

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

**VIRTUAL REGULAR MEETING  
March 3, 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:

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**PRESENT:** Cheryl Bethea, Joel Reiss, Alan Rich, Gary Rosenthal, Robert Shepherd, Vaseem Firdaus, and Chairman Thomas

**ABSENT:** Richard Procanik and Elizabeth Clarkin

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

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**MINUTES**

- **Regular Meeting - December 2, 2021**

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

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

**AGAINST:** None

- **Regular Meeting - December 16, 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. Rich, Mr. Rosenthal, Vice Chair Shepherd, Ms. Firdaus, and Chairman Thomas

**AGAINST:** None

- **Regular Meeting - January 6, 2022**

Mr. Reiss made a motion to approve the Minutes, as submitted. Mr. Rosenthal 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

- **Regular Meeting - January 20, 2022**

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

AGAINST: None

**RESOLUTIONS:**

- **Joe Salazar / ZBA-21-00018**

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

AGAINST: None

**DISCUSSION:**

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

**CARRIED TO MAY 4, 2022 – with notification required**

Board Attorney, Mr. Francis Regan, asked that the Township Engineer, Darrin Mazzei, be sworn in the event that he would provide any testimony in the upcoming hearings.

Mr. Darrin Mazzei, Township Engineer, was sworn in by the Board Attorney, Mr. Regan.

## HEARINGS:

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

Mr. Larry Calli, Esq., Attorney, appeared before the Board on behalf of the Applicant, Neil Patel. They were before the Board seeking C Variance approval in which the Applicant proposed to construct a pool with surrounding 1,300 sq. ft. patio, a 1,320 sq. ft. sport court 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 - **CARRIED FROM JANUARY 20, 2022 – no further notification required.**

Mr. Callie then reiterated the testimony he gave at the last hearing about living in the home for over six (6) years with extended family and have the support for the project from the surrounding neighbors. He noted that they were there before the Board to discuss a proposed pool with surrounding patio and a pickle ball court. He then drew the Boards attention to the two items that were discussed at the last hearing, to include impervious coverage and the location of the accessory improvements in the eased area at the rear of the property.

Mr. Eric Sudman, Engineer, came forward and was sworn in. The Board accepted his qualifications. Mr. Sudman brought up the plan that had previously been submitted to the Township related to the project. He then referred to the November 30, 2021 Technical Review Committee Memorandum (TRC), and indicated that they had revised the plans based upon comments received to date. Mr. Sudman indicated that they had relocated the proposed fencing and the proposed pickle ball court outside of the easements as requested. He then added that they managed to reduce the impervious coverage by 930 sq. ft. from the previous set of plans, while still over the maximum allowable percentage (42.6% to 37.9%, which was still over the allowable 25%). Mr. Sudman then discussed the inclusion of a dry well storage system in the rear of the property and sized in accordance with the Township ordinance for a minor development. He then explained that should the dry wells overflow during a heavy storm, the water would sheet flow to the rear of the property to the existing detention basin at the rear of the property, thus not causing any negative impacts to the adjacent properties. Mr. Sudman then indicated that with the inclusion of the dry wells, there would be a net change of 0% from the runoff that existed today on the site and the runoff that would occur with the proposed plan. He added that the stormwater system was, in fact, oversized for the needs of the property.

Mr. Sudman that they were also in receipt of the most recent TRC report, which brought up an additional concern regarding the elevation of the sports court by potentially causing negative impacts to the adjacent properties. He clarified by stating that it would prevent the adjacent property to drain properly to the westerly side. Mr. Sudman added that they were willing to work with the Board and Township staff to make the sports court in compliance and not cause any negative drainage issues to the adjacent neighbors.

Additionally, Mr. Sudman indicated that all of the proposed improvements on the property were now within the easement area. They discussed that the fencing on the easterly side of the pool would be right up against the surrounding material there and right up against the sport court in the rear of the property. The Vice Chair then asked how much impervious coverage was included in the front yard of the home, and Mr. Sudman indicated that it was

approximately 1,000 sq. ft., to include the driveway and front walkway. They then discussed how the impervious coverage was reduced to alter the percentage of that coverage, by reducing the paver patio area

Vice Chair Shepherd asked for clarification as to where the proposed fencing could be placed, and Mr. Sudman indicated that it would all be outside of the easement area and along the rear and easterly property lines. He testified that there were no plans to remove any existing impervious coverage.

Mr. Neil Patel, Applicant, came forward and continued to be sworn from the last hearing. Mr. Patel briefly told the Board what brought him before them that evening, including that he was a participating member of the community and coached sports and wanted to improve his property so that he and his family could enjoy the outdoors. Mr. Patel told the Board that they did not have the original TRC memorandum prior to the last hearing, so they wanted to be a good neighbor and to comply with all of the requirements. Mr. Patel then explained that the front yard concrete work was done after he moved in by someone who did work in the neighborhood. He added that that contractor indicated that he assured Mr. Patel that he would take care of all of the requirements of the Township, including permits, and went ahead with the construction of a large driveway to accommodate extra parking for his in-laws. He indicated that he was unaware that the required permits and other requirements were not met.

Vice Chair Shepherd then asked for clarification of the concrete space next to the walkway to the front of the home, and Mr. Patel indicated that it was extra parking space for his in-laws.

Mr. Reiss wanted to know if he had informed his neighbors of the noise generated when playing pickle ball. Mr. Patel indicated that his two adjacent neighbors were on the call for the meeting that evening to address that issue, if necessary.

Mr. Paul Ricci, Planner, came forward and was sworn in. The Board accepted his qualifications. He gave the Board his analysis and conclusions relative to the variance relief sought and the justifications to approve the request. Mr. Ricci told the Board that the Applicant went through substantial expense to provide these recreational facilities for his family on his property since the nearest pickle ball field was approximately 3-4 miles away. In looking through the Township's Open Space and Master Plan as well as the 2013 Recreation and Open Space Plan, noted that it said that there was a shortage on active recreation fields and gaps in locations in parks and facilities. Mr. Ricci then spoke of how the Application fulfilled some of the purposes of the Municipal Land Use Law (MLUL) in seeking the flexible "C" variance. He indicated that he believed that the variance could be granted without substantial detriment to the public good and that the benefits outweigh any detriments. He then discussed how the pandemic had affected the way people work and recreate, and that many of those activities were finding space to be accommodated in the home. He then enumerated the many purposes of the MLUL that would be advanced through the grant of the variance, including the advancement of elements of the Master Plan, and to provide sufficient space for a variety of recreational needs. He reiterated that he did not believe that the grant of the variance would create any substantial detriments to the zone plan and adheres to all the requirements of the zone, with the exception of the impervious coverage. Mr. Ricci then testified that any impacts of the impervious coverage would be mitigated through the proposed dry well system. He then added that 62% of the lot would still remain as open space, and with the majority of the improvements being located within the rear of the yard, it

would not be shielded by the home on the lot from the street. Mr. Ricci noted that the lot adjoined a three (3)-acre lot to the rear that was associated with a detention facility as well as a Marriott, a bar/restaurant and a multi-family project. He also testified that 168 Second Street, down on the cul-de-sac, had a basketball court and a pool that calculated to 38% of impervious coverage as noted using the GIS system and consistent with the proposed Application. Mr. Ricci then reiterated that the storm water management system that was associated would provide storm water mitigation that was more than adequate for the property. Mr. Ricci then indicated that the accessory uses that were proposed were included in the code.

Mr. Reiss stated that Castleton Park had four (4) pickle ball courts that he was involved in getting developed and that Colonial Park had pickle ball lines on their tennis courts.

Ms. Bethea inquired about the type of C variance that was being requested, and Mr. Ricci stated that they were seeking a C-2 variance and mentioned the need for additional recreational facilities in the Master Plan and Parks and Recreational Master Plan and would advance a purpose of the MLUL and would not cause a substantial detriment to the public good and the zone plan and that the benefits of the deviation outweighed any detriments.

Vice Chair Shepherd asked the Township Director of Planning, Mark Healey, about the Planner's testimony. Mr. Healey indicate that he was struggling with the testimony citing the need for community needs in the Recreation Plan, and that if they were trying to cite a hardship it would have to be something that uniquely affects the subject property. Mr. Ricci added that he was trying to demonstrate that there was a need and a gap for the type of active recreation that Mr. Patel was requesting, and that the Application did not qualify for hardship variance. A discussion ensued, and Mr. Ricci mentioned the Leight decision where everyone was entitled to a recreational amenity on their property, but that having a 25% impervious coverage limit on the property made it quite difficult for someone to obtain that. He also reiterated that the pandemic has brought many activities back to the home due to health concerns. Mr. Healey also stated that they had not had a sizeable request for variances for impervious coverage in that zone and could not actually remember any. He also added that he did not believe that the 25% limit was not unduly restrictive.

Vice Chair Shepherd then opened a discussion with Mr. Ricci and asked him if he had visited the property. Mr. Ricci answered in the affirmative. The Vice Chair asked him if he had visited the other property in the neighborhood that had a basketball court and pool, with Mr. Ricci indicating that he saw the development of the property from GIS in an aerial at his office at a later time. Mr. Ricci pulled up the aerial view from Google Earth for the Board's edification and entered it into the record as Exhibit A-1 with that day's date, Mr. Ricci indicated that the other property was located just down the street from the subject property. The Vice Chair then asked if the other property sought and obtained a variance, and Mr. Ricci answered in the negative.

Ms. Bethea opened a discussion as to whether the impervious coverage overage was due to both the pool and pickle ball court on the property or for just one or the other. A discussion ensued regarding the want/need for too many things to be located on the property that created the overage in impervious coverage, and the municipal needs should not be part of the discussion. Mr. Calli also added that when Mr. Patel hired a contractor to expand his driveway, the impervious coverage was over the allowed amount on the property just for that

expansion and was unbeknownst to Mr. Patel. He added that Mr. Patel was only made aware of that situation when he went to move forward with the subject project. Mr. Calli indicated that the contractor who expanded the driveway probably did not obtain a permit as it would have been flagged by the Township for the overage in impervious coverage. Mr. Patel indicated that he wanted to do everything the right way, especially considering what happened with the last contractor, but was trying to provide recreation and exercise for his whole family, which included his young children and his in-laws.

Mr. Sudman was briefly called back to review the overage in impervious coverage with all of the added elements, including the baseline number that initially put the property over the allowed amount of impervious coverage. Mr. Sudman testified that the site was currently over the allowed impervious coverage by 2.6% (515 sq. ft.). He then noted that the proposed pool patio area was about 693 sq. ft. (about a 3.5% increase in impervious coverage). Additionally, Mr. Sudman testified that the sports court added 1,320 sq. ft. or 6.6% impervious coverage, for a total impervious coverage of 37.9%.

Chairman Thomas then opened the meeting to the public for questions/comments on the Application.

Mr. Pingali, 156 Second Street, Somerset, NJ, came forward and was sworn in. Mr. Pingali indicated that he was a neighbor just across the street from the subject property. He wanted to give his support for the project.

Mr. Bose, next door neighbor on Second Street, Somerset, NJ, came forward and was sworn in. Mr. Bose stated that he is a newer neighbor but was fine with the plans as proposed as well as the sound that would be emanating from the pickle ball court. Mr. Bose gave his full support to Mr. Patel regarding the proposed plan.

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

Mr. Reiss then indicated that in looking into Google Earth, he noted that there were pickle ball courts within two (2) miles of his home. Ms. Bethea then discussed the justification of the additional impervious coverage, and expressed the lack of support for the justification given.

Mr. Calli then gave his closing summation. In giving the summation, Mr. Calli was in touch with Mr. Patel, who stated that the Patel family would like the entirety of the project to be approved; however, he stated that they would be willing to sacrifice the pickle ball court if the balance of the already constructed driveway improvement and swimming pool would be allowed. A discussion ensued among the Board.

Mr. Sudman explained that there would be an additional impervious coverage with just the proposed pool of 31% as opposed to 37.9% coverage with both the pool and pickle ball court. He stated that eliminating the sports court would reduce the impervious coverage by 6.8%.

Mr. Darren Mazzei, Township Engineer, then asked if the sports court would be moved, would the Applicant still be intending on installing the dry well storm water management system. He discussed the minor development requirements with Mr. Sudman but testified that they would

keep the system in the project to account for the additional 2.6% (515 sq. ft.) impervious coverage that currently existed in the front yard.

Vice Chair Shepherd made a motion to approve the Application, with variance, to allow the Applicant to construct a pool shown on the revised plan and submitted February 2, 2022 and allow for the currently constructed driveway improvements that exceeded the impervious coverage limitations. Mr. Reiss 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

- **CEDAR HILL HOLDINGS, LLC / ZBA-19-00041**

Mr. Peter U. Lanfrit, Esq., appeared before the Board on behalf of the Applicant, Cedar Hill Holdings, LLC. Applicant is seeking a D Variance to allow operation of a summer day camp at 152 Cedar Grove Lane, Somerset; Block 424.12, Lot 6.03, in an R-40 Zone.

Chairman Thomas indicated that he would be recusing himself due to living with 200 ft. of the property.

Vice Chair Shepherd would be running the meeting in the absence of Chairman Thomas that evening.

Mr. Lanfrit indicated that at the last hearing, the Board Attorney, Mr. Frank Regan, requested a brochure of the summer camp, with respect to the Application. He added that he did send the brochure to Mr. Regan's office and assumed that it would have also been provided to the Board members or perhaps put it on the website, and neither of those things occurred. In addition, he had provided information on February 22, 2022, including the Cedar Hill Camp Parent Orientation. He told the Board that he submitted that to the Township via e-mail as well as via a disk, which had also not made it to the website. Lastly, Mr. Lanfrit stated that since the Chairman had to recuse himself, there were only six (6) members who could act on the Application. He added that because it was a D variance request, he was entitled to have seven (7) Board members. He stated that he did not feel it was appropriate to hold the hearing that evening for those listed items.

Vice Chair Shepherd told Mr. Lanfrit that he thought they were going to only have one (1) witness (Traffic Expert) give testimony. Mr. Lanfrit stated that there were several questions related to traffic raised by Board members that would need to be discussed and responded to in order to prepare for the Traffic Expert to testify and Ms. Mennen. A discussion ensued regarding what further testimony was needed to be heard and some documents missing from the website. Board Attorney, Mr. Frank Regan stepped in, noting that the Board asked for certain additional information at the last hearing and the agreement between the school and the summer camp as well as the agreement between the school/summer camp and the swim club for shared parking. Mr. Lanfrit indicated that he just received the agreement between the school/summer camp and the swim club yesterday, therefore not affording the opportunity to post to the website yet. The Vice Chair agreed that the agreement related to the Traffic Expert's testimony and would recommend that the hearing be adjourned to March 17, 2022

and make sure that the required documents were posted to the Township website prior to the hearing.

**CARRIED TO MARCH 17, 2022, with no further notification required.**

**DL 4/30/22**

Ms. Woodbury then read the instructions in order to participate in the carried hearing.

**MEETING ADJOURNED:**

Vice Chair Shepherd made a motion to adjourn the meeting at 9:10 p.m. The motion was seconded, and all were in favor.

Respectfully submitted,

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Kathleen Murphy, Recording Secretary  
April 30, 2022