

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

**VIRTUAL MEETING
August 5, 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:

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

ABSENT: Elizabeth Clarkin

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

MINUTES:

- **Regular Meeting – July 1, 2021**

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

FOR: Ms. Bethea, Mr. Reiss, Mr. Rosenthal, Ms. Firdaus and Chairman Thomas

AGAINST: None

RESOLUTIONS:

- **Rozi & Siva Dhandu / ZBA-21-00008**

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

FOR: Ms. Bethea, Mr. Procanik, Mr. Rosenthal, Mr. Lakhia, and Chairman Thomas

AGAINST: None

- **Cathy DeWitt / ZBA-21-00003**

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

FOR: Ms. Bethea, Mr. Procanik, Mr. Rosenthal, Mr. Lakhia, and Chairman Thomas

AGAINST: None

DISCUSSION:

- **Franklin II Associates, Ltd – Appeal of Zoning Decision**

CARRIED TO OCTOBER 21, 2021 – with further notification required

HEARINGS:

Ms. Woodbury, Planning & Zoning Secretary, discussed the applications that were being carried that evening to other dates. She also gave information for the public to attend those upcoming virtual meetings.

- **SAHAROSE, INC. / ZBA-20-00026**

“D” Variance in which the Applicant was applying to be able to park fifteen school buses on the property at 2 JFK Boulevard, Somerset; Block 386.17, Lot 138, in the General Business (G-B) Zone - **CARRIED TO SEPTEMBER 2, 2021 – with no further notification required.**

- **SAINT SHARBEL MARONITE CHURCH / ZBA-20-00027**

“D”(3) Conditional Use Variances, Preliminary & Final Site Plan w/”C” Variance in which the Applicant proposed to demolish the existing church and daycare use, as well as four (4) of the single-family homes on the site and construct a new 35,699 sq. ft. place of worship at 526 Easton Avenue, Somerset; Block 261, Lots 1-6, in the OP & R-7 Zones - **CARRIED TO OCTOBER 7, 2021 – with no further notification required.**

- **BRENTWOOD BAY, LLC / ZBA-19-00006**

Mr. Peter U. Lanfrit, Esq., Attorney, appeared before the Board on behalf of the Applicant, Brentwood Bay, LLC. He indicated that they were seeking Relief of Condition in which the Applicant was asking for relief of a condition related to the use of exterior building materials at 830 & 850 Hamilton Street, Somerset; Blocks 143/145, Lots 21.01/1.01, in the Hamilton Business District (HBD) Zone.

Mr. Lanfrit then reminded the Board that they were before the Board under a different name, 7507 Properties, LLC and appeared before the Board to obtain Site Plan approval and Use Variance to construct two (2) buildings on Hamilton Street, both facing Hamilton Street on either side of Pershing Avenue. He added that there was also related parking and other site improvements. He then told the Board that the Application went before them because they asked for relief to allow residential on the first floor in one of the buildings, which was granted. Mr. Lanfrit then indicated that in the conditions of approval, specifically #13, it stated that building architecture, including but not necessarily limited to exterior materials, shall be as provided on the submitted plans and testified to by the project's Architect at the hearing. He added that this would include the use of the same materials around the side and rear of the building as provided along the front. The examples, according to Mr. Lanfrit, were masonry base and siding and modifications to the sides facing Pershing Avenue to address the Board comments.

Mr. Lanfrit then described the relief that they were asking for that evening was to allow them to use vinyl siding on the sides and the rear of the building and Hardie plank siding facing Hamilton Street and around the corners on Pershing Avenue on both buildings. He then spoke about the escalation in price for building materials, thus making the use of Hardie plank feasible or viable. Mr. Lanfrit noted that he scheduled a meeting with the Hamilton Street Business District, including three (3) members of the Hamilton Street Business District, Mr. Dominach, who is the liaison, Mr. Healey, and a representative of Mr. Ludwig's office. The newly proposed materials were shown at that meeting and discussed those. He added that the Hamilton Street Business District members did not have an issue with what they were proposing to the Board that evening. He then indicated that the Technical Review Committee then issued a report, dated July 6, 2021, detailed the discussion that was had with the Hamilton Street Business District. Mr. Lanfrit stated that the proposal that evening was to continue the use of Hardie plank facing Hamilton Street and wrapping around the corners onto Pershing Avenue, with the sides and rear portion of the building to be covered with vinyl siding.

Mr. Ludwig, Architect, came forward and was sworn in. The Board accepted his qualifications. Mr. Ludwig briefly described the proposed materials, noting that the Hardie planking was a cement board material that was designed to look like wood. He then spoke about the high-density vinyl siding, which he indicated was an insulated siding that didn't fade as easily as the Hardie planking and was more energy efficient as well. Mr. Ludwig then testified that the two (2) materials would not touch each other but would be separated by stone veneer.

Mr. Shepherd then questioned where the break would occur between the two siding materials, and both Mr. Lanfrit and Mr. Ludwig described how the materials would be placed on the building, as stated earlier in the hearing by Mr. Lanfrit. Mr. Shepherd then inquired how wide

the stone veneer portion would be, and Mr. Ludwig indicated that it would be about 20 ft. wide and was quite substantial.

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

Mr. Reiss made a motion to approve the Application for relief of the condition related to the use of exterior building materials (siding). Vice Chair Shepherd seconded the motion, and the roll was called as follows:

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

AGAINST: None

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

Mr. Lanfrit stated that he was provided with the report prepared by the Environmental/Natural Resources Expert presented by the objector's attorneys and had an opportunity to review it prior to the hearing.

Ms. Martina Bailey, Esq., Attorney representing Ray and John Snyder, came forward.

Ms. Susan Quackenbush, Environmental Consultant/Natural Resources Expert, employed with Amy Green Environmental, and came forward and was sworn in. The Board accepted her qualifications. She entered into the record as Exhibit O-2, an environmental report for the subject property, dated July 9, 2021 and prepared by Amy Green Environmental. Ms. Quackenbush stated that she was familiar with the proposed development and the site, reviewed the environmental assessment, the staff biologists had visited the Snyder Farm as well as the open space parcel and acknowledging the relief that was being sought by the Applicant and reviewing the Site Plan. She added that she heard some of the testimony in the matter, but not all of it from the previous witnesses that have presented, including the Applicant's Engineer, Mr. Ardman. Ms. Quackenbush indicated that she had also reviewed Mr. Ardman's Environmental report, dated November, 2019. She then went over the process she undertook to view the site and the environmental aspects in preparation for that night's hearing. Ms. Quackenbush indicated that she reviewed the Site Plan and compared that to existing documentation, including the wetlands plans and the approved Letter of Interpretation (LOI) from the NJDEP for the property, she reviewed the ecological resources of the site using available GIS resources mapping and publicly available databases. She then stated that their staff biologist conducted a visual survey from the adjacent Snyder Farm property to observe and document existing conditions on the adjacent, subject property as well as

conducted a visual inspection of the adjacent Open Space parcel to the south to identify the potential presence of a stream on the adjacent southern parcel.

In her environmental report, Ms. Quackenbush identified three (3) main areas of concern. The first concern mentioned were the threatened endangered species that were found using GIS mapping and available databases to check that. She then mentioned that they checked the U.S. Fish and Wildlife Service information planning tool, they found that the site was identified as having a potential habitat for Indiana Bat, a federally endangered species, and Northern Long Eared Bat, a federally threatened species. Ms. Quackenbush then stated that the U.S. Fish and Wildlife Service recommended that an effects analysis to these species be considered during project planning. She discussed the fact that the site was forested, as noted in the environmental assessment, the proposed tree clearing had been discussed various times in the hearings, indicating that the noted bat species were really very dependent upon trees, primarily trees that have flaking, peeling bark that were useful in the summer months. Their biologist stated that there were mature trees present with peeling bark that could potentially provide habitat for the aforementioned bat species. She then stated that they recommend a full habitat assessment be done on the subject property, with technical assistance available from the U.S. Fish and Wildlife Service that can screen projects and provide recommendations to applicants to avoid harming these bat species and confirm that the development would not harm them.

Ms. Bailey stated that they were not providing the information to halt the development, but just putting it out there for the Board to consider because it goes to the heart of the environmental concerns of the area. She added that it was a low-cost procedure that the Applicant could have conducted and be made a condition of approval to receive a Consistency Letter from the U.S. Fish and Wildlife Service. Ms. Quackenbush indicated that they might suggest timing conditions when trees would be cleared, such as in the winter when those species would be hibernating in caves.

Ms. Quackenbush then addressed migratory birds and other species that would likely to be affected by the development. She again referenced the Fish and Wildlife Service database provided a list of birds that were protected under the federal Migratory Bird Treaty Act that may be on the project site. She then told the Board that these birds were also recognized in the Environmental Assessment provided by the Applicant (pg. 12) that the birds could be impacted by disruption and removal of their forested habitat. Ms. Quackenbush then recommended that the Applicant observe the standard timing restriction recommended by the U.S. Fish and Wildlife Service to protect migratory birds from April 1st to August 31st.

Ms. Quackenbush then opened a discussion relating to her second point of concern where she spoke about the stream that was located to the south of the property. She testified that the Environmental Assessment indicated that there were no streams or riparian zones, or flood hazard areas located on the subject property. Similar to wetlands, she told the Board that streams and surface waters in the State of New Jersey were regulated on the State level, so the Applicant went through the process of obtaining and LOI to document the boundaries of wetlands and transition areas on their property. She then noted that there was a similar process available for streams and their regulated areas. With very few exceptions, Ms. Quackenbush stated that all streams, surface water bodies with a discernable channel in the State of New Jersey were regulated under the State by the Flood Area Control Act rules. The streams, when they were considered regulated water, had two (2) regulated areas that

included the flood hazard area (flood plain) and the riparian zone (an ecological buffer). She then told the Board that one of their sources used to identify streams was their soil survey maps, published back in the 1970's. Ms. Quackenbush then shared the soil survey map of the property (Exhibit D) and was submitted as part of the Environmental Assessment report. She pointed out on the map that highlights a stream located south of the property. She then discussed how these soil survey maps can highlight the location of where streams had been historically present, and that one of their biologists went to the site to pinpoint the actual location of the stream and detailed it on the exhibit. She did, however, state that the accuracy of the location was limited and not professionally graded, but that it was visually recognized as being located there. What was observed, according to Ms. Quackenbush, was a small headwater area that definitely had evidence of water flow and may have a discernable channel. Ms. Quackenbush then shared a photo of that area and stated that a standard in the Flood Area Control Act rules was a feature with a discernable channel. She noted that the photo showed the headwater, the very beginning of a feature, and so a discernable channel was a standard and was a process determined with NJDEP as to whether it was regulated or not. She added that the process was called a Flood Hazard Area Verification and was an application to NJDEP costing \$1,000 and will provide a legal determination as to whether the feature, identified on the soil survey map would be regulated by the NJDEP. If it were to be found to be regulated by the NJDEP, it was subject to a riparian zone, she added that because the feature drained to 9-Mile Run, it would be considered Category 1, and, therefore, would be the widest riparian zone, which was 300 ft. measured from the top of its bank. She explained that if they went back to the soil survey map and measured 300 ft. from the GPS point, they could see that the potential buffer from the feature did come on to the subject site. Based on this Exhibit D from the Environmental Assessment report, it can be seen that the distance from the proposed outfall of the storm water basin was within 23 feet. Ms. Quackenbush then stated that this would be a regulated area in addition to and separate from the wetlands. Just like the wetlands, there was the NJDEP's determination to legally establish boundaries that is the Flood Hazard Area Verification. Ms. Bailey and Ms. Quackenbush discussed the fact that the foregoing information was not included or that they might have had outdated information in the Applicant's Environmental Assessment report. Mr. Lanfrit objected to their line of discussion and trying to determine what was on the mind of the person who wrote the Environmental Assessment report as to whether to include it or exclude it. Board Attorney, Mr. Frank Regan, agreed with Mr. Lanfrit's point and asked Ms. Bailey to reword the question. Ms. Bailey then asked Ms. Quackenbush her opinion on whether the undertaking of a Flood Hazard Area Verification could and should be made by the Applicant at a relatively low cost, and she concurred, and stated that the Applicant could apply for just Flood Hazard Area Verification, riparian zone determination, or both.

Ms. Quackenbush then discussed the required approval from the Delaware & Raritan Canal Commission (DRCC) since the property was located within their review zone. She added that one of the areas that the DRCC reviewed was storm water management, so if the presence of the riparian zone, as verified by the NJDEP, was present and if it in some way affects the proposed development, that could also in turn require revisions for DRCC approval. She testified that she would recommend that the DRCC approval be provided as well.

Mr. Lanfrit asked Ms. Quackenbush the location and the date of when her staff biologist visited the site, and she corrected him by indicating that they visited the Snyder Farm and the Open Space parcel on November 4, 2020. He asked if she had ever visited the property, and Ms. Quackenbush answered in the negative. Mr. Lanfrit then asked what her description of a

“desktop assessment” was, and Ms. Quackenbush stated that they used the resources available from the NJDEP GIS resources that had various mapping layers that were available for use. Mr. Lanfrit questioned whether Ms. Quackenbush knew for certain that there was a habitat for bat species on the subject property or if she ever observed bats on the property. She indicated that she had not seen bats on the property but had seen photos of trees that were consistent with bat habitat. She further stated that she had not conducted a habitat assessment, nor had she visited the site. Mr. Lanfrit then asked Ms. Quackenbush whether she was aware of testimony given at a prior hearing that the Applicant had already agreed to not remove trees during the April 1st – August 31st time period if the Township Engineer or Township Construction Dept. thought it was appropriate not to remove trees during that period of time. Mr. Lanfrit noted that it was not under the Board’s jurisdiction regarding the timing of when the Applicant could clear a site, and Ms. Quackenbush stated that she did not have that information and did not know if that were true or not. In Mr. Lanfrit’s line of questions, they both agreed that there were no streams or State open waters on the subject property, but Ms. Quackenbush reiterated her testimony regarding the possibility of a discernable channel on the Open Space property and that a stream was shown on the soil survey there as well. Mr. Lanfrit then asked what the buffer requirements would be should it be determined that there was a stream as located on the soil survey exhibit. Ms. Quackenbush indicated that if it were to be determined to be a regulated water, the buffer on the stream would be 300 ft. because it drained to a Category 1 waterway in the same sub-water shed. Mr. Lanfrit then asked whether any of their proposed development within that 300 ft. buffer, and Ms. Quackenbush stated that the development was 23 ft. away and outside of the 300 ft. buffer. Finally, Mr. Lanfrit asked Ms. Quackenbush if she had reviewed any of the submissions the Applicant had made to the DRCC, and she answered in the negative. Mr. Lanfrit then stated that the DRCC did review the project and issued a letter of approval, subject to the Township approval, as well as County approval. He asked whether she had even checked on whether any approvals had been issues, and she answered in the negative, but stated that she recommended that those approvals be presented to the Board.

Mr. Healey gave a clarification regarding Ms. Quackenbush’s testimony that the stream was a tributary to 9-Mile Run but corrected her by saying he thought she meant to say that it was a tributary to Six-Mile Run. Ms. Quackenbush stood by her testimony, and Mr. Healey indicated that he was not aware of such a waterway in Franklin Township. Ms. Quackenbush then stated that 9-Mile Run was reference in the Environmental Assessment and also matches the documentation that they have.

Chairman Thomas then opened a discussion regarding the Township not allowing tree cutting during the period of time between April 1st and October 1st with other applications. He stated that he agreed that it was not in the Board’s jurisdiction to make that call, however, the Applicant must be sure that the other pertinent outside agencies had filed their responses to the Application. The Chairman then asked Ms. Quackenbush to confirm again that there were no environmental constraints on the subject property and that what was discussed was outside the 300 ft. buffer. Ms. Quackenbush confirmed that and reiterated her earlier testimony that their mapping was not survey grade and not confirmed or approved by the NJDEP. Ms. Bailey indicated that Ms. Quackenbush did not address the effect and impact of tree clearing, but that there was a substantial environmental impact. A discussion ensued between Ms. Bailey and Mr. Lanfrit, and Chairman Thomas did not think that there was a limit to what Ms. Quackenbush was covering and that she was only discussing and responding to what was on the Environmental Impact study. Chairman Thomas indicated that he felt that

Ms. Quackenbush was speaking about endangered species that they have never seen and environmental impacts on the property that weren't there. He then stated that he thought that it would have been more beneficial for Ms. Quackenbush to have some "boots on the ground" in her assessment and response rather than rely on reports, photos, and GIS information Mr. Rosenthal agreed with the Chairman. Ms. Quackenbush stated that she felt it would be considered trespassing to go onto the Applicant's property. Mr. Lanfrit indicated that he would have to ask the Applicant, but he thought that if she asked, she would probably have been allowed on the property.

Mr. Procanik then asked Ms. Quackenbush if she believed that there was a discernable channel. Ms. Quackenbush answered that she believed that she thought it was questionable and that the ultimate decision was always made by the NJDEP as to whether something was regulated or not. She then told the Board that in that case, she would not be comfortable excluding it as a regulated channel because it was mapped on the soil survey and there was evidence of water there, which was the standard in the rules. She and Mr. Procanik continued their discussion, and she testified that the discernable channel drained into a more established waterway, a recognized stream which was 9-Mile Run which was 1,400 ft. away. He then asked if Ms. Quackenbush knew what the area that drains to that point that she was referring to and if that area impacts the riparian zone requirements. Ms. Quackenbush stated that the area that drains to that point, if it had an area of less than 50 acres that excluded it from having a regulated flood hazard area under the Flood Hazard Area Control Act rules. They discussed the fact that it would be excluded if it were found to be a man-made feature such as a farm ditch, which Ms. Quackenbush stated she didn't think was the case.

Mr. Healey then clarified his previous discussion, noting that he did see 9-Mile Run on the Township's Environmental Resource and seemed like it was a tributary to the 6-Mile Run. He then had a question for Ms. Quackenbush, asking about the Environmental Assessment where it identified 9-Mile Run as FW2-NTC1 and wanted to know what that identifier meant. Ms. Quackenbush indicated that it stood for freshwater non-trout category 1 which was the surface water quality classification that was given by NJDEP to surface waters in the State and was one of the parameters that affects what the width of the riparian zone would be. She added that category 1 waters were afforded the widest riparian zone, which was 300 ft.

Chairman Thomas then opened the meeting to the public for questions of the witness.

Ms. Yanni ten Broeke, Township resident, came forward. She discussed the recommendation that Ms. Quackenbush, which was from the U.S. Fish and Wildlife Service, to limit the disturbance of the trees on the subject property to a specific time of year when bats were hibernating in caves and not in trees. Ms. Ten Broeke then asked if there was another recommendation to not remove those trees at all from the property. Ms. Quackenbush indicated that the recommendations she was providing from the U.S. Fish and Wildlife Service was to prevent the harming of bats during construction and not to prevent the development of the land. Ms. ten Broeke then asked what the overall result of the report that Ms. Quackenbush prepared and what the overall environmental impacts upon the property would be if the development went forward. Mr. Frank Regan, Board Attorney, intervened by stating that he didn't think the witness could answer that question since her testimony did not rise to that level of detail. Chairman Thomas as in agreement with the Board Attorney's statement. Ms. ten Broeke then asked if the NJDEP came in after the hearing and before any construction to determine whether there would be any environmental impacts upon the land.

Ms. Quackenbush stated that there was no further requirement for the NJDEP to take any action on the site with regard to wetlands, transition areas, streams, and riparian zones.

Ms. Mary Ellen Warwick, 646 South Middlebush Rd., Somerset, NJ, came forward. Ms. Warwick noted that Ms. Quackenbush could sit on her deck every night at dusk and see many bats. Mr. Lanfrit objected to this resident's testimony because she was represented by counsel and the witness was her witness and was offering testimony and/or statements and did not think it was appropriate. Chairman Thomas also reminded Ms. Warwick and the public that if you are represented by counsel, the attorney asks the questions and makes the comments in a hearing. Ms. Bailey stated that she represented the Snyders and not Ms. Warwick who was represented by Ms. Knarich. She added that the Snyders were the ones who retained Ms. Quackenbush in this hearing. Mr. Regan, Board Attorney, reiterated that if she was represented by counsel, Ms. Warwick should not be asking questions or making comments.

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

Mr. Healey then asked Ms. Quackenbush if the endangered bats included all species of bats or a particular bat. Ms. Quackenbush indicated that there were two (2) federally recognized bat species in New Jersey; the Indiana bat and Northern Long-Eared Bat. She added that the U.S. Fish and Wildlife Service conducted a survey noting the species as potentially present.

Ms. Bailey then stated that both objecting parties were presenting a Planner that evening to give testimony.

Ms. Jennifer Knarich, Esq., representing the Warwick's, came forward.

Mr. Michael D. Kauker, Planner, came forward and was sworn in. The Board accepted his qualifications. Mr. Kauker stated that he had heard most of the testimony given relating to the Application, more specifically, he heard the testimony of the Applicant's Planner, Mr. O'Brien. Mr. Kauker then gave his analysis and summary of proofs for the Application. He spoke about the area along South Middlebush Rd. as containing a significant amount of farmland and Open Space and included the Scenic Corridor Ordinance in place along the roadway. He then spoke of the challenges of complying with both the Conditional Use Requirements as well as the Scenic Corridor requirements. He then wanted to focus on the importance of the Scenic Corridor and its relationship to the particular development. Mr. Kauker stated that he did have an opportunity to review the Township's Master Plan adopted in 2006, which was comprehensive, and then a re-examination last adopted in 2016. He noted that both plans really recognize the importance of protecting and preserving farmland areas and also contains a Farmland Preservation Plan as well. He then detailed the deviations from the conditional use standards, which include the number of parking spaces, the location of the parking area, the rear yard setback, as well as buffer requirements, which was the reason that they were seeking a D-3 Conditional Use Variance. He told the Board that essentially what the Applicant must show, notwithstanding the deviations, was that the proposed use was still appropriate and suitable for the subject property as well. He brought up the fact that the Application was an inherently beneficial use and performed the seek a test in analyzing the particular merits of the Application. He stated that, generally, a Conditional Use was suitable to a specific zoning district, but not every location within that district may be suitable. He indicated that he wanted to bring to the Board's attention the suitability in the area which was

in the middle of the Scenic Corridor and the proposed use and building was a fairly large structure and would be seen from South Middlebush Rd. He testified that he thought there were things that could be done, from a Planning and design standpoint, to further mitigate the impacts associated with the development. In the process of the seek a balance test testimony given by Mr. O'Brien, he felt that there were things lacking to support the negative criteria. Some of the negatives he wanted to bring to the Board's attention was the massing of the building, noting how it was out of character to the other farm-style buildings in the area. He then discussed the impacts to the character of the subject area. He then discussed that the building proposed was, in his opinion, more institutional in nature and that something might be done to the architectural style of the building to make it more suitable to the area. He then drew the Board's attention to the fact that he believed that the intensity of the use was going to increase and that there was a deviation in respect to parking. In summary, Mr. Kauker stated that he believed the building size was going to be inconsistent with the Scenic Corridor, and those requirements deal with the aesthetic protection of resources and that there would have to be a significant number of trees that would have to be removed as a result of the Application. He told the Board that he didn't know if there would be enough buffering to shield it properly, despite being set back over 800 ft. from the roadway. Mr. Kauker indicated that he didn't remember seeing any type of exhibit presented by the Applicant that supported that issue. Also, he added that the color of the proposed building (white) would also not blend into the surrounding area of greens and browns.

Mr. Kauker then went on to discuss the following purpose of the Master Plan where it talks about consistency with the Master Plan as well as the New Jersey State Development and Redevelopment Plan as well. He noted that those plans designate the subject area as PA4, which was Rural Planning Area #4 in the State. It was the intent of both development plans to focus development in already developed areas (PA1 and PA2) and protect the more rural areas. He then explained that a portion of the subject property was identified as a Critical Environmental Site in both plans, with the intent to protect and enhance those areas rather than adversely impact them.

Mr. Kauker then discussed the seek a balancing test when assessing developments that were inherently beneficial and included a four (4)-part review. The first part he mentioned was the public interest at stake and to identify detrimental effects, which the Applicant's Planner told the Board that there were none. Mr. Kauker felt it important to look closely at any detrimental effects because the Board could then impose reasonable conditions upon the Application. He again stated that he thought there would be a detrimental effect on the character of the area in both the size of the building and the deviation from providing the appropriate amount of parking. He then reminded the Board about the visual and aesthetic impacts related to the size and the architectural design of the proposed building as well as the character of the area. He spoke about providing more buffering between the wetlands and the proposed building. Mr. Kauker then testified that he felt that providing buffering in the open vista would provide screening of the building from South Middlebush Road. He then added that the Scenic Corridor Ordinance included some examples of the styles, colors, and appearance of appropriate building structures to be placed in that area.

Mr. Kauker then drew the Board's attention to any impact to any impairment of the zone plan and Master Plan and told the Board that both of those documents strongly suggest preservation of farmland and Open Space area. He added that, due to the impact to the Scenic Corridor, due to the size and intensity of use, the deviations requested for the

proposed use, be it parking number or parking location, rear setback, and buffering, he felt that the negatives would outweigh the positive criteria to a certain extent. He added that these negatives could be mitigated by the Board imposing conditions upon the Application.

Mr. Kauker then discussed the deviation from providing the required number of parking spaces and spoke about the Applicant stating that they wouldn't need 457 parking spaces because there were not enough congregants to support that. He questioned why the Applicant needed such a large building if they had so few congregants. He felt the Board needed to seriously consider the impact to the Scenic Corridor.

Mr. Lanfrit asked Mr. Kauker how many signs he saw on the Snyder's farm area on that day when he visited the site, and they discussed a small farm stand with signs noting what was for sale. He indicated that he saw about 5 or 6 signs on the property. Mr. Lanfrit then discussed what he called construction signs at either end of the Snyder's property, and Mr. Kauker indicated he did not notice those signs. Mr. Kauker then indicated that he could look at the photographs he took that day to see what signage was out on the property.

While Mr. Kauker looked at his photos, Ms. Bailey objected to the line of questioning and indicated that her clients were operating under the Right to Farm Act. Mr. Frank Regan, Board Attorney, agreed with that conclusion as well.

Mr. Lanfrit then stated that Mr. Kauker's testimony dealt with a balance between the right to farm and the right to have a house of worship, an inherently beneficial and conditional use in the zone. They then discussed the building size in comparison to the property size, however, Mr. Kauker emphasized that the structure was large enough to have an impact upon South Middlebush Rd. and the Scenic Corridor. Then then discussed the residential structures in the area that were surrounding by woods, with Mr. Lanfrit recalling the Applicant's Engineering testimony that those woods would be preserved to the extent possible with additional landscaping provided where there were gaps in coverage. Mr. Kauker again emphasized that the proposed building would not be visible from all vantage points but would be visible from some points. They then discussed the architectural design, size, and height of the proposed building as well as the choice of white for the color that would make it stand out in the area. Mr. Lanfrit then discussed the other single-family homes in the area very close to South Middlebush Rd., and Mr. Kauker indicated that they were not of the same mass as the proposed building.

Mr. Lanfrit then opened a discussion with Mr. Kauker related to the lack of provision by the Applicant for the required 457 parking spaces. They then discussed the allowable occupancy due to the fact that they had a septic system. Mr. Lanfrit then brought up the testimony of the Applicant and the Traffic Engineer related to the fact that there were no fixed services proposed at the temple and that people come and go during the course of a day. Mr. Kauker again asked why the building needed to be so large if they don't anticipate the number of congregants attending to be very high. Mr. Lanfrit brought up the testimony of the Applicant and the various uses of the structure. Mr. Kauker then indicate that there was no accommodation for potential growth of the congregation. Mr. Kauker asked Mr. Lanfrit if he felt that the proposed building's architecture was consistent with a rural, farmland area and consistent with the Scenic Corridor designation of South Middlebush Rd. Mr. Kauker reiterated to Mr. Lanfrit that if there was something that could be done to allow the proposed structure to fit in better in the area, then the Board had the right to ask the Applicant to do

that. Mr. Lanfrit then stated that there had already been concessions related to moving the house of worship, moving the driveway, reduce the lighting, etc. Mr. Kauker indicated that he was not involved with the Application at the beginning of the hearings, but that he was aware that the building was moved at some point in time. The discussion then went to the issue of parking, and Mr. Kauker emphasized that his point was that if the temple did not need the required number of parking spaces, then why not reduce the size of the building. That being said, and noting that the Applicant was not willing or wanting to reduce the size of the building, Mr. Kauker testified that they could change the architecture of the building and add additional landscaping beyond what was proposed to better screen the structure from South Middlebush Rd.

Mr. Lanfrit then discussed the traffic on South Middlebush Rd., and Mr. Kauker testified that there was a moderate amount of traffic when he was there that day around 11:00 a.m. Mr. Lanfrit questioned the fact that motorists moving along the roadway at 45 mph would consider the proposed structure, at 800 ft. away from the roadway, prominently visible. Mr. Kauker indicated that he hadn't seen an exhibit that has proved otherwise. A discussion ensued.

Chairman Thomas brought up Mr. Kauker's testimony that the appearance of the proposed structure did not fit into the character of the area. The Chairman brought up the fact that there were actually five (5) single-family homes between South Middlebush Rd. and where the facility would be built and a wooded area that would remain. Mr. Kauker indicated he was aware of those homes but noted that all were much smaller structures and at least one (1) of them was a one (1)-story structure. A discussion ensued regarding visibility from certain areas on South Middlebush Rd. and the fact that there was a lot of wooded areas and a tall silo visible from the roadway just prior to the subject property. Mr. Kauker again suggested that the building's architecture could be looked at and that additional landscaping could be provided in certain areas where it was not present to screen the building from the roadway. He added that a silo and other farm or rural type buildings were visible from the roadway, however, those structures were consistent with the rural farmland area. Chairman Thomas asked how to remove someone's religious beliefs from the architecture of the structure they propose, especially when the Applicant was agreeable to all the suggestions of additional landscape to screen the building from the roadway. A discussion ensued regarding the balance between allowing someone to worship as they wish and still conform to the ordinances in the area, with Mr. Kauker suggesting they could paint the structure a different color than white and to provide some different architectural features such as providing a sloped roof.

Mr. Healey then asked Mr. Lanfrit about the front façade of the structure since his notes indicated that the side and rear facades of the temple would be beige in color. Mr. Lanfrit indicated that in a meeting with Ms. Bailey and Ms. Knarich's predecessor that they would agree to paint the sides and back of the structure earth-toned colors, but for religious reasons the front would be painted white, which he believed was submitted in a letter he sent to the Board some time ago. Mr. Healey then stated that he didn't believe that any testimony from the Applicant or the Applicant's architect related to the design of the building related to religious expression. Mr. Healey suggested that Mr. Lanfrit discuss this with the Applicant as it may be a discussion that the Board may want to have with them. Mr. Lanfrit indicated that due to some of the changes to the plan, they would have to come back before the Board for a Final Site Plan approval even if they receive Preliminary approval from the Board. He stated he would speak to his client regarding changes to the architectural design.

Mr. Healey then stated that he could not imagine any visibility of the structure going northbound on South Middlebush Rd. because it was well in excess of 1,000 ft. based on the angle of view with two (2) intervening homes that were heavily wooded, and an intervening Township owned forested Open Space site that was between the subject building and South Middlebush Rd. He then discussed the view shed going southbound on South Middlebush Rd. and noted that the location of the house of worship was consistent with the Scenic Corridor ordinance to “tuck the structure in the woods” and not in the open field to shield it from view. He added that the Applicant agreed to place the structure 75 ft. off the side yard setback and reflected on an exhibit that was presented a few months ago. He added that they also agreed to protect the trees in that area and also testified that they would supplement the existing trees with evergreens. He did admit, however, that they had not seen an exhibit showing how that would happen and would suggest that if the proceedings move forward to Final Site Plan approval that they provide a very specific plan as to how the Applicant was going to supplement the existing trees to remain, to minimize potential views southbound on South Middlebush Rd. should absolutely be a specific condition of approval.

Chairman Thomas then asked the Applicant to come up with a computer simulation of a view coming from south to north and from north to south and then directly in front to give a better perspective. The Chairman then asked the Applicant to give the Board the total acreage, how many acres of trees were there and how many acres of trees would be removed because the general impression he got was that the Board was going to allow the Applicant to go in there and clear cut all of the trees.

Mr. Lanfrit suggested a third option of the Board granting the Use Variance and the bulk variances and come back before the Board with a Site Plan to show all of those items requested by the Chairman to show what the proposal would look like.

Chairman Thomas then also suggested that they might consider constructing a model of the building to let everyone see what the structure would look like. Mr. Lanfrit indicated that he could ask the Applicant and Architect. Mr. Healey felt that a computer simulation would be adequate. A discussion ensued and it was suggested that a view going southbound would be very helpful.

Chairman Thomas made a motion to open the meeting to the public to ask questions and make comments regarding the Planner’s testimony.

Ms. Yanni ten Broeke, Township resident, came forward. Ms. ten Broeke asked if the increase in traffic on a roadway would slow down that traffic and increase the visibility of the structure. Mr. Kauker agreed with her line of thinking.

Ms. Leah Convery, 43 Townsend Court, Somerset, NJ, came forward. Ms. Convery asked if there was an ordinance that a religious institution had to be a certain color or has to have a certain style of architecture. Mr. Kauker answered that there was no such ordinance in place. A discussion ensued regarding the attempt to mirror the architectural style of the surrounding area.

Ms. Barbara Lawrence, 383 South Middlebush Rd., Somerset, NJ, came forward. Ms. Lawrence stated that she was a former member of the Historic Preservation Commission and

travels on South Middlebush Rd. several times per day. She stated that she has never been able to see the house that was on the subject property with the current tree coverage on the site.

Mr. Healey admitted that the proposed structure did have the potential to be seen much more than the existing house on the property, considering the remaining trees to be left on the site.

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

A discussion ensued between Mr. Lanfrit and the Chairman regarding the submission of an additional Preliminary Site Plan. He suggested again that the Board could grant the Use Variance on its own if they so wished prior to the Preliminary Site Plan approval.

Mr. Shepherd stated that he thought they would be in a position to vote on the Use Variance and bulk variance request but want to see an updated Site Plan. A discussion ensued with Mr. Lanfrit.

The Board, Mr. Lanfrit and the objector's attorneys all agreed to carry the hearing - **CARRIED TO SEPTEMBER 2, 2021, with no further notification required.**

Ms. Woodbury, Planning & Zoning Secretary, read off the information in order to participate in the next virtual hearing for DADA BHAGWAN INSTITUTE at 7:30 a.m.

Mr. Healey then asked if it would help the Board in their deliberations if they were provided a list of plan changes and things that the Applicant had agreed to over the course of the hearings. Chairman Thomas indicated that it might be a lot of work for someone, but that it might be valuable since it had been more than a year. Mr. Healey agreed to take care of providing that information.

MEETING ADJOURNED:

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

Respectfully submitted,

Kathleen Murphy, Recording Secretary
August 30, 2021