

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

**REGULAR MEETING
May 5, 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: Alan Rich, Gary Rosenthal, Vaseem Firdaus, Elizabeth Clarkin, and Chairman Thomas

ABSENT: Cheryl Bethea, Richard Procanik, Joel Reiss, and Robert Shepherd

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

RESOLUTIONS:

- **Marcin Baginski / ZBA-22-00001**

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

FOR: Mr. Rich, Mr. Rosenthal, Ms. Firdaus, Ms. Clarkin, and Chairman Thomas

AGAINST: None

- **Maureen & Edward Matson / ZBA-21-00024**

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

FOR: Mr. Rich, Mr. Rosenthal, Ms. Firdaus, Ms. Clarkin, and Chairman Thomas

AGAINST: None

DISCUSSION:

- **Franklin II Associates, Ltd – Appeal of Zoning decision - CARRIED TO SEPTEMBER 15, 2022 – with notification required.**

HEARINGS:

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

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 TO MAY 19, 2022, Board member vote only.**

Mr. Rich was not at the last meeting and prepared some questioning of the Applicant related to the hearing. He asked the Applicant's attorney, Mr. Chris Murphy, is they would have any problem installing solar panels on the roof of the self-storage unit.

Mr. Paul Mutch, Engineer, came forward and continued to be sworn in from the last hearing. Mr. Mutch indicated that there was a good likelihood that they could do solar panels on a portion of the roof and would be agreeable of a condition of approval for the same.

Chairman Thomas then opened a discussion, indicating that the addition of solar panels to the project did not affect any other portion of the Application or any of the testimony that had been heard, so there was no need to open up to the public.

- **SARWAT SIDDIQUI / ZBA-22-00007**

C Variance in which the Applicant had a ground-mounted solar array installed. Upon submittal of the as-built survey it was discovered that it was placed closer to the front property line than permitted (50 feet required – 47 feet existing/ proposed). at 3 Wood Turtle Court, Franklin Park; Block 33.01, Lot 26, in the NRPC Zone - **CARRIED TO MAY 19, 2022 – notification required.**

DL - 7/28/2022

- **RICARDO PEREZ / ZBA-22-00004**

C Variance in which the Applicant wished to demolish the existing home and accessory structures to build a single-family dwelling at 178 Coppermine Road, Princeton; Block 11.01, Lot 66.02, in the Canal Preservation (C-P) Zone.

Mr. Kevin Evanko, Architect, 816 Aspen Drive, came forward and was sworn in. The Board accepted his qualifications. He indicated that there was an existing single-family home and two (2) accessory structures that would be demolished and that they were seeking variances to build a single-family home in its place. Mr. Evanko indicated that they were open to comply with all staff comments.

Mr. Healey indicated that the variances reflected were largely indicative of existing conditions, and those are:

1. Lot Area – 6 acres required; 1.208 acres existing
2. Lot Frontage – 400 ft. required – 218.43 feet existing for each frontage.
3. Front Yard Setback – 100 ft. required – approximately 95 feet (to the west) and 83.5 ft. to the south) proposed.
4. Side Setback – 75 feet required – 39.5 ft. proposed.
5. Total Side Setback – 150 ft. required – 148.5 ft. proposed
6. Lot Building Coverage – 3% permitted – 5.84% proposed
7. Impervious Coverage – 10% permitted – 12.01% proposed

Mr. Evanko showed the Board the locations of all existing structures to be demolished and then indicated the structure that would replace them. He added that the new structure had a smaller footprint than the other three (3) that would be demolished. Mr. Evanko noted that they would be constructing the new structure further back front the road.

He then detailed the comments from the Historic Preservation Commission in relation to the exterior materials on the façade, to include the change in texture on the materials from wood plank to a smooth plank and lattice work below the stairs in the front and rear of the building from a 45-degree angle to a 90-degree angle. Mr. Evanko indicated that they received approval from the Historic Preservation Commission.

Additionally, Mr. Evanko indicated that they went before the Delaware & Raritan Canal Commission (DRCC) and received a few comments, which would be addressed, and would be reapplying to them pending any changes that might come about from that night's meeting.

Mr. Evanko then explained the height of the proposed structure, noting that it was 51% exposed above grade and were proposing to adjust the grade on the left side of the proposed home. He indicated that they would comply and be below the 50% requirements and would not be seeking a variance there.

Mr. Evanko then spoke to a proposed decrease in impervious coverage of 716 sq. ft. He indicated that with the redesign of the driveway and relocation of the house and going from the three (3)-car existing structures to the single car, it would result in a smaller amount of impervious coverage on the site. He also added that the proposed home would be set back further from the roadway on both frontages since it was a corner lot.

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

Mr. Rich made a motion to approve the Application, to include all conditions discussed. Ms. Firdaus seconded the motion, and the roll was called as follows:

FOR: Mr. Rich, Mr. Rosenthal, Ms. Firdaus, Ms. Clarkin, and Chairman Thomas

AGAINST: None

- **SAI DATTA MANDIR, INC / ZBA-19-00037**

Mr. Peter U. Lanfrit, Attorney, appeared before the Board on behalf of the Applicant, Sai Datta Mandir. D(3) Conditional Use Variance, "C" Variances and Site Plan in which the Applicant wanted to construct a 28,616 sq. ft. place of worship at 583 South Middlebush Road, Somerset; Block 36.01, Lot 6.03, in the A.(Agricultural) Zone - **CARRIED FROM APRIL 7, 2022 – no further notification required.**

DL - 7/31/2022

Chairman Thomas then indicated that there was a matter to be discussed brought up by the attorney for some objectors before they could start the hearing that involved whether or not the property would be considered a flag lot.

Ms. Martina Bailey, Attorney, came forward on behalf of the Ray and John Snyder, whose residences were immediately adjacent to the site on the south and southwest of the subject property. She then referred to a letter that she sent to the Board on April 26, 2022, which had already been submitted to the Board according to Board Attorney, Mr. Frank Regan. Ms. Bailey then explained that there was a jurisdictional issue as to whether the property would be considered a flag lot in that houses of worship were expressly prohibited from being constructed on these types of properties. She then went on to give the definition of a flag lot and noted that the frontage was actually only 357.92 ft. where 400 ft. was required, and a variance requested. Ms. Bailey then indicated that the property was connected to South Middlebush Rd. by means of a flagpole and located behind two (2) lots (Lot 6.02 and Lot 7) that have frontage on South Middlebush Rd. and were both owned by Ray Snyder. She then gave the definition of a flagpole and discussed how the proposed property met the criteria of a flag lot utilizing the formula to determine such that the minimum area of a flag lot, excluding the area of the flagpole, is more than 1.5 times greater than that required in the zone. Additionally, Ms. Bailey indicated that the flag lot area was at least 992,000 sq. ft., whereas 1.5 times that was required in the zone with an area of 12 acres (784,000 sq. ft.). She then noted that the minimum width of the flagpole was at least 30 ft. She then added that the property clearly had relatively narrow frontage in relation to its depth, which met the criteria when speaking of a flag lot. Ms. Bailey then spoke about her e-mail discussions with Mr. Healey, the Township's Sr. Zoning Officer, related to whether or not the property was considered a flag lot, which he determined it was not. She then discussed an interpretation of an ordinance and stated that the ordinance gave a much clearer description of what a flagpole was, and she therefore disagreed with Mr. Healey. She then asked the Board to render a decision and make a legal representation based on the provisions, as described in her letter. Ms. Bailey concluded by saying that if it were to be determined to be a flag lot, then houses of worship would not be allowed to be built there and the Application would have to be amended.

Mr. Healey then indicated that her description of their e-mail conversations went further than she described, and he said that he had a further reply that was conveniently left out of the April 26, 2022 letter sent to the Board. He read the portion of the e-mail discussion with Ms. Bailey, per the definition of flagpole, that area was not only defined as narrow, but it indicated that the area projects from the street to the buildable portion of the lot, thus the flagpole, by definition, was so narrow that it did not contain any buildable area. Mr. Healey then told the Board, Ms. Bailey and the public that the property was so wide, up to 400 ft. in width, that there was actually 250 ft. of buildable area in the narrower portion of the lot. He then added

that, by definition, the property was not a flagpole. He then described the three elements of a flag lot, to include the fact that it did not have the length of frontage on a public street, but that there was about 360 ft. of frontage, where 400 ft. was required. The next criteria were that it was located behind a lot or portion of a lot which had frontage on a public street. Mr. Healey then explained that the lot did extend behind at least two (2) homes. He then added that the lot must be connected to the public street by means of a flagpole, which by ordinance was a narrow strip or projection of land extending from the public right-of-way to the buildable portion of a lot. Mr. Healey then projected onto the screen, examples of what were considered flag lots. He added that not only was the presentation going to show that it was not a flag lot per the Township's ordinance, but it would also show that it was not a flag lot as they were commonly known in the land use field. He showed the latest illustrated book of development definitions from the Center of Urban Policy Research, a standard book that land use practitioners use when coming up with ordinances and want to understand how certain zoning and land use terms were defined. Mr. Healey indicated that the book describes a flag lot as a lot not meeting the minimum frontage requirements and where access to the public road was by a private right-of-way or driveway. The book goes on to describe what a right-of-way was, according to Mr. Healey's testimony, and he also spoke about a flagpole being described as a long strip of land. His description went on to include, for the subject Application, the use of the flagpole for vehicular access and for utility access to the property in question. Mr. Healey then discussed what a long strip of land was in zoning terms, often described as a long, narrow piece of land. He then went on to show examples of flag lots within Franklin Township. Then Mr. Healey showed the subject lot that was 360 ft. in width and that the buildable portion of the lot extended into this narrower portion of the lot, but did not include a flagpole, which was previously described as long and narrow. He then spoke to the reason that there were no maximum flagpole widths, stating that it needed to have a legitimate public purpose to do so, and there was none. To address Ms. Bailey's comments in her April 26th letter regarding if the Board were to determine that the subject property was a flag lot, a D-1 Use Variance would be required. Mr. Healey indicated that her statement was not true because houses of worship are permitted conditional uses, subject to the conditional use standards in the ordinance. He added that should the Board determine that the property was a flag lot, it would not change the fact that houses of worship were conditional uses in the zone and would be a D-3 Conditional Use Variance. He added that the Applicant would then have to prove that the use continued to be appropriate despite the deviation. A discussion ensued related to flag lots and their configurations. Mr. Regan, Board Attorney, opined that he did not believe the property was a flag lot because it had enough frontage to build at the front of the property. Mr. Healey told the Board to keep in mind going forward to see that the Applicant would be providing sufficient distance and buffering from the resident homes the property was behind.

Ms. Bailey then inquired about the ordinance not providing for a maximum width for a flagpole and discussed the issue. She indicated that she felt the buildable portion of a lot needed to be defined. A discussion ensued with Mr. Healey.

Mr. Lanfrit then indicated that if Ms. Bailey was questioning the ordinance interpretation by Mr. Healey, she should have applied for that and paid the appropriate fee that went along with that inquiry.

Chairman Thomas then indicated that the Board needed to make a motion to accept Mr. Healey's definition of a flag lot and that the subject property did not meet that definition. The

Chairman then made the motion for the Board to do so, and the motion was seconded by Mr. Rosenthal. The roll was called as follows:

FOR: Mr. Rich, Mr. Rosenthal, Ms. Firdaus, Ms. Clarkin, and Chairman Thomas

AGAINST: None

Mr. Lanfrit then opened the hearing by stating that the Application was filed in 2019 after another house of worship, in close proximity to the subject property, and took 11 meetings over a year's time to get to resolution of that application. He then indicated that the testimony that would be given for the subject Application would be very similar to that given in the previous application, except for the fact that it was a different site with different conditions. He then indicated that they would be providing testimony given by the Applicant and professionals for the Applicant. He then noted the following approvals that were required, as follows:

1. Site Plan approval
2. D(3) Conditional Use Variances:
 - a) Parking Location – the majority of the parking area shall be located to the rear of the main structure, with no more than 10% of the total parking located at the front entrance for handicapped accessibility, weddings, funerals – parking located to the side of the building.
 - b) Buffer – requires a 15 ft. buffer consisting of double, staggered row of evergreen trees planted at a maximum of 10 ft. on center with a minimum planting height of six (6) to eight (8) ft., or approved equivalent; a mix of evergreen and deciduous shrubs; and a six (6)-ft. high, solid, board-on-board or 25 ft. wide heavily landscaped buffer with triple, staggered row of evergreen trees planted at a maximum of 10 ft. on center with a minimum planting height of six (6) to eight (8) ft., or approved equivalent, and a mix of evergreen and deciduous shrubs – Buffer requirements not fully satisfied in certain areas (Applicant primarily relying on preservation of existing perimeter hedgerows to serve as screening with supplemental landscaping proposed in certain locations).
3. "C" Variances
 - a) Lot Frontage: 400 ft. required – 357.92 existing/proposed
 - b) Parking Aisle Width: 26 ft. required – 25 ft. proposed

Mr. Upendra Chivukula, Member/Representative, 536 New Brunswick Rd., Somerset, NJ 08873, came forward and was sworn in. Mr. Chivukula indicated that the religious/non-profit organization had been in existence for 10 years. They currently worship at 1665 Oak Tree Rd., Edison, NJ as an owner there. Previously, he indicated, they worshipped in South Plainfield, NJ. Mr. Chivukula indicated that they would continue to worship at the Edison site since there was a large population of members living there. He stated that they wanted to replicate their main temple in Mumbai, Indiana and that was their intent with the proposed Application. He then discussed the differences between the temple that currently existed in Edison, NJ, currently and the proposed. He added that the temple in Edison housed 10 deities and the one in Somerset, NJ would have only one (1) deity – Sai Baba. He indicated

that there were other similar temples in NJ. He noted that the size of the proposed temple was slightly under 29,000 sq. ft., would be open 7 days per week, with hours of operation weekdays from 8:00 a.m. To 12:30 p.m. and from 5:30 p.m. to 9:30 p.m. He added that the Saturday/Sunday hours would be 8:00 a.m. to 9:30 p.m. and that people would come to pray and then leave. Mr. Chivukula stated that there were four (4) times during the day, called AARTI, would be considered like a service. He discussed the number of attendees (M-T-F) would be 20-30 devotees during the morning hours, with 40-50 devotees during the evening hours. On Wednesdays, he indicated that 20-30 devotees would come during the morning hours and about 25-35 would come during evening hours. On Thursdays, he said that 40-50 devotees would come during the morning hours and 150-200 devotees would come during the evening hours as it is the main devotion for Sai Baba. On Saturdays/Sundays, Mr. Chivukula indicated that 100-120 devotees would come during the morning hours and 150-200 people would come during the evening hours. He then discussed holy days during the year, with three (3) main holidays in April, July, and October in 2022 for a one (1)-day event with about 350 people in attendance during the course of the day. He discussed working with the Township staff to keep attendees safe and keep traffic flowing as well as to agree to this as any condition of approval. He anticipated that most members would be from Franklin Township. He then told the Board that there would be different priests at the temple during the hours of operation, but they will not be living on the site. Mr. Chivukula also testified that there would be no activities held outside of the temple building and that there would be no weddings/funerals at the site. He did indicate that they would be doing some community services at the site such as blood drives, health camps, food bank drives, etc. with members only participating.

Mr. Healey then asked what the gift shop was for, and Mr. Chivukula explained that there were religious items for sale for members only.

Mr. Regan, Board Attorney, asked how many employees might be on-site at any one time, and Mr. Chivukula answered that there might be two (2) priests on-site at any one time.

Mr. Rosenthal asked if there would be a kitchen, and Mr. Chivukula answered in the affirmative. Mr. Healey asked what would happen in the kitchen and dining area, and Mr. Chivukula stated that small snacks would be served, and members would sit in the dining area to eat and then would leave. He added that the dining area would not be rented out to other organizations. Chairman Thomas asked if any part of the temple would be rented out, and Mr. Chivukula answered in the negative.

Chairman Thomas then opened the meeting for questions from the public for the witness.

Ms. Martina Bailey, Attorney for objectors, Ray, and John Snyder, came forward. She wanted to know about the other sites in surrounding areas and whether devotees from other sites in NJ would come to the Somerset, NJ site for regular days and/or for holy days. Mr. Chivukula indicated that the same festivals were being celebrated at the other locations. She then asked why they were building such a large facility when the stated membership is only 350 maximum on a holy day. Mr. Lanfrit interjected by saying that the site has a maximum building coverage requirement of 10% and they have 2.69% for building coverage, well under the maximum. Mr. Chivukula explained that the deity takes up space and the devotees want to prostrate in front of it and need the space to do so. Ms. Bailey then asked if the temple has activities devoted to growing their congregation, and Mr. Chivukula indicated that they did not.

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

Mr. Healey discussed the differing numbers for occupancy load of the proposed temple, noting that the Traffic Report indicated a top number of 587, the architectural plans mentioned a maximum occupancy load of 445 and Applicant's representative mentioned other numbers. He stated that the Applicant would have to discuss the discrepancies between these numbers.

Mr. Kishor Y. Joshi, Architect, 42 Townsend Drive, Freehold, NJ, came forward and was sworn in. The Board accepted his qualifications. The architectural plans were on a display board in the chambers that evening, and Mr. Lanfrit handed out color renderings of the same to the Board members and entered that into the record as Exhibit A-1. Mr. Joshi stated that the architecture proposed was to replicate the existing temple in India, both inside and outside. He then told the Board that the building would be oriented to the East, with the shorter side of the building facing South Middlebush Rd. He added that the entrance to the building would be on the right side as seen from South Middlebush Rd. Mr. Joshi then indicated that the building was one (1)-story with fake façade with fake windows and balcony in the upper portion to reflect the elevation in India. He indicated that the proposed colors for the exteriors would be greys, blues and reds and would be very close to what was being shown on the exhibit. He did tell the Board that the blues represented the glass, with the grey color being that of the exterior walls. Mr. Joshi then told the Board that the height of the proposed building, excluding the steeple, was 34 ft., 6 inches. He then indicated that the steeple height was 51 ft., 4 inches. He then told the Board that the dome was set back about 80 ft. from the front of the building. He did indicate that the dome was capable of being illuminated but could be shut off after all activities were over. Mr. Joshi added that the entrance/exit doors were required to be illuminated per the Township, with the main doors on the parking lot side of the proposed temple where the shoe racks were located and where the devotees would be entering/exiting the site. .

Mr. Joshi then drew the Board's attention to the layout of the interior of the building. He then oriented the Board to the main entrance area from the parking lot. He showed the main vestibule and the men's and women's side where the associated restrooms were located. He then oriented them to the sitting area of the temple of 425 occupancy load. He then showed the area in the temple where the main deity (Sai Baba) would be located, a food heating area, dining area, gift shop, office area, and two storage rooms for decorations and outside maintenance items. The architectural drawings showed each area of the temple and the associated occupancy load, assuming that each area would be occupied at the same time even though, in reality, the same people would be occupying many of the areas at the same time. He added that the total occupancy for the entire building was 587. Mr. Joshi told the Board that the building would be sprinklered. He then discussed the entrance/exit areas of the building.

Ms. Clarkin asked about the listing of Office 1, 2 and 3, but she indicated there shows only one office in the building. Mr. Joshi concurred and stated that would be corrected.

Mr. Rich asked about the one (1)-story nature of the building, with Mr. Joshi explaining that the upper areas would accommodate the mechanicals, etc. Mr. Rich then asked about the use of the kitchen, and Mr. Joshi indicated that it was a warming kitchen only, with no food preparation done there.

Mr. Healey then asked Mr. Joshi if the code did not require the inclusion of the large, wide lobby and 14 ft. wide corridor. Mr. Joshi stated that the occupants do not stay there or sit there, so it was not in the code to include that space for occupancy load. Mr. Healey then asked why all of the prayer space was not included for occupancy load purposes, and Mr. Joshi stated that some of the areas were restricted by the fire dept. and building code. Mr. Healey then asked about the devotees wanting to pray for the other idols shown in the building, and Mr. Joshi stated that they were not able to sit in the restricted area in front of the idols, so it did not have to be included in the occupancy count as a result.

Mr. Regan, Board Attorney, asked if there was a trash and/or recycling storage area. Mr. Joshi stated that the Engineer would give testimony regarding that.

Chairman Thomas then opened the meeting to the public.

Ms. Martina Bailey, Attorney for objectors, Ray, and John Snyder, came forward. She asked Mr. Joshi where the dome was located and if it was over the restricted area within the temple. Mr. Joshi stated that the dome was located over the main deity in the temple. They then discussed the type of lighting for the dome, with Mr. Joshi stating that it would be lighting facing up onto the dome. Ms. Bailey then discussed the ceiling height of 25 ft. and the rest of the height above that ceiling height. Mr. Joshi stated that the building height was 31 ft., 6 inches, with three additional inches to accommodate for the parapet. He added that there was about ft. above the inside ceiling for mechanicals, etc. Mr. Healey stated that with his calculations, the dome would be approximately 16 ft. above the parapet. Mr. Lanfrit indicated that parapets of 5 ft. or less does not count towards the height of the structure. They then had a discussion regarding the size of the dome, and Mr. Joshi indicated it was designed to mimic the dome in India. Ms. Bailey then inquired about the entrance/exit on the south side, and Mr. Joshi indicated that it was an emergency exit and that the paved area was just so that it would not be just dirt outside the door.

Mr. Chivukula testified that it was not their intention to illuminate the dome except on Saturdays and Sundays and during high holy days, per Ms. Bailey's questioning.

The Board and Applicant agreed to carry the matter – **CARRIED TO JUNE 2, 2022, with no further notification required. DL- 7/31/22.**

MEETING ADJOURNED:

Mr. Rich made a motion to adjourn the meeting at 9:41 p.m. The motion was seconded, and all were in favor.

Respectfully submitted,

Kathleen Murphy, Recording Secretary
June 21, 2022