property, Mr. O'Brien drew the Board's attention to the testimony given by Mr. Ardman that the wetlands in the southeast corner of the property could not be touched and, therefore, they could not comply with the buffer requirements. Mr. O'Brien, again utilizing Mr. Ardman's aerial exhibit, spoke about the rest of the property line that adjoins with the Snyder's property, that includes their driveway and along the Scenic Corridor, that was not near the proposed area of disturbance on the subject property. He pointed out to the Board the area on Mr. Ardman's exhibit that showed an open field in that area and felt that adding any trees or hedgerows there would take away from the Scenic Corridor aesthetic. What they were proposing, according to Mr. O'Brien, was screening at the front of the property along South Middlebush Road to ensure that the house of worship and the associated activities would be unseen from South Middlebush Rd. He noted that the farm, which was operating with several

Use Variances, including the cell tower, commercial farm, and landscape and snowplow business had nothing in that area to screen and with something that he felt would look out of place. He felt that the existing landscaping would be appropriate in that area, along with the addition of trees, landscaping and fencing directly around the house of worship activities screening it from the view of the farm, would be the most appropriate for the Scenic Corridor there.

Mr. O'Brien then discussed the requirement for 457 parking spaces on-site. He stated that he heard the testimony of the architect about the use of the building as well as the testimony of the representative of the temple who indicated that most of the activities were on the weekends and would generate anywhere between 75 and upwards of about 140 people on some weekends, with twice a year events that might generate 250 people. Mr. O'Brien then discussed the premise of the parking ordinance for religious uses that included a 15 sq. ft. allowance of space for each worshipper. Mr. O'Brien indicated that the temple was large (21,000 sq. ft.), with a lot of common areas, and was unique in several different ways that included the use of tables/chairs and standing at times for cultural and other events such as lectures as well as seated congregants on the floor for prayer. Because of this type of use of the space, he felt it was difficult to quantify in an ordinance. He added that the applicant believed that they were providing more than sufficient parking space and would be self-policing. Mr. O'Brien described the use as more of a learning center/contemplation center than a place with fixed worship times that might be found in a synagogue or Christian church. Based on the testimony given, it was Mr. O'Brien's opinion that the parking was sufficient, as proposed, for the congregants of the temple and for the various uses, including the twice a year events where up to 250 people might attend. He indicated that an equation that was used by Planners and Traffic Engineers was roughly three (3) people to a car going to a house of worship, which in their case was more than adequate parking provided on-site.

Mr. Lanfrit then refreshed the Board's memory regarding the sign that they were proposing, with a sign area of 25 sq. ft., which was permitted; however, there were some posts and the base of the sign that took up additional space. He added that the way the Township calculated its sign requirements included every element of the sign, which included 67 sq. ft. in the case of the proposed sign. Mr. O'Brien testified that he thought it was a de minimus exception and very comparable to other houses of worship in the Township and necessary for people to be able to find the location along South Middlebush Rd., which others have commented was a busy roadway. As shown in all the other testimony given, Mr. O'Brien stated that they were doing their absolute best to hide the house of worship from any passerby and, therefore, would need a prominent sign at an appropriate location was necessary to bring congregants into the location.

Mr. O'Brien then opined as to whether the Township Master Plan would give the Board any guidance concerning the proposed Application. He added that they typically utilize the Township's Master Plan was generally part of the burden of proof for the positive criteria; however, as they had previously indicated, the positive criteria had been met. That being said, Mr. O'Brien stated that he believed that there were a number of passages from the Master Plan that did support the Application, including that of the community facilities element. He read from the 2006 Township Master Plan related to providing adequate community services and facilities to current and future residents of the Township.

Mr. O'Brien then drew the Board's attention to how the Municipal Land Use Law (MLUL) would provide the Board with guidance regarding the Application that was before them. He supported the request for the D(1) Use Variance that asked whether the Applicant met the special reasons aspect of the burden of proof. He added that as a house of worship and as a conditional use, they did not have to meet that burden of proof; however, there were passages that do support it related to not only the uniqueness of the Application but also something that the Board could look favorably upon. He then discussed the various passages in the (MLUL) that support the subject proposal, specifically in Chapter 40:55D-2 of the MLUL. He indicated that he believed that the Application supported those passages by providing a service that promoted the health, safety, morals, and general welfare, by providing an inherently beneficial house of worship, a new fully code-compliant building that would include every safety feature to ensure the safety of congregants and neighbors and a desirable visual environment was maintained and protected by the Application by placing all the development over 850 ft. away from the Scenic Corridor.

Mr. O'Brien then gave the Board his opinion related to any negative impacts of the development by testifying related to the "seek a balancing" test which had been offered by the courts as a way to gauge the impact that an inherently beneficial use would have upon the area and the Township as a whole. He then explained that the test as a four (4)-step process. He indicated that the Board had to balance not only the various competing ordinances that affect each application, but they also had to balance the needs of stakeholders, the needs of an applicant, the Master Plan, the MLUL to arrive at a decision. In the case of the subject Application, Mr. O'Brien indicated that the very first step of the four(4)-step process was to identify the public interest at stake. In the case before the Board that evening, they would identify the house of worship as the public interest because it was an inherently beneficial use. He then stated that the second step was to identify the detrimental effects that would ensue from the grant of the variance. Mr. O'Brien then reminded the Board that the Scenic Corridor would be preserved and enhanced by removing the possibility of development at the front of the property adjacent to the roadway, existing landscape would be preserved, and additional buffering was being proposed for the adjoining residences. For those reasons, Mr. O'Brien testified that he did not see any detrimental effects resulting from the Application. He then discussed the third step for the Board to consider, which was whether or not one could determine if they could reduce any detrimental effect by imposing reasonable conditions. Since he indicated that he could not identify any detrimental effects resulting from the revised Site Plan before the Board, Mr. O'Brien stated that he did not see any reason to impose further conditions upon the Application beyond what had already been offered and discussed at the many hearings that had been held during the course of the Application. Mr. O'Brien then described the fourth step in the process as having the Board weigh the positive and negative criteria by balancing the public interest against the public detriment. He stated his opinion that the public interest, providing a house of worship, outweighed the unidentified detriments; therefore, he testified that he believed that the Application could pass the "seek a balancing" test which would give the Board the ability to pass the conditional use variance for an inherently beneficial use.

After reviewing all of the evidence and hearing all of the testimony, Mr. O'Brien indicated that the site could accommodate all of the problems associated with the use by minimizing the non-conformities, protecting the scenic roadway, and providing substantial buffering to neighbors. Because the Application was also for an inherently beneficial use, he noted that the special reasons criteria had already been met, they met the requirements of the "seek a

balancing” test, thereby showing that there were no detrimental effects to nearby properties because the facility was particularly suited for the proposed use. He then testified that the Application met the second prong of the negative criteria by meeting the goals of the MLUL and Township Master Plan. Related to the bulk variances related to the proposed sign, he testified that he believed that the sign variance could be granted under the C-2 criteria in that the benefits of granting the variance outweigh any detriments. Mr. O’Brien then stated that the Application could be granted without substantial detriments to the public good and without substantial impairment to the zone plan and zoning ordinance.

Mr. Rich inquired as to whether the temple and the Application were both inherently beneficial or were they two (2) separate things. Mr. O’Brien indicated that the Application for the temple was an inherently beneficial application. Mr. Rich then asked whether they were bound to approve the Application because it was an inherently beneficial application.

Mr. Daniel Lagana, Board Attorney, interjected by saying that Mr. O’Brien had provided testimony that had really touched on different areas of the MLUL, with the first one being that it was a Conditional Use Variance (D-3 Variance) and that houses of worship were permitted in the Agricultural (A) Zone. Mr. Lagana then stated that as long as they met certain enumerated conditions, their application would be deemed inherently beneficial. He added that since they outlined four (4) conditions that the facility did not meet and that was how the Board should approach the review of the Application as a D-3 Variance. He then spoke about how and if the Applicant could mitigate the non-conformities and did the non-conformity rise to the level of being so substantially negative to the public good or intent of the Master Plan that it would tip the scales in favor of the negative so that the Board could deny the Application. A discussion ensued.

Chairman Thomas suggested conditioning the parking to state that every car needed to be parking in a striped parking space, with no accommodation for overflow parking on the site such as on grassy areas or undeveloped land and, particularly, never any parking along the driveway on the way out to South Middlebush Rd. Mr. Lanfrit responded by stating that the Traffic Engineer testified that the parking that was being provided would be adequate to meet the needs of the congregation. He also added that the testimony of the Applicant included the fact that if they were to have some kind of large event, it would not be held on the site. Mr. Lanfrit stated that they had already agreed, related to the two (2) events per year that they have larger attendance numbers, that they would meet with the Township to determine if they needed police officers to help monitor and control traffic. A discussion ensued.

Mr. Lagana interjected at this point, noting that the Chairman had brought up something in his discussion that could be included as a reasonable condition imposed by the Board. He brought up something that was discussed at a previous hearing regarding an online registration for the two (2) larger events for high holy days that had been used by other entities within the Township during COVID that could space out the parishioners to allow for better parking flow throughout the day. Mr. Lanfrit discussed that they had previous meetings for other applicants with Police, Fire, Health Dept. to discuss the events where there were conditions imposed by those departments for the specific events. He indicated that an online registration could be set up if it was determined to be beneficial by those departments in the review of each event but did not think a condition should be imposed across the board upon the Applicant.



Mr. Procanik wanted to know if a house of worship required a State or Federal designation to be considered a house of worship. Mr. Lanfrit indicated that the Applicant was a 501 c3 entity registered with the federal government and were considered a religious institution. He indicated that he could provide the documentation to the Zoning Board if the Board felt that it would be appropriate.

Mr. Procanik then mentioned that a pedestrian had been struck by a vehicle on South Middlebush Rd. recently and wanted to express his concern about pedestrians walking along the roadway where there were no sidewalks and up the driveway as well. He suggested that some kind of striping could be placed on the driveway that denoted "No Parking". Mr. Lanfrit stated that he would have no problem in invoking Title 39, which would allow police to issue summonses on the private property if anyone on the property violated a motor vehicle statute. He then spoke about possibly putting some signage on the driveway, but that they were talking about a Scenic Corridor and did not want to clutter the driveway near the roadway with signs. Mr. Lanfrit indicated that they could discuss the issue with Police and Engineering possibly further into the site along the driveway. A discussion ensued.

Mr. Lakhia asked for clarification regarding whether the other proposed temple on the other side of South Middlebush Rd. was considered in the traffic counts and Traffic Study. Mr. Lanfrit indicated that Ms. Dolan was the Traffic Engineer for both projects and that her testimony at the last hearing was for her review of both facilities' impact upon the roadway and surrounding areas, with her conclusion that South Middlebush Rd. could handle the traffic from both. He added that it was ultimately Somerset County's decision as the roadway was under their jurisdiction because it was a county road.

Mr. Lagana, Board Attorney, had a few questions for Mr. O'Brien, asking him if the D-3 Conditional Use Variance was main focus of the Application that evening. Mr. O'Brien indicated that the D-3 Condition Use Variance was the prime focus, however, he added that he felt it was important for the Board to consider the inherently beneficial aspect of the project because that was what lead to the "seek a balancing" test in terms of the negative impact which was a particularly important part of the burden of proof that the Board was reviewing that evening. Mr. Lagana stated that one of the conditions that was both in the D-3 and flows to the negative criteria was the parking, with 457 parking spaces required where they were only providing 157 parking spaces (112-37.D(1)) which calculated 6,864 sq. ft. at 15 sq. ft. per parishioner to come to the total required parking spaces for the site at 457. They then discussed the reasons given for why the entire building was not going to be utilized for worship space, adding that there was office space and storage areas within the building and utilizing that as a reason why they did not need all of the required parking spaces. Mr. O'Brien stated that what Mr. Lagana brought up was true, however, mostly it was because of what the Applicant thinks the temple will need as far as parking even though they had the space to provide the required parking spaces. Mr. O'Brien added that the subject temple worships a blend of deities and that there was no other temple in the United States that worships in the same manner as the subject temple. He continued by saying that they were unique and was one of the reasons that there were various types of seating available and was a house of contemplation and not one of a religious service. Mr. Lagana then read into the record Section 112-37.D(1), "the parking requirement where no permanent seating is provided is "one parking space for every three (3) persons at the largest anticipated gathering or a minimum of one parking space for every 15 sq. ft. of worship area." Mr. Lagana then asked Mr. O'Brien if he thought that the ordinance contemplated different types of houses of

worship. Mr. O'Brien stated that no Township would be able to contemplate and address every single possibility, otherwise there would be no reason for a Zoning Board of Adjustment. Mr. Lagana then asked if using one portion of the ordinance, i.e., using 15 sq. ft. of worship area to determine the number of parking spaces provided, was the most relevant part of the ordinance the Board could look to when determining whether or not that one condition under the D-3 standard had been met. Mr. O'Brien stated that he felt that that condition came the closest to the subject Application.

Chairman Thomas asked for clarification as to whether the existing driveway on the site would be abandoned as part of the Application. Mr. Lanfrit indicated, as testified to by Mr. Ardman, that not only will that driveway be abandoned, but there will also be trees planted in that area. He also stated that it would be abandoned before construction started, so that they would be using the new driveway only during construction.

Mr. Healey asked Mr. O'Brien if the inherently beneficial status of a house of worship was spelled out in statutory law (MLUL) and/or was it from case law. Mr. O'Brien answered that the house of worship aspect was spelled out in the statute in the MLUL (40:55D-4) and there was case law to substantiate it as well.

Mr. Healey then stated that his May 21, 2020 memo identified a variance for the mounting height of the lights (15 ft. maximum) where the plans show 17.5 ft. Mr. Lanfrit indicated that he believed Mr. Ardman's testimony was that they would reduce the mounting height of the lights and was no longer a variance.

Mr. Healey then stated that the new driveway was now proposed to go through the field and wanted to know if there was testimony given by Mr. Ardman stating that there would be lights along that driveway, and if so, how many and how tall. Mr. Lanfrit indicated that there were no lights proposed along the new driveway. He added that, normally, there would be a light at the intersection of the driveway and South Middlebush Rd. so that people could see the driveway and vehicles could safely exit. He added that they may want to defer to Engineering as to whether they feel that some lighting along that road was appropriate or not, but that they had not proposed any. Mr. Healey gave his opinion that for the Scenic Corridor ordinance, that lighting should be the absolute minimum along that driveway. Mr. Lanfrit reminded Mr. Healey that their testimony was that they would be on the site till 8:00 p.m. on Saturdays and only till 2:00 p.m. on Sundays. He added that they would not need the lighting in the summer months due to the longer daylight hours. Mr. O'Brien suggested that they may consider the liberal utilization of cats' eye road reflectors and reflective striping on the roadway would be adequate to guide motorists up and down the driveway.

Mr. Healey then asked another question related to parking. He noted that calculations given on the Site Plan was that there was only a need for 153 parking spaces on the site corresponding to the largest gathering of 458 people anticipated. He then asked where that figure might have come from. Mr. Lanfrit indicated that the numbers came from calculations done if the house of worship was a seated facility (458 people divided by 3 people per car = 153 parking spaces). Mr. Healey stated that utilizing that calculation and knowing that there would be no permanent seats inside the structure and with only larger events (250 people) occurring two (2) times per year, he asked Mr. O'Brien whether they would need the provided 157 parking spaces. Mr. O'Brien indicated that that was where the balancing came in and that they might quite possibly not require all of those parking spaces. He then brought up the

topic of future growth, and Mr. O'Brien added that the temple stated that they do not anticipate future growth. He stated that, as a Planner, he could have a Planning opinion, but he indicated that he would rather defer to the operational use of the temple and what they think they need. Mr. O'Brien stated that his opinion as a Planner, he would recommend that they have some additional parking spots available above what they think they need at this time. When Mr. Healey did the calculations utilizing the formula of one (1) parking space for every three (3) people, that number came out to 83 parking spaces, and a discussion ensued regarding land-banking the rest of the proposed parking spaces. Mr. Lanfrit thought the best approach would be to approve all of the parking spaces that were set forth in the Site Plan, but to land-bank the aisle closest to the two (2) residential dwellings so that those spaces would not be built unless they were necessary and provided additional buffering to the neighbors.

Ms. Martina Bailey, Esq., Attorney for the Snyder's came forward. Ms. Bailey stated that she wanted to talk about the way that the positive criteria was treated with respect to inherently beneficial uses. She had a question related to Mr. O'Brien's testimony where he said that they were presenting a D-3 Conditional Use Variance to the Board and did not have to meet the same burden of proof because the governing body had already found that the use was allowed in the zone and inherently beneficial. She wanted to hear Mr. O'Brien's answer to how the positive criteria was presumptively met by an inherently beneficial use. She then read through section 32-5, page 709, of the Cox Book that Mr. O'Brien referred to earlier, which talked about the inherently beneficial uses. The section read, "it should be noted that the inherently beneficial use doctrine generally applies only in those cases that seek to permit a use or a principal structure in a district that was restrictive against such use. The issues and considerations applicable in the "D" cases enumerated as 2,3,4, 5 and 6 are mostly quite different from those applying to the traditional Use Variance cases. She went on to state that they were concerned with the D-3 case in the matter before the Board. Mr. O'Brien then discussed his 10 years working with Bill Cox who wrote the Cox Book and that he did admit that there were some areas that might be considered a bit "gray" and might be considered a bit of a contradiction. He added that the authorship had been passed on to some extremely qualified individuals who had revamped that book after the death of Mr. Cox in 2010. Mr. O'Brien then indicated that as a practicing Planner, he and other professionals like himself also rely on other aspects that had been noted in other areas of the Cox Book which, he believed, specifically addressed both the inherently beneficial uses as well as the Conditional Use Variances, which he stated was the testimony he relied upon that evening. A discussion ensued between Ms. Bailey and Mr. O'Brien.

Mr. Mark Healey, Director of Planning, Township of Franklin, came forward and was sworn in. The Board accepted his qualifications. Ms. Bailey then asked Mr. Healey if a D-3 Conditional Use Variance used a standard that was typically applied when it came to just the positive criteria, which under Coventry required the showing of special reasons and site suitability. She then asked if an inherently beneficial use was always given the benefit of presumption that it met that positive criteria. Mr. Healey indicated that it was his understanding that if they were requesting a D-1 Variance, the Applicant would have to prove that the site was particularly suitable for the use despite the fact that it was not a permitted use. In the case before the Board that evening, Mr. Healey stated that the use was permitted in the zone, but that they did not meet some of the Conditional Use standards. He went on to explain that instead of proving that the site was particularly suitable for the use, they had to prove that the site remains suitable for the use despite the deviations. Additionally, Mr. Healey stated that

he believed that Mr. O'Brien was bringing up the fact that it was an inherently beneficial use was maybe an attempt to put a "cherry on the top", if you will, of his argument. Mr. Healey admitted that he did not know what the case law was with respect to inherently beneficial uses for Conditional Use Variances. He then indicated that in a D-1 Variance, if the positive criteria were to be presumptively satisfied for an inherently beneficial use and a D-1 Variance was held to a higher standard than a D-3 Variance, then it would seem logical to him that if it were an inherently beneficial use, then he believed that the positive criteria was presumptively satisfied for a D-3 Conditional Use Variance. Mr. Daniel Lagana, Board Attorney, then agreed and stated that Mr. Healey's analysis was correct because that was what the Coventry Square court case spoke about. As it pertained to the positive criteria and D-3 Variance, Coventry Square vs. Westwood Board of Adjustment (138NJ285-1994) stated that "they must focus on whether the site remains appropriate for the conditional use despite the failure to conform to all the ordinance conditions. This does not require a finding that the site was particularly suited for the use as in the case for a D-1 Use Variance. This is so because the use is permitted, albeit conditionally, and it is the conditions attached to the use for which the deviations are sought." Mr. Lagana spelled out the Board's focus as what are the conditions that are not met in the ordinance and the deviations being requested are the focus – does the site remain appropriate despite those deviations. A discussion ensued with Ms. Bailey, but she did mention that the Coventry case did not involve an inherently beneficial use. She indicated that it was her opinion that the positive criteria was not presumptively satisfied for an inherently beneficial use in a D-3 Variance. Mr. O'Brien then quoted his previous testimony and Bill Cox when he said that the Conditional Use Variance Applicant must show that the site would be able to accommodate the problems associated with the use even if the proposal did not comply with the conditions the ordinance established to address those problems. He then brought up his earlier testimony related to the "seek a balancing" test.

Ms. Bailey then drew the Board's attention to the parking issue, opening a discussion with Mr. O'Brien regarding what she described as a substantial deficit in parking spaces on the site. Mr. O'Brien disagreed with Ms. Bailey, stating that he did not believe it was a substantial deficit under the unique circumstances of the Application and that each application stood on its own in which the Board was to consider whether or not relief could be granted. Ms. Bailey opened a discussion regarding the impervious coverage allowance on the property, noting a 40% allowance in a residential zone which the project was not located in, and stating that providing that much parking would put their impervious coverage over the limit. Mr. Lanfrit then objected to Ms. Bailey's line of questioning/discussion, stating that Mr. Healey had already referred to the Agricultural (A) Zone as being a residential zone, where the 40% impervious coverage applied. He then explained that Ms. Bailey was suggesting that we needed to provide 456 parking spaces, and currently their impervious coverage was 18.6%. Mr. Lanfrit went on to state that for the past seven (7) months, Ms. Bailey was stating that the development was too intensely developed, and now she was suggesting that they put in another 200 parking spaces on the property, which he indicated that they could do. Ms. Bailey countered with telling Mr. Lanfrit that the Application presented a basic problem in that the Applicant was forcing the Board to choose between one variance and possibly a second variance. A discussion ensued regarding what the ordinance allowed in the Agricultural (A) Zone.

Ms. Bailey then opened a discussion regarding the Scenic Corridor criteria. She asked Mr. O'Brien if the Application was consistent with the criteria of the Scenic Corridor. Mr. O'Brien replied that not only was it consistent with the Scenic Corridor criteria, but the Applicant's

attempts to maintain the Scenic Corridor and enhance the Scenic Corridor had led to some of the variances that the Board was considering. He again stated that they could come in with a conforming application in terms of parking, lot cover, and remove the variances that were being requested if they wanted to and the Board would have very little choice about it. Instead, Mr. O'Brien indicated that they were trying to balance the needs of the neighbors and the Scenic Corridor against the betterment of the Application by putting in self-imposed variances by trying to make it a better application for the Township and the neighbors. He discussed the proposed landscaping along the new driveway and the removal of the current driveway all enhances the Scenic Corridor. Ms. Bailey then asked if there was a conflict between the Scenic Corridor criteria and the zoning ordinance standards, which would govern. Mr. O'Brien indicated that it was all part of the balance between the two, and that the Board would decide what was best. Ms. Bailey then brought up the fact that part of the problem with respect to the objecting parties and others was that the development was designed partly around the existing structure on the property, and if that were not an issue there would be more flexibility and would not need the variances. Mr. Healey then tried to clarify for Ms. Bailey by explaining what Mr. O'Brien was talking about when he referred to being able to move the building to the open field and propose a complying application.

Ms. Jennifer Knarich, Esq., Attorney, representing the Warwick's came forward. Ms. Knarich asked Mr. O'Brien if there was a definition for a similar place for worship other than a church. Mr. Healey read off the definition from the ordinance related to places of worship. Ms. Knarich then asked if the residence that already existed on the lot was considered a principal use or an accessory use. Mr. Lanfrit stated that the ordinance allowed residences as accessory uses to a principal use and that was the way in which the Applicant would be utilizing the residential structure on the property for their priest. Ms. Knarich then referred to the section on accessory buildings (Section 112-16) in the ordinance and asked Mr. O'Brien if he believed their use of the existing residential structure on the property complied with the code, and he answered in the affirmative. Ms. Knarich then asked which Township professional's report would include the suggestion that the proposed house of worship structure should be moved from the open field, the original location proposed. Mr. Lanfrit addressed her question, noting that they met early on with Township staff, including Planning, Zoning, and Engineering, which was often done before a formal application presentation. As a result of those meetings, Mr. Lanfrit indicated that the Township staff suggested that they move the building out of that open field to preserve the Scenic Corridor and there was no formal application with the building located in the front of the property. Mr. O'Brien then interjected that in Mr. Healey's report, he did write, and he quoted his language that stated, "In my opinion, the overall site layout was consistent with the Scenic Corridor ordinance".

Chairman Thomas then opened the meeting to the public.

Mr. Jim Johnston, 34 Knollers Place, came forward and asked whether they could move the building back to the open field and not have to disturb forested lands and disturb wildlife. Mr. O'Brien reiterated his earlier testimony indicating that they could place the building in the open field, however, they were attempting to preserve the Scenic Corridor as suggested by the Township staff. Mr. O'Brien then explained to Mr. Johnston that not only were they preserving the Scenic Corridor, but they were enhancing it by adding landscaping and removing an existing driveway. Mr. Lanfrit commented that they were not taking out all of the existing trees on the property and will be taking out only those that were necessary to build the house of

worship and the parking lot. He noted that there were many existing trees that were to remain on the property.

Mr. Greg Foster, 39 Lebed Drive, Somerset, NJ, came forward. Mr. Foster asked why they could not comply with the 200 ft. rear yard setback and have to ask for variances when he thought they could move the building forward. Mr. Lanfrit indicated that Mr. Ardman, Site Engineer, testified a few meetings ago that doing so would impact the existing residence on the property. Mr. Lanfrit stated that Mr. O'Brien gave the justification for the encroachment and the Board would have to decide if the justification for the encroachment was justified. A discussion ensued. Mr. Foster then had concern that the height of the building would be seen from South Middlebush Rd. and affect the Scenic Corridor. Mr. Lanfrit explained that the building met the height requirements of the ordinance and were under the maximum limits. A discussion ensued. Mr. O'Brien had a discussion regarding the height of the building and the addition of landscaping at the front of the property to screen and enhance the Scenic Corridor.

Ms. Leah Convery, 43 Tomlin Court, Franklin Park, NJ, came forward. Ms. Convery asked whether Mr. O'Brien's statement regarding the house of worship being inherently beneficial was related to the State, the County, or the Township. Mr. O'Brien explained that the State of New Jersey, in the Municipal Land Use Law (MLUL) – an act that governs all 565 municipalities, finds that a house of worship was an inherently beneficial use.

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

Mr. Lanfrit indicated that he had no more witnesses to present that evening but understood that Ms. Bailey intends to call witnesses and would reserve the right to recall witnesses that had previously testified after her witnesses testify or bring in additional witnesses.

Chairman Thomas then reopened to the public since there was someone that had previously had their hand raised and that Mr. Healey indicated he may have inadvertently skipped over her.

Ms. Barbara Lawrence, 383 South Middlebush Rd., Somerset, NJ, came forward. Ms. Lawrence mentioned that the Master Plan of the Township had really advocated for open space and agricultural uses. She then asked how the Master Plan fit into the balancing act that Mr. O'Brien had discussed earlier. He explained that he did not think it was necessary because the positive criteria were met by the Application, however, he indicated that his testimony offered that justification for the Board in reviewing the Application. Mr. O'Brien then repeated his testimony, given earlier in the hearing, regarding the 2006 Master Plan's Community Facilities element. He then repeated his original testimony related to the Scenic Corridor criteria. Ms. Lawrence then reminded Mr. O'Brien that there were other goals in the Master Plan that relate to keeping rural areas in their rural state. A discussion ensued, and Mr. O'Brien indicated that the governing body decided to allow a house of worship to exist in the Agricultural (A) Zone. He noted that any goals in the Master Plan could not supersede what the ordinance stated. A discussion ensued.

Chairman Thomas then closed the meeting to the public. He told Mr. Lanfrit that he believed that Ms. Bailey would be calling an environmental witness and a traffic witness and wondered if Mr. Lanfrit would have any witnesses to provide a rebuttal. Mr. Lanfrit indicated that he had not received any reports nor heard any testimony, so he asked that he reserve the right to

recall previous witnesses or call new witnesses after hearing the testimony that Ms. Bailey's witnesses might provide. A discussion ensued.

Chairman Thomas stated that his preference would be to end the hearing where they were at the moment and call Ms. Bailey's witnesses at a future meeting so that Mr. Lanfrit could be more prepared for any rebuttal. Mr. Lanfrit reserved the right to make his decision to cross-examine after he has heard the testimony Ms. Bailey's witnesses would be providing. A discussion ensued between Ms. Bailey, Mr. Lanfrit, and Board Attorney, Mr. Lagana regarding the next steps. Ms. Bailey indicated that there would be three (3) witnesses representing both objectors and would include Ms. Knarich. Ms. Bailey stated that they could provide a report related to the witnesses they were prepared to call prior to the next meeting. A discussion ensued, and Mr. Lagana stated that he would prefer that Ms. Bailey get reports from the three (3) witnesses to Mr. Lanfrit prior to the next hearing so that he would have the ability to prepare for the cross-examination at the next hearing. He noted that it would keep the record clean and be a more efficient way to conclude the matter. Mr. Lanfrit then asked who the third witness would be, and Ms. Bailey indicated that she would have a Planner testify at the next hearing.

After discussions related to scheduling, it was agreed to carry the hearing to the June 17, 2021 meeting.

Ms. Christine Woodbury, Board Secretary, then read off the instructions on how to participate in the next scheduled hearing for **DADA BHAGWAN VIGNAN INSTITUTE**.

#### **MEETING ADJOURNED:**

The Chairman made a motion to adjourn the meeting at 10:10 p.m. The motion was seconded, and all were in favor.

Respectfully submitted,

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Kathleen Murphy, Recording Secretary  
July 9, 2021