

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

**VIRTUAL MEETING
January 20, 2022**

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, Vaseem Firdaus, and Chairman Thomas

ABSENT: Elizabeth Clarkin

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

RESOLUTIONS

- **Adichunchanagiri Cultural & Spiritual Foundation of USA, Inc. / ZBA-18-00014 – Ext. of Time**

Mr. Reiss 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. Reiss, Mr. Rich, Mr. Rosenthal, Vice Chair Shepherd and Chairman Thomas

AGAINST: None

- **Dada Bhagwan Vignan Institute / ZBA-19-00040**

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. Procanik, Mr. Reiss, Mr. Rich, Mr. Rosenthal, Vice Chair Shepherd and Chairman Thomas

AGAINST: None

- **Robyn Mandalakis / ZBA-21-000017**

Mr. Reiss 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. Reiss, Mr. Rich, Mr. Rosenthal, Vice Chair Shepherd and Chairman Thomas

AGAINST: None

- **Guru Har Rai Grocery d/b/a Apna Bazar / ZBA-21-00021**

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. Reiss, Mr. Rich, Mr. Rosenthal, Vice Chair Shepherd, Ms. Firdaus, and Chairman Thomas

AGAINST: None

- **Gabriel & Luzilda Mercado / ZBA-19-00042**

Ms. Bethea 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. Procanik, Mr. Reiss, Mr. Rich, Mr. Rosenthal, Vice Chair Shepherd, and Chairman Thomas

AGAINST: None

HEARINGS:

- **NEIL PATEL / ZBA-21-00005**

Mr. Larry Callie, Esq. Attorney, appeared before the Board on behalf of the Applicant, Mr. Neil Patel. He explained that they were there for a C Variance in which the Applicant proposed to construct a pool with surrounding 1,300 sq. ft. patio, a sport court at 1,320 sq. ft. and add fencing along the side and rear property line at 159 Second Street, Somerset; Block 424.04, Lot 29.17, in an R-20 Zone.

Mr. Callie indicated that the Patel family had lived at the property for over six (6) years and were very active in the Township. He told the Board that all of the proposed improvements were permitted and that they were just wanting to make some improvements to their property, particularly in light of being cooped up at home for two (2) years. He then told the Board that there was no illumination proposed and no exterior amplification proposed by way of outdoor speakers. Mr. Callie then told the Board that they were there that evening for an impervious

coverage variance, notwithstanding the fact that they had a sizeable property and natural storm water runoff controls at the rear of the property.

Mr. John Ferrante, Engineer, came forward and was sworn in. The Board accepted his qualifications. Mr. Ferrante then detailed the proposed improvements and entered into the record as Exhibit A-1, a colorized version of the Site Plan that had been submitted as part of the Application. Mr. Ferrante indicated that they were looking at Revision C, dated September, 2021. He then noted the large lot behind the subject property that contained a storm water management facility that was constructed for the entire development. He then showed the layout of the proposed lot that would include a pool, patio, and sports court, which would be located in the rear of the property. Mr. Ferrante also mentioned that fencing was shown on the plans as they were required with the addition of a pool. He indicated that there would be steps coming from the home onto the patio to the pool. He testified that they were not providing any lighting for the sport court or for the pool. Mr. Ferrante then reiterated Mr. Callie's testimony that they were only seeking a variance for impervious coverage of 42.6% where 25% was the maximum allowed in the zone. He then described the pool as a modest one at 800 sq. ft., a sport court for family recreation and the inclusion of a dry well for storm water management control to mitigate the impacts of additional impervious coverage. Mr. Ferrante explained that they meet all other bulk standards of the zone. He then noted that the existing lot was over the allowable 25% for impervious coverage with approximately 1,700 sq ft. of new, impervious coverage on the lot. Mr. Ferrante drew the Board's attention to the fact that there was a very large storm water management facility to the rear of the subject property for the entire neighborhood and that the storm water easement for that facility ran through the subject property. He added that the homeowner observed the detention basin behind his property was able to handle the more recent rain events and did not overflow. Mr. Ferrante told the Board that they were going to add storm water management controls directly onto the property to control the water flow on the property even more. He added that the size of the proposed storm water management facility would be sized to handle the total increase in impervious coverage on the site to include infiltration and based upon the additional amount of impervious coverage.

Vice Chair Shepherd voiced his concerns for the large amount of impervious coverage that the proposed project would bring to the site.

Mr. Ferrante suggested that the proposed patio could be converted to a porous pavement design which would allow storm water to further infiltrate into the subsurface very quickly. He explained that they could use pavers with a wider gap between them

Mr. Neil Patel, Applicant/Homeowner, came forward and was sworn in. He addressed Mr. Rosenthal's question regarding the pool, with the proposed depth of the pool, at its deepest point, would be 6 ft.

Mr. Ferrante then told the Board that there was a zero net change of storm water sheet flow and runoff from the site, under the proposed conditions. He noted that the site currently drained towards the current storm water management basin, and the proposed basin would intercept the sheet flow coming off the site and sized accordingly.

Vice Chair Shepherd then asked Mr. Ferrante where they would place the dry well on the property and how was the water going to move the water towards that dry well. Mr. Ferrante

then located the area for the dry well in conjunction with the sanitary sewer area and the already in place easement for the current neighborhood dry well on the property. He added that if porous pavement were used for the patio, there would also be a layer of sand underneath the pavers to also mitigate runoff from that area and underground piping would be included to take the runoff to the proposed basin on the property. He added that the runoff from the proposed sport court would be handled by having a sloped area to bring the water to the dry basin. Vice Chair Shepherd asked for the detail of the material being used for the sport court, and Mr. Ferrante showed a grid-patterned material that would be supported by a thin layer of concrete to play pickle ball upon.

Mr. Procanik then asked for clarification regarding the drainage easement that goes through the subject property. Mr. Ferrante reiterated that it was assumed that area was for sanitary sewer pipeline running around the entirety of the neighborhood. Mr. Procanik then asked if they had a legal right to develop on that easement. Mr. Healey, Director of Planning, stated that the Technical Review Committee (TRC) report indicated that the fencing and the sport court needed to be relocated outside of those easements. A discussion ensued regarding the needs of the various agencies and Township that those elements proposed would have to be located outside of the easements. Mr. Ferrante stated that the Applicant could agree that should any maintenance of the easement be needed, that he would remove the sport court to allow that to happen as a condition of any approval.

Mr. Callie then held a discussion regarding the Applicant review his alternatives in light of the previous discussion.

Ms. Bethea brought up the Applicant's request for a "C" variance, and she asked what the case was for a hardship in the area for the improvements that were being requested. Mr. Callie stated that, legally, there did not have to be a hardship to request the variance, but that there could be a benefit/detriment analysis (a flexible C-2) that they believe the request fell under. Mr. Healey then asked what the zoning benefit to the public good was in the granting of the variance, and Mr. Callie explained that it was the improvement of incidental and customary accessory improvements on a residential lot that were permitted and allowed by code. Mr. Healey again asked for how they could justify the grant of the variance by showing the benefit to the public good. Mr. Callie indicated that he suspected that they would be coming back to the Board for the relocation of the sport court or a removal of that amenity. Mr. Healey indicated that impervious coverage was not just a storm water control but spoke to aesthetics as well as community character.

Mr. Healey asked if there was an approved variance for the existing coverage on the property. Mr. Callie stated that there were no previous approved variances. Mr. Healey stated that they were already 1,600 sq. ft. of impervious coverage over what was allowed in the zone. He added that the Board needed to consider the 3,500 sq. ft. over what was allowed for impervious coverage in the zone (42.6% impervious coverage proposed vs. the 25% allowed).

Mr. Reiss suggested that the Application was incomplete at that time and did not see any benefit for any more discussion that evening.

Mr. Healey then opened the meeting to the public for questions of the testimony given.

Mr. Bengali, 166 Second Street, Somerset, NJ, came forward. Mr. Bengali indicated that he supported the Application.

Mr. Bose, 157 Second Street, Somerset, NJ, came forward. Mr. Bose also indicated that he supported the Application.

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

Mr. Neil Patel, Applicant/Homeowner, came forward to describe what he was proposing. He added that the amenities that he wanted to include on his properties were for his two(2) small children and his in-laws who would be moving in with them after being kept home for the most part during the past two (2) years of the pandemic. He explained that he felt he did everything right when improving his driveway and deck when he first purchased the property as a new homeowner by hiring professionals who said that they would handle all permitting issues.

Vice Chair Shepherd then opened a discussion with the Board Attorney regarding their ability to grant an extension of time to allow the Applicant to adjourn the hearing that evening and come back to the Board with a revised plan. Mr. Rich asked if they had a valid survey, and Mr. Ferrante indicated that their proposed plan was based upon an underlying survey and could provide a copy to the Board when they come back with a revised plan.

Mr. Regan, Board Attorney, asked that they receive a copy of the current easement on the property if the Applicant was still considering a sport court on the property.

Mr. Callie told the Board that they were going to bring a Planner to the next meeting to answer some of the Board's questions.

The Board agreed to allow for an adjournment that evening, and it was agreed to the hearing being **CARRIED TO MARCH 3, 2022 – no further notification required.**

DL - 3/09/2022

Christine Woodbury, Board Secretary, brought up the instructions on how to attend the next hearing for Neil Patel.

MEETING ADJOURNED:

Mr. Reiss made a motion to adjourn the meeting at 9:02 p.m. The motion was seconded, and all were in favor.

Respectfully submitted,

Kathleen Murphy, Recording Secretary
February 28, 2022