

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

**REGULAR MEETING
April 21, 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, Robert Shepherd, Vaseem Firdaus, Elizabeth Clarkin, and Chairman Thomas

ABSENT: Joel Reiss, Alan Rich, and Gary Rosenthal

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

HEARINGS:

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

D(3) Conditional Use Variances, Preliminary & Final Site Plan w/C Variance in which the Applicant proposed demolishing the existing church and daycare use, as well as 4 of the single-family homes on the site and constructing 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 JUNE 16, 2022– with further notification required.**

- **ARTHUR & DIANE WILMOT / ZBA-22-00003**

C Variance in which a shed straddling the property line needed to be moved onto the applicant's property at 2125 Amwell Road, Somerset; Block 510, Lot 3.02, in an R-40 Zone.

Mr. Healey explained that the hearing that evening originally came from an application that was before the Board for the landscaping business next door. As part of that application, Mr. Healey indicated that it was discovered that there was a shed that was straddling the property line and needed to be relocated. He then added that Mr. Wilmot owned the adjoining property and noted that the normal accessory structure set back in that zone was 25 ft., but that he would like to relocate the shed so that it was 15 ft. off the property line. Mr. Healey added that the Technical Review Committee (TRC) had no issues and that it was an existing shed where the adjoining property was a commercial use in a residential zone. Mr. Wilmot agreed with that explanation of the situation.

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

Vice Chair Shepherd made a motion to approve the Application with variance, as discussed. Ms. Bethea seconded the motion, and the roll was called as follows:

FOR: Ms. Bethea, Mr. Procanik, Vice Chair Shepherd, Ms. Firdaus, Ms. Clarkin, and Chairman Thomas

AGAINST: None

- **1784 CAPITAL HOLDINGS, LLC / ZBA-21-00009**

Mr. Chris Murphy, Esq., Attorney, appeared before the Board on behalf of the Applicant, 1784 Capital Holdings, LLC. D(1) Use Variance; Preliminary & Final Major Site Plan w/C Variances in which the Applicant was seeking approval for construction of a 125,335 sq. ft. self-storage facility at 1613 Route #27, Somerset; Block 85, Lots 58 & 59.02, in the GB Zone, **CARRIED FROM MARCH 17, 2022, with no further notification required.**

Mr. Murphy indicated that they were before the Board on December 16, 2021 that included Engineering, Architectural and Planning testimony, but agreed to come back to the Board with some revisions to the plan based upon Board and Township staff feedback and concerns. He added that they submitted updated Engineering and truck turn plans to the Board on February 18, 2022. Mr. Murphy then explained that they were before the Board that evening to discuss the changes made to the Engineering plans and Planning testimony to justify the variance relief in connection with the Application.

Chairman Thomas then stated, for the Board's and the public's edification, that they would not be voting on the matter that evening because they did not have enough members present for a vote. He added that the three (3) members that were absent would be listening to the tapes and submitting questions ahead of time

Mr. Paul Mutch, Engineer, employed with Stonefield Engineering, 92 Park Avenue, Rutherford, NJ, came forward and was sworn in. The Board accepted his qualifications. Mr. Mutch then explained to the Board the changes that were made and included on the February 18, 2022 plans. Mr. Mutch then entered into the record as Exhibit A-1, a colorized rendering of the Site Plan completed on February 14, 2022. He then indicated that they had met with the concerned neighbor and the professionals and revised the plans accordingly. He added that the most significant change was that they removed a block of 25 RV spaces that were previously pressed right up against the property line on the southern block and replaced with additional buffering and landscaping. Additionally, Mr. Mutch indicated that they reduced the overall intensity of the development by reducing the drive aisles and the pavement areas. He then discussed working with the neighbor to the north with the storm water and adjusted some of the fencing along the southern property line where they were closest to that southern abutter and changed the fencing from the decorative wrought iron to an opaque board-on-board type fence to provide a more definitive screen to the residences.

Vice Chair Shepherd then asked Mr. Mutch about the reduction of impervious coverage from a little over 69% to a little over 60%, an approximate 7.5% reduction, where a maximum of

40% was required. He then explained that most of the changes were made in the rear of the property, with an increase in side yard setback to 51 ft. with the removal of the block of RV parking spaces. He added that they centered up the RV spaces that do continue to exist in the rear so that there was also a nice 57 ft. setback to the canopy structure from both property lines, both to the north and the south. Mr. Mutch then indicated that they have decreased the building coverage overall, which came with the canopy removed for the RV spaces (4% reduction). He then added that they had increased the buffer along the frontage by about 5 ft., the side buffer to the north along the RV spaces by 10 ft., and increased the buffer along the side to the south of the site by 29 ft.

Vice Chair Shepherd then asked for clarification about the testimony given by Mr. Mutch regarding the different new setbacks. A discussion ensued. Mr. Mutch indicated that they had increased the plantings around the site to 340 from 240 and supplemented by 200 or so shrub plantings throughout the site and parapet wall. Mr. Mutch indicated that all of the buffer plantings would be 6 ft. tall along the sides of the property to give the residential properties a substantial buffer, double and triple planted to make a very dense screen. Mr. Mutch drew the Board's attention to the aerial view that was submitted with the Plan Set, showing the open space areas that did not require as dense a screening.

Mr. Mutch then described the current storm water management on the site currently as non-existent, allowing the storm water to flow uncontrolled to any one of the property lines. He then stated that their proposed storm water management plan was to collect all of the storm water that was on-site so that there would be no storm water runoff directly from the proposed site as it would be conveyed and collected underground to two (2) separate bio-retention basins located at the rear of the site. He stated that the plan would provide a betterment in the runoff conditions that exist on the property today.

Mr. Murphy indicated that they had received a letter from Kingsberry Acres residential development to the north, dated April 8, 2022, and submitted to the Board. He added that the letter indicated that the Applicant had met with the Kingsberry Acres property management, discussed the storm water issues, and that now they were in support of the project. He added that a representative from Kingsberry Acres would be speaking during the public portion of the hearing that evening.

Mr. Mutch then discussed the lighting plan to ensure that there was no light spillage onto neighboring residential properties by reducing the mounting heights of the fixtures on-site. In doing so, the lighting averages and ratios were a little off, but that the Township professionals would be agreeable to those waivers due to the effort to reduce the impact to the residential properties. He indicated that they have 0 foot candles in all the areas that abut the residential properties. A discussion ensued regarding the light levels in relation to the addition of the thick screening..

Vice Chair Shepherd then asked about the different kinds of fencing that appears to be proposed for the site. Mr. Mutch indicated that they typically include a decorative wrought iron fence along the top of a 2 ft. parapet wall to be aesthetically pleasing while also providing security and opaque screening for car lights. He reiterated that in spots where they were closer to the residential properties, they had swapped out the decorative wrought iron fencing with an opaque vinyl or board-on-board fence to give more screening in that area. He did testify that the wall would be surrounding the entire site and they showed the area where they

would be swapping out the decorative wrought iron fencing with the board-on-board solid fence.

Mr. Mutch then discussed the interlocking pervious pavers meant for water quality treatment on the site and part of the new NJDEP rules and regulations, based on Ms. Bethea's questioning. Mr. Procanik then asked for further understanding as to where the water was ultimately conveyed. Mr. Mutch indicated that it would be taken to the swales that would take it to the stream away from the residential properties.

Vice Chair Shepherd asked whether the pervious pavement on the site counted toward impervious coverage, and Mr. Mutch answered in the affirmative.

Mr. Mutch then showed the Board on the exhibit where the reduction of impervious coverage occurred on the site, related to a question from Mr. Healey, Township Director of Planning. Mr. Mutch reiterated his previous testimony of reducing the drive aisles and the removal of the 25 RV spaces on-site. He clarified his testimony regarding that and stood by the 7.5% reduction of impervious coverage on the site.

Mr. Healey then asked for clarification of the height of the buffer trees that would be required. Mr. Mutch indicated that they would comply. Mr. Healey then asked for the Applicant to prove that it was not feasible to keep some of the existing trees, particularly along the southerly border. Mr. Mutch indicated that there were some select areas where they could keep some existing trees, but some were older and more damaged. He indicated that they would be agreeable to work with the professionals and Mr. Healey to walk the site with their Landscape Architect to identify trees that could be saved and grade the properly accordingly.

The Chairman then opened the meeting to the public for questions of the Applicant's Engineer

Mr. Mark Rothberg, Esq., opposing counsel on behalf of Hempstead Garden Apartments, came forward. He indicated that they had their own Engineer and Planner that they wanted to put on the record of the Applicant's professionals completed their testimony.

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

Mr. Reinkamp, Planner, came forward and continued to be sworn in from the last hearing in December, 2021. He indicated that all his testimony still stood for the current plan and that he would be providing testimony that evening in support of the changes that had been made to the plan since the last hearing. He first detailed the improvements made to the storm water management system, going from sheet flow for a heavily used area for material storage and truck storage that would now be controlled, filtered, and released to a particular point on site that would have the least disadvantage to the neighbors. He added that the second was the provision of a landscape buffer increased on all sides, and substantially on the southern side with the removal of a large portion of the parking area for RV storage, while still providing RV storage where it doesn't exist within the community. Mr. Reinkamp then indicated that the Application advanced three (3) purposes of the Municipal Land Use Law (MLUL) to include the improvement of a non-conforming use, efficient use of land with a deep and narrow lot that would be difficult to use as currently zoned, and a low impact use in the neighborhood and fits generally in the mixed character of the other uses along the roadway. Additionally,

the need for self-storage in the post-COVID era. Mr. Reinkamp then focused on the C variances, stating that they had improved since the last hearing.

Vice Chair Shepherd then asked for clarification and additional explanation regarding the Planning testimony that was just given. Mr. Reinkamp emphasized the unusual deep and narrow lot that would make it difficult to place something more conforming on the site. He then stated that the Application before the Board that evening gave the property the least active use it could possibly have as a residential use.

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

Mr. Rothberg, Esq., opposing counsel on behalf of Hempstead Garden Apartments, came forward.

Mr. Christopher D. Briglia, Engineer, employed with Carroll Engineering, 105 Raider Blvd., Hillsborough, NJ, came forward and was sworn in. The Board accepted his qualifications. He then drew the Board's attention to the revised proposed stormwater management plan, noting that there were still 46 comments that were outstanding of the original 52 comments in the Township Engineer's report, dated March 4, 2022, particularly section F. He expressed his concern that the detention ponds discharge out onto an adjoining property (Hempstead Garden Apartments) without permission to do so and without easements to maintain the drainage system. He also described drainage being directed to the parking area of an adjoining property, also with no easement and no right to do so as well as no way to maintain the drainage system. He then described deficiencies in the detention ponds to provide water quality as required by the Township and the NJDEP to provide maintenance. Mr. Briglia then noted that easements had not been acquired and Hempstead Gardens had not been approached and that there were at least a half dozen items that the Applicant had not complied with regarding the Township ordinances that would require relief from the Township Zoning Board and eventually relief from the NJDEP regulations. He then spoke of Ordinance, Section 330-7J6 that related to the required minimum orifice size for outlet structures was 2 ½ inches in diameter and were only providing those that were 2 inches in diameter. He then spoke of Ordinance Section 330-7Q relating to relief from water recharge standards due to poor infiltration and would need relief. The next section he spoke of was Section 330-7R whereby the Applicant had not properly designed the bio-retention basins to be completely be filled with water during a water quality storm and, therefore, the water quality standards had not been met. He then spoke of maximum pipe length between inlets should only be 30 ft. and there were some sections that were greater than that length. Mr. Briglia then discussed Section 330-7T #3, which discussed a required grade drop from foundation walls, Section 330-7T #6 where the Applicant had a shallow grade and should be beefed up a bit from the foundation walls. Next, he discussed Section 330-7T #10 where storm structures should be located at least 10 ft. from the property lines and the Applicant had three (3) discharge structure and two (2) emergency spillways that were less than 10 ft. from the property lines. He then detailed Section 330-11E that had no safety ledge proficiency were shown on the plans for the bio-retention basins with no detail for them on the Site Plans that he saw. Next, he brought up Section 330-12C #7 where there should be a place on the plans that show all the bmp's on the site in the Operations and Maintenance Manual and there was none.

Mr. Briglia then indicated that on the first page, the Applicant was quoting the total area of new impervious surface to be 2.27 acres, which was 105,380 sq. ft. which would account for 42% of impervious area where it was 61% impervious area. He then noted that there was not any access shown on the plans to maintain the bio-retention basins and without access to be piped outside of their property.

Mr. Briglia then addressed the fact that he did not see anything from the Fire Prevention Director regarding circulation on the site and he felt the building was higher than it should be with three (3) stories and the height being higher than what was allowed. He then noted that there were 25 ft. drive aisles vs. 26 ft. required. Mr. Briglia then discussed utilities for the site, noting that there were 7 ft. retaining walls on the south side of the building and without the 50 ft. required buffer with only half of them being 6 ft. high as required. Also, he stated that if the walls failed, they were relatively close to the property line on the east end of the site. He asked how the retaining walls would be maintained and if there was a construction easement in place to maintain those.

Overall, Mr. Briglia testified, that the Applicant was providing less than half the required parking for the site, the impervious is over twice the amount allowed for the site and the site was being overbuilt for the size of the site. He brought up the deficient buffer that would not go over well with Hempstead Gardens. He indicated that the buffers provided were anywhere from 29 ft. down to 9 ft., half of what was required. Mr. Rothberg interjected that it was the entire length of the south side of the Hempstead Gardens property and the western portion where the detention basins were located, and Mr. Briglia concurred.

Vice Chair Shepherd made a point to note that all of the technical engineering comments usually need to be worked out between the Applicant and the Township Engineer. He added that they typically ask if the client would comply with all of the comments in the Township Engineer's report, and they typically answer in the affirmative. Mr. Healey then weighed in and agreed with Mr. Shepherd, but also indicated that the Applicant's Engineer should be able to speak to the concerns of Mr. Briglia.

The Vice Chair then asked for clarification of whether the storm water from the Applicant's property was being discharged onto the adjoining property. Mr. Briglia answered in the affirmative.

Mr. Healey then addressed some of Mr. Briglia's concerns, indicated that the building was 34 ft. high and the smallest setback was 45 ft. Mr. Healey then asked for clarification regarding the construction of a retention wall or maintenance/repair of that same wall, they would have to be allowed onto the Hempstead Gardens property without an easement in place to do so.

Mr. Healey wanted to clarify that the Director of Fire Prevention did write a report, dated May 8th, and Mr. Healey read the report off to Mr. Briglia for his edification. Chairman Thomas then stated that there would be a condition of approval that the Applicant comply with the comments in the Fire Prevention report.

Mr. Murphy, Applicant's attorney, stated that they did agree at the December, 2021 hearing, that they did agree, as a condition of approval, to comply with all the conditions set forth in the reports given to them so there would not be any variance relief necessary.

Mr. Mutch, Applicant's Engineer, went over a couple of points brought up by the objector's Engineer related to any of the waivers from the Township Ordinances for the storm water management system, indicating that they would agree to comply with all of the Township Engineer's comments. He did add that there were a few waivers necessary, as highlighted and agreed to by the Township Engineer. Specifically, the storm structures being separated from the property line was agreed to, with a waiver for that specific section pointed out. Mr. Mutch then addressed the comment made by Mr. Briglia regarding discharge onto private property, and currently does so. He added that all of the proposed storm water was captured, conveyed, and retained on the subject site and then discharged on the Applicant's site where it eventually flows over land through the swales and the basins in a way that met all of the NJDEP requirements for reductions and peak flows as well as volumes, etc. Mr. Mutch then discussed the fact that the Township Engineer directs their proposal so that there would be no negative impact on adjoining properties and in order to comply with NJDEP standards as well as the fact that they had to obtain approvals from the Soil Conservation District.

Mr. Procanik opened a discussion with Mr. Mutch related to the current conditions on the site related to storm water management and what was being proposed. Mr. Mutch also did not believe that the proposed storm water system would not have a negative impact on the basin on the Hempstead Gardens property.

Mr. Mutch then testified that there was enough room between the retaining walls and the property line so that it would not require a construction easement there. He stated that it would be built to industry standards and approved by the Township Engineer.

Chairman Thomas then asked if the Applicant required any kind of easement with Hempstead Gardens to do anything on the subject property, and Mr. Mutch answered in the negative. The Chairman then asked Mr. Mutch if the water released from the subject property would be less than what was currently occurring on the property, and Mr. Mutch answered in the affirmative. A discussion ensued.

Mr. John Chadwick, Objector's Planner, came forward and was sworn in. The Board accepted his qualifications. Mr. Chadwick indicated that the Applicant had to find that the site was particularly suited to the proposed use and evaluate that criteria a number of different ways. He then indicated that the proposal was in the immediate front yard/backyard of approximately 100 households and was not consistent with the surrounding area at 34 ft. high, three (3) stories with a blank wall more than 40 ft. long. He then brought up whether the proposal was consistent with the development regulations. Mr. Chadwick then indicated that the zone permits multi-family units that completely surround the subject property, and that the Applicant was asking for relief from building coverage, building size, and impervious coverage. He did not feel that the 29 ft. buffers were adequate to buffer the height and size of the proposed building. Mr. Chadwick stated that the purposes of the MLUL that were brought up, in his opinion, were weak and did not believe that the proposal was an aesthetic improvement to the neighborhood. He also indicated that he did not see any public benefit for the proposal and saw significant drawbacks. Mr. Chadwick's conclusion was that the Application did not meet the standards for a Use Variance.

Mr. Procanik asked if the proposed was a more or less intense use than what was currently on-site. Mr. Chadwick answered that he felt it was more intense a use. Mr. Chadwick stated that he was both concerned for the use as well as the magnitude of the development.

Mr. Healey then asked for clarification for how Mr. Chadwick felt the property was more intense. Mr. Chadwick included the building bulk and its relationship to the surrounding usage. Mr. Healey indicated that they had heard testimony that self-storage units were very low intensity operations. A discussion ensued.

Mr. Reinkamp, Planner, responded to Mr. Chadwick's comments by saying that the standard was to provide something similar needed to be placed on the property to fit in with the neighborhood. Mr. Reinkamp indicated that he did not believe that was the standard, but that it is whether or not there was a substantial detriment, and he did not believe that there was a detriment in the proposal crossing the property line. He then addressed the visual and aesthetics of the proposal, noting that if a residential property were to be constructed there, there would be multiple buildings of townhomes or apartments that would be in their view and they would be 2-1/2 stories, with peaks as high as the proposed building. Mr. Reinkamp then stated that the building height of the proposed building was conforming. He then spoke of mitigating the storm water issues. He then indicated that self-storage was a residential use and wants to be near those areas to serve the community.

Chairman Thomas opened the meeting for questions or comments.

The Chairman indicated that they would take a five (5)-minute break. He then re-opened the meeting to the public portion.

Mr. Hoever, V.P. of Operations, Matrix Property Management, came forward and was sworn in. Mr. Hoever indicated that he had been managing Kingsberry Acres for 12 years. Mr. Hoever handed a letter, dated April 8, 2022, to the Board members, Counsel and Counsel for the objectors. He marked the letter into evidence as Exhibit P-1. He then described their initial reaction to the proposal related to storm water management, lighting, and landscaping. He then compared the landscaping business to the self-storage business as being a much more intense use than the landscaping business.

Ms. Erica Malloy, Owner in Kingsberry Acres, came forward and was sworn in. She indicated that she lived very close to the proposal and was happy to hear that the fencing and landscaping would be visually appealing and excited for the new construction. She was interested in when construction would start. Mr. Healey stated that there were noise ordinances and time frames when work can be conducted on-site.

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

Mr. Murphy, Esq., then gave his closing summation.

Mr. Rothberg, Esq., then gave his closing summation.

The Board agreed to CARRY THE HEARING UNTIL MAY 5, 2022, with no further notification required. BOARD MEMBER VOTE will be taken on May 5, 2022.

MEETING ADJOURNED:

Vice Chair Shepherd made a motion to adjourn the meeting at 9:40 p.m. The motion was seconded, and all were in favor.

Respectfully submitted,

Kathleen Murphy, Recording Secretary
June 10, 2022