

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

**VIRTUAL MEETING  
June 17, 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 Vice Chairman Shepherd 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, Robert Shepherd, Kunal Lakhia, and Vaseem Firdaus

**ABSENT:** Richard Procanik

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

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**RESOLUTIONS:**

- **James & Susan Morano / ZBA-20-00016**

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

**FOR:** Mr. McCracken, Mr. Reiss, Mr. Rich, Mr. Rosenthal, and Ms. Firdaus

**AGAINST:** None

- **Saurabh & Abhisha Desai / ZBA-21-00006**

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

**FOR:** Mr. McCracken, Mr. Reiss, Mr. Rich, Mr. Rosenthal, and Ms. Firdaus

**AGAINST:** None

- **DNT Holdings Group, LLC / ZBA-21-00001**

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

FOR: Ms. Bethea, Mr. McCracken, Mr. Reiss, Mr. Rich, Mr. Rosenthal, and Vice Chair Shepherd

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 JULY 1, 2021 – no further notification required.**

Ms. Christine Woodbury, Board Secretary, read off the instructions for the public to participate in the upcoming hearing on **JULY 1, 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 TO JULY 1, 2021, with no further notification required.**

Ms. Christine Woodbury, Board Secretary, read off the instructions for the public to participate in the upcoming hearing on **JULY 1, 2021.**

- **ALLWELL PHARMACY, LLC / ZBA-21-00010**

Mr. Peter Wagner, Esq., Attorney, appeared before the Board on behalf of the Applicant, Allwell Pharmacy, LLC. He indicated that the Application before the Board that evening consists of a D(1) Use Variance in which the Applicant proposed to construct and operate a pharmacy within Suite 106 of 49 Veronica Avenue, Somerset; Block 88.02, Lot 73, in the Business & Industry (B-I) Zone.

Mr. Wagner then indicated that the building was currently utilized as a medical office space and laboratory space, which were permitted uses in the zone. He noted that the proposed pharmacy would fill prescriptions and sell over the counter medications and surgical supplies to patients within the building as well as to members of the public, thus requiring the variance.

Mr. Wagner then stated that the suite was approximately 883 sq. ft. of space, with a total of 1,067 sq. ft. when including the common areas. He then told the Board that legal notifications were sent to all property owners within 200 ft. by certified mail on June 7, 2021 and notice was published in the Courier News on June 5, 2021.

Mr. Wagner stated that he was confident that the testimony given that evening would show that the use was inherently beneficial and uniquely suited to the proposed location. Furthermore, he added that the benefits of granting the required variances connected with the Application would substantially outweigh any detriments. He also indicated that they were confident that their Application would service the public interest and had no substantial detrimental effect on the neighborhood or the community.

Mr. Amar Patel, Owner/Applicant, came forward and was sworn in. Mr. Patel indicated that he was a pharmacist by profession and stated that he was proposing to start his own pharmacy in the medical building that already existed. He then noted that the suite he was looking at was located on the first floor of the building and included about 880 sq. ft. in order for him to dispense prescriptions that were prescribed by the medical doctors within the same building as well as through a few doctors whose offices were nearby. He also added that he also wanted to dispense OTC drugs and the surgical products that were required by the patients. He added that they would also provide delivery service for medications. Mr. Patel then testified that he would not be selling any other products that might be sold in other retail pharmacies, such as greeting cards or food.

Vice Chair Shepherd then asked Mr. Patel if he had ever run a pharmacy before, and he answered in the negative, but stated that he had experience in the retail pharmacy.

Ms. Bethea asked Mr. Patel about servicing customers other than the patients who would be coming to the medical facility. He stated that he would be selling to patients coming to the medical facility as well as the general public.

Vice Chair Shepherd asked Mr. Patel if he would be agreeable to a condition that would limit him to sell only prescriptions, OTC medications and surgical supplies. Mr. Patel testified that he would be agreeable to that condition.

Ms. Bethea then asked if Mr. Patel had a sense of the customers that would be coming in from the public versus strictly just patients from within the medical offices inside the same building. He answered by stating that he was expecting about 20-30% of the patrons coming to his pharmacy from the general public, with the majority coming from within medical offices within the same building.

Vice Chair Shepherd then opened the meeting to the public. Seeing no one coming forward, the meeting was then closed to the public.

Mr. Justin Taylor, Traffic Engineer, employed with Dynamic Traffic, came forward and was sworn in. The Board accepted his qualifications. Mr. Taylor testified that he had prepared the Traffic Impact and Parking Assessment report. Mr. Taylor stated that he was familiar with the subject site, and he testified that he submitted the Traffic Report that was included with the submission of the Application. Mr. Taylor then provided a summary of his report and the conclusions he came to after preparing the Traffic Impact and Parking Assessment report.

Mr. Taylor then drew the Board's attention to the screen that showed the aerial map that was part of the Technical Review Committee's (TRC) memorandum, dated June 2, 2021. In presenting this overview of the site, he was showing what the site currently looked like. He added that they were there that evening to speak about a re-occupancy of a space located at 49 Veronica Avenue, on the south side of the street and about 2/3 of a mile west of Rte. 27. He then told the Board that the site was developed with an approximately 22,400 sq. ft. medical office building supported by 96 parking spaces and providing a full-movement driveway to Veronica Avenue. He stated that they were discussing the re-occupancy of a 1,067 sq. ft. space that included common space to be developed with Allwood Pharmacy. He then spoke about Mr. Patel's testimony, stating that he would be drawing from the in-house medical uses where he felt had a good synergy with the other medical uses within the building. Because retail sales were not permitted within the zone, they were before the Board that evening to obtain a use variance.

Mr. Taylor then stated that from his perspective, he looked at what the impacts would be with the granting of the requested D(1) Use Variance and the traffic impacts as well as the parking impacts to the site. He told the Board that they first looked at the trip generation for the two varying uses. He noted that the difference in converting the space to a pharmacy would increase the traffic by a handful of cars during the evening peak hour and would reduce it by that same handful of cars during the morning peak hours. Mr. Taylor then told the Board that it would essentially be a "wash" on a Saturday. He added that there would be only about 2 additional cars coming to the site if the customers were solely new to the site and not already coming to the site to see medical doctors. Mr. Taylor testified and reiterated Mr. Patel's testimony that approximately 70% to 80% of his customers would already be coming to the building after seeing a medical doctor that was already within the building. Realistically, Mr. Taylor did not see any additional traffic associated with the conversion of the space to a pharmacy. He added that it could also result in a reduction in traffic because most of those utilizing the services of the proposed pharmacy would already be at the site.

Mr. Taylor then discussed the parking demand that could be generated from the use, looking to the Institute for Transportation Engineers (ITE) for parking ratios that they could anticipate for the two varying uses. He then explained that a medical office had a parking demand ratio of 2.23 spaces per 1,000 sq. ft. Mr. Taylor then indicated that a pharmacy had a lower ratio (2.19 spaces per 1,000 sq. ft.). He told the Board that the conversion of a medical office, with doctors, receptionist and patients to a pharmacy would actually reduce the parking demand by about 1/3 for that same 1,067 sq. ft. space that they were discussing. He also stated that those calculations did not consider the overlapping trips of patients who were already within the building to visit their doctor and would not have any detrimental effect on the parking conditions on the site. Because of his testimony, Mr. Taylor did not see any detrimental effects on the site from a parking and traffic perspective. He then added that there would be no change to the access or circulation on the site, the change in the traffic associated with the new use was negligible and the parking demand would actually be lower with a pharmacy use as opposed to a medical office use.

Mr. Rosenthal then asked if there were the usual handicapped parking spaces at the site, and Mr. Taylor indicated that there were handicapped parking spaces that were already provided on the site in conformance with ADA.

Ms. Firdaus then asked what affect the delivery service that Mr. Patel spoke of have on the traffic to and from the site. Mr. Taylor indicated that it would only involve a handful of trips, and that according to the ITE and the NJDOT, a threshold of about 100 trips would cause a significant impact to the traffic in the area. Mr. Taylor stated that a handful of trips of a van making deliveries was not going to impact the traffic in the area.

Vice Chair Shepherd opened a discussion as to the activities of the Institute of Traffic Engineers (ITE) and the data that they provide to Traffic Engineers for guidance.

Ms. Bethea asked for clarification on the period of time that the ITE and NJDOT were looking at to base their determination upon. Mr. Taylor stated that they look at the busiest hour at that peak traffic hour for a period of one (1) hour. She also then opened a discussion as to how the general public coming to the site to avail themselves to the pharmacy services would impact the traffic. Mr. Taylor responded that he did not think it would be any more than the turnaround time of patients visiting a doctor in a medical office, which was a permitted use.

Vice Chair Shepherd then opened the meeting to the public. Seeing no one coming forward with any questions, the meeting was closed to the public.

Mr. Justin Auciello, Planner, employed with Cofone Consulting, came forward and was sworn in. The Board accepted his qualifications. Mr. Auciello testified that he had the opportunity to review the Application, Master Plan, and Site Plan as well as the surrounding areas. He then gave the Board an assessment of the Application and discussed the proofs that were necessary to be put on the record to establish the justification for a Use Variance. Given that the Application was for a D(1) Use Variance, the first prong of the justification was the suitability of the use for the site. Mr. Auciello then spoke to the synergistic nature of the use and benefit the public to provide a "one stop shopping" scenario so to speak. Because the site was primarily utilized by doctors/medical office uses, the Application was unique and an opportunity for convenience for the patients who visit the doctors' offices there. He then drew the Board's attention to the special reasons and described the various criteria of the Municipal Land Use Law (MLUL) that would be advanced, including item #a, which spoke to public health, safety, and general welfare. Item #h, which spoke to the promotion of the free flow of traffic on the site and off-site and would have little to no impact on the circulation and traffic on the site as well as the parking demands, as testified to by Mr. Taylor. Mr. Auciello then stated that he believed that the benefits outweighed any detriments.

Mr. Auciello then drew the Board's attention to the negative criteria, to include two (2) prongs. He addressed the first one was that no variance should be granted if there was a substantial detriment to the public good. With respect to the Application, Mr. Auciello referred to Mr. Patel's testimony related to the fact that the vast majority of his business would be coming from the patients visiting doctors on the site already and there would also be no impacts to any residential neighbors as there were none. Mr. Auciello's opinion was that there would be no substantial detriment to the public good, the zone plan or zoning ordinance and he felt that the site was uniquely suited as a pharmacy because of the close proximity within the same building and nearby of medical offices that were visited by patients who had a need for the pharmacy's services.

Ms. Bethea then asked for clarification as to who would be utilizing the pharmacy's services, and Mr. Wagner reiterated the Applicant's testimony that it would be for the sale of

prescription medications, OTC medications and surgical supplies. A discussion ensued among the Board.

Vice Chair Shepherd then asked if the pharmacy would be providing deliveries, and Mr. Wagner indicated that they would be providing that service. The Vice Chair indicated that he would be making a condition of any approval that the deliveries would be limited to prescription medications, OTC medications and surgical supplies. Mr. Patel was agreeable to that condition.

Ms. Firdaus then asked how many doctor's offices were located within the building. Mr. Patel indicated that there were 7-8 medical offices within the building, with 4-5 doctors practicing within each office. Ms. Firdaus then asked what percentage of the business would be for deliveries of medications and supplies. Mr. Patel stated that he would be hiring a personal driver to make deliveries and in emergencies, if a patient was out of town, they might have to utilize UPS or USPS to deliver medications to them outside of the area.

Mr. Rich then asked what the hours of operation would be for the pharmacy. Mr. Patel stated that he would be operating during the same hours as the rest of the building (9 a.m. to 6 p.m. M-F and 9 a.m. to 2 p.m. on Saturdays). Mr. Rich then asked how many employees would work there, and Mr. Patel indicated that there would be one (1) full-time pharmacist and one (1) technician. He noted that the driver would not be working on-site, but just be picking up the medications and delivering them to the person's home. Mr. Rich then asked is there would be a sign, and Mr. Patel answered in the affirmative.

Vice Chair Shepherd opened the meeting to the public. Seeing no one coming forward, the meeting was closed to the public.

Mr. Reiss opened a discussion regarding the positivity of having the pharmacy business within a medical office.

Mr. Healey gave his opinion that as a Planner, he stated that he thought the testimony related to synergy was compelling and that the suitability of the proposed use in that location. He added that conditioning the use for the sale and delivery of prescription medications, OTC medications and surgical supplies was appropriate.

Mr. Wagner stated that the Applicant may want to extend the hours of operation at some point and that he just wanted to put it on the record that it was a possibility in the future. Mr. Patel indicated that if the medical offices were to change/extend their hours, they would want to mirror those hours to be able to provide their services. He asked if he would be able to have the ability to stay open until 8:00 p.m. during the weekdays and until 5:00 p.m. on Saturdays.

Vice Chair Shepherd made a motion to grant the D(1) Variance to allow a pharmacy located within the medical building at 49 Veronica Avenue, Suite 106, for the sale of prescription medications, OTC medications and surgical supplies as well as the delivery of the same to its customers' homes. He added that the hours of operation would include M-F, 9 a.m. to 8 p.m. and Saturdays, 9 a.m. to 5 p.m. Mr. Reiss seconded the motion, and the roll was called as follows:

FOR: Ms. Bethea, Mr. McCracken, Mr. Reiss, Mr. Rich, Mr. Rosenthal, Vice Chair Shepherd, and Kunal Lakhia.

AGAINST: None

**MEETING ADJOURNED:**

Mr. Reiss made a motion to adjourn the meeting at 8:30 p.m. The motion was seconded, and all were in favor.

Respectfully submitted,

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Kathleen Murphy, Recording Secretary  
July 11, 2021