

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

**REGULAR MEETING  
January 19, 2023**

This Regular Meeting of the Township of Franklin Zoning Board of Adjustment was held 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, Alan Rich, Gary Rosenthal, Robert Shepherd, Vaseem Firdaus, Vasiliki Anastasakos, and Chairman Thomas

**ABSENT:** Richard Procanik, Joel Reiss, Faraz Khan, and Michael Dougherty

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

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**MINUTES:**

- **Regular Meeting – November 3, 2022**

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

**FOR:** Ms. Bethea, Mr. Rich, Vice Chair Shepherd, Ms. Firdaus, and Chairman Thomas

**AGAINST:** None

- **Regular Meeting – December 1, 2022**

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

**AGAINST:** None

- **Regular Meeting – December 15, 2022**

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

AGAINST: None

**RESOLUTIONS:**

- **2023 Board Attorney**

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

AGAINST: None

- **2022 Board Attorney Amended Resolution**

Mr. Rich brought up a discrepancy he found in the contract amount for Township funds listed as \$40,000 in some places and \$25,000 or \$32,000 in other places within the document.

Mr. Healey stated that the “not to exceed amount” figure should indicate that it was going from \$25,000 to \$32,000. He noted that the fifth paragraph in the Resolution was saying that in February 6, 2022, the “not to exceed amount” was \$25,000, and the next paragraph indicated that it was being increased from \$25,000 to \$32,000 due to litigation matters. Mr. Healey stated that the \$40,000 figure was for the 2023 Board Attorney approval.

Ms. Bethea made a motion to approval the Amended Resolution, as submitted. Vice Chair Shepherd seconded the motion, and the roll was called as follows:

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

AGAINST: None

## HEARINGS:

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

Applicant was 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 - **CARRIED to MARCH 2, 2023 – with no further notification required.**

Chairman Thomas indicated that the Applicant should know that this March 2<sup>nd</sup> date was a “drop dead” date so that it didn’t go into Spring and cause potential issues. Mr. Healey indicated that he would inform the Applicant of such. He added that they did receive a Technical Review Committee (TRC) report and that they wanted one last shot at revising their traffic report to address the remaining issues that would address staff reports. A discussion ensued among the Board.

- **SAHAROSE, INC. / ZBA-20-00010**

Public hearing was required as a result of litigation related to the Board’s denial on the application for D(1) use variance relief in order to park fifteen (15) school buses on the Site. As a result of the litigation the Board, will consider a resolution to memorialize a resolution conditionally approving the application as a settlement to the litigation.

Board Attorney, Mr. Frank Regan, indicated that a trial was held on the appeal filed by the Applicant in March, 2022. He noted that the parties had reached a settlement that included approval of the Use Variance, subject to additional conditions beyond those that were on the original Resolution adopted by the Board in January, 2022. He added that prior to the Board considering the Resolution approval of the Use Variance and the settlement of the litigation, a public hearing was required. Mr. Regan then discussed the 20 conditions that were set forth in the proposed condition, as follows:

1. The granting of this relief shall not be construed or eliminate the satisfaction of any other requirements of the zoning ordinance or requirements of the agencies, board or authorities of the Township of Franklin, County of Somerset or State of New Jersey
2. All improvements are to be completed in accordance with the testimony and evidence submitted to the Board.
3. The Applicant agrees to comply with all review memoranda of the Board and Township professions as identified herein.
4. The 15 school buses are permitted (16-24 passenger size) to park in the northeast corner of the Site and no maintenance or repairs shall be made on-site, with the exception of tire replacement.
5. The Applicant shall stripe the 56-space parking area to include the 15 bus parking spaces to the specifications of the school bus size and those plans to be submitted to the Township Technical Review Committee (TRC) for review.
6. The Applicant shall install appropriate bus only parking signage, including no idling and exit direction signs for buses.
7. All improvements shall be made on-site within three (3) months after memorialization of this resolution.

8. The Applicant shall insure that the parking lot must be operation and in good state of repair.
9. The buses shall exit the designated parking spaces from the rear of the building.
10. The Applicant shall insure that the owner of the property keeps the travel lane clear.
11. There are three (3), 55-gallon drums of kitchen grease in the parking lot that must be removed.
12. There shall be a dumpster or garbage can for garbage from buses assuming they are cleaned regularly.
13. The rental area for the school bus parking shall be fenced.
14. The Applicant agrees to the installation and operation of security cameras 24 hours, 7 days a week.
15. For safety, lights shall be installed in the parking lot.
16. Applicant shall provide a copy of the Lease Agreement with all financial information redacted.
17. Applicant shall provide supervision of the Site to ensure that no persons other than Saharose buses or driver's personal vehicles are parking in the required parking areas.
18. The Applicant shall have someone in its office with supervisory authority and available to go to the parking area if there is an issue with the Site when the buses are being parking overnight. There shall be an employee on-site between 2:00 p.m. and 6:00 p.m. (or 3:00 p.m. to 5:00 p.m. Monday through Friday (and especially Friday)) to keep order in the lot.
19. Regarding concern with unauthorized users – Applicant shall have the authority and obligation to have unauthorized vehicles towed and to require the to erect signage to that effect.
20. This approval is subject to the Applicant's continuing obligation to pay all professional fees generated by this Application prior to issuance of a building permit and/or the issuance of the Certificate of Occupancy, as applicable.

Mr. John DeLuca, Attorney, came forward and appeared on behalf of the Applicant, Suharose, Inc., along with Mr. Ali who was the principal of Suharose, Inc. Mr. DeLuca indicated that they would comply with all of the conditions included in the Resolution just read by the Board Attorney.

Chairman Thomas then made a motion to open to the public. Seeing no one coming forward, the meeting was closed to the public by the Chairman.

Mr. Regan noted that the Applicant did make notice to property owners within 200 ft. of the subject property by publishing a notification in the newspaper and submitted an Affidavit of service regarding the same.

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

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

AGAINST: None

- **THIRUKUMARAN VELAYUDHAN / ZBA-22-00006**

Mr. John DeLuca, Esq., Attorney, appeared before the Board on behalf of the Applicant, Thirukumaran Velayudhan. He explained that they were before the Board that evening for Zoning certification of a pre-existing, non-conforming lot size and “C” variances in which the Applicant sought to expand a two-family dwelling at 21 Highland Avenue, Somerset; Block 194, Lot 20.01, in an R-7 Zone (2F) - **CARRIED TO MARCH 16, 2023 – with no further notification required.**

Mr. DeLuca then put on the record that all required notices had been published and served at least 10 days in advance of the hearing that evening, providing an Affidavit of service.

Mr. DeLuca indicated that the R-7 residential zone permitted single-family and two (2)-family dwellings and that the lot in question was a corner lot situated on the corner of Highland Avenue and Jefferson Street. He noted that the driveway access was from Jefferson Street. Mr. DeLuca indicated that the two (2)-story, two (2)-family home existed but was not habitable due to fire damage that occurred in or around February, 2021. He noted that the Applicant proposed to demolish a significant portion of the structure, renovate and construct a new expansion, which would be described in more detail by the Applicant. Also proposed was the removal of the existing asphalt driveway, which was more of a parking lot towards the rear of the property and replace it with a 10 ft. wide driveway that would lead to a newly constructed detached garage.

Mr. DeLuca then explained that they were seeking a zoning certification that the property was an undersized lot, where a 10,000 sq. ft. lot was required for a two (2)-family dwelling within the R-7 Zone and that that condition pre-existed prior to the Township’s adoption of Ordinance #3846-10, which occurred on February 3, 2010. He noted that at that time, there was an increase of lot size to 15,000 sq. ft. for a corner lot. Mr. DeLuca then indicated that the Applicant also required five (5) bulk variances for the proposal. Those are enumerated, as follows:

- Minimum Lot Area - where 15,000 sq. ft. was required for a two(2)-family dwelling in the R-7 Zone and 10,000 sq. ft. was existing and proposed.
- Minimum Frontage (Highland Avenue) – where 150 ft. was required for a two(2)-family dwelling in the R-7 Zone and 100 ft. was already existing and proposed.
- Minimum Frontage (Jefferson Street) – where 150 ft. was required for a two(2)-family dwelling in the R-7 Zone and 100 ft. was already existing and proposed.
- Minimum Front Yard Setback (Highland Avenue) – where 25 ft. was required for a two(2)-family dwelling in the R-7 Zone and 10.86 ft. was already existing and proposed.
- Maximum Impervious Coverage – 30% maximum permitted where 37.98% existed and 30.74% was proposed.

Mr. Thirukumaran Velayudhan, Applicant, came forward and was sworn in. Mr. Velayudhan stated that the dwelling was built in 1920 and that he purchased the property in 2009, but was now applying to repair and renovate the fire-damaged home. He noted that he purchased the home as a two(2)-family home in 2009, and planned to move into the home after renovations with his family and children. He also planned to rent the other unit in the home. The new plans included a renovated basement, which he stated he would use for the recreation for his three (3) children. He wanted to include an exit door in the basement for safety purposes. He

testified that he did not have any intention to make the home a three (3)-family home in the future. Mr. Velayuhdan stated that the third electrical meter included in the plans was for the common areas/uses such as the security cameras, etc. to share with the tenant.

Mr. Velayuhdan then described the parking plan, stating that he would use the driveway and garage and the second unit would use on-street parking. He agreed to widen the driveway if the Board so desired, but would increase the impervious coverage that they proposed.

Mr. Healey asked if the Applicant planned to present testimony/documentation as to the fact that the home was used as a two(2)-family home prior to zoning changes. Mr. DeLuca then submitted into evidence as Exhibit A-1, tax records from the Township Tax Assessor's office from a few months ago in 2022 that support that claim.

Mr. Healey questioned whether the tax records being submitted speak to whether the home was either built as a two(2)-family structure or whether it existed as a two(2)-family structure in 2009 when Mr. Velayuhdan purchased the home prior to an ordinance change. A discussion ensued regarding lack of expert testimony and/or documentation regarding the pre-existing/non-conformity. Mr. DeLuca indicated that they would be happy to come back before the Board again to provide the type of support that the Board was looking for to support the request for a Zoning certification of a pre-existing, non-conforming use. Vice Chair Shepherd suggested the Applicant look at all of the documentation he has from the 2009 purchase of the property.

The Board agreed to carry the hearing, and the Applicant was in agreement.

**DL - 3/17/2023**

## **DISCUSSION:**

- **Zoning Board By-Laws**

Mr. Frank Regan, Board Attorney, then discussed the Cox Treatus, which he described as the Zoning and Land Use Administration's "bible" that contained model rules for Zoning Boards. He indicated that the rules from the reference were modeled by the Township's Zoning Board, with a few exceptions. Mr. Regan suggested that they go through the Zoning Board By-Law document (20 pages) and entertain questions or comments on those.

Mr. Rich and Vice Chair Shepherd brought up the fact that most of the items in the By-Laws as it related to Rule 1:1 Organization, Officers, General Provisions, etc. are generally known as he, with one exception. The Board Attorney, Mr. Frank Regan, indicated that that there was a blanket statement at the beginning of Part 1 (Administration) that noted that all references made and all nouns and pronouns used herein shall be constructed in such gender as the sense and circumstances require. Mr. Regan also gave the example given in the document that "he" is used throughout for convenience and is to be considered gender neutral.

Mr. Rich then pointed out the language used in Rule 1:3-1 related to a Quorum. He questioned the language used to allow present member to adjourn a meeting when a quorum

was not present. Mr. Regan indicated that the wording should probably be changed to “shall” from “may”. A discussion ensued.

The Board then discussed Rule 2:2-2 - Adjournment, and Mr. Regan suggested the second sentence should read “however, that where such adjournment would extend the statutory period within which the Board is required to act, the consent of the applicant shall be evidence in writing or shall be made on the record.

They then discussed Rule 2:4-4 - Affidavit of Ownership, with Mr. Regan stating that there was a reference at the end of the sentence that read “except as otherwise provided in Rule 2:4-2” and should read “Rule 2:4-1” instead.

Vice Chair Shepherd had a question related to Rule 2:5-4, noting that he felt that there should be a change in the second sentence by replacing “he” with “the Board Member”.

Mr. Regan then discussed under Rule 2:10 - Qualification and Disqualification of Members of the Board and referred the Board to Rule 2:10-2 regarding the disqualification of a member. He added that they excluded a provision of the model rules that says that “any member so disqualifying himself shall not sit with the Board for participation in any executive session or conference, during the hearing or determination of the case in question.” The paragraph should be amended to read and include additional language previously left off as such: “Any member so disqualifying themselves shall not sit with the Board for participation in any executive session or conference, or during the hearing or determination of the case in question, nor shall such member participate as a member of the public by testifying either for or against the relief sought by the applicant. Nothing herein shall prevent any member of such member’s family or his attorney from appearing and giving testimony either for or against the application. A discussion ensued among the Board.

Mr. Regan then opened a discussion related to Rule 3:4 – Grounds; Recommendation. He read through what was written, stating that “Whenever a member of this Board shall miss three consecutive meetings or fail to attend at least 50% of the Board meetings over a six-month period” should be changed to read “Whenever a member of this Board shall absent themselves from meetings of the Board, without just cause, for a period deemed detrimental to the conduct of Board business, the Board may recommend to the Governing Body in writing, that such member be removed in accordance with the provisions of N.J.S.A. 40:55D-69. A member, except in cases of emergency, shall notify the Secretary of the Board of any planned absences at least 24 hours prior to a scheduled meeting.

Ms. Anastasakos opened a discussion regarding the removal of a Board member should they miss three consecutive meetings or fail to attend at least 50% of the Board meetings over a six-month period. She asked for clarification when it came to family emergencies, extended illnesses, etc. A discussion ensued among the Board, and Mr. Rich and Vice Chair Shepherd felt that the missing of three consecutive meetings was too strict. Chairman Thomas wanted to make sure they didn’t take all of the “teeth” out of it so as to not have it mean anything.

Mr. Frank Regan then discussed Rule 3:4-2 – Automatic Vacancy that was related to the previous discussion. It read, “In accordance with the provision of N.J.S.A., 40A:9-12.1(g), any Board member who, without being excused by a majority of the authorized membership of the Board, which is seven (7) members, fails to attend and participate at meetings of the Board

for a period of four (4) consecutive regular meetings shall be considered to be no longer a member of the Board and a vacancy on the Board shall be deemed to exist, provided that the Board shall notify the Governing Body in writing of such determination and further provided that the Board may refuse to excuse only with respect to those failures to attend and participate which are not due to legitimate illness. Mr. Regan indicated that he would check to see if that statute applied to the Board here and revisit the topic at a later date.

Ms. Bethea then brought up the incident that occurred recently with the Planning Board where they had a large room full of people, but did not have a quorum. She wasn't sure that the edict that asked for 24-hour notice when absence was not due to an emergency. Ms. Woodbury, Board Secretary, discussed the issue of things coming up at the last minute without being able to give 24-hour notice. She stated that she can only recall one time where the remaining members came to the meeting, but there was no quorum and the meeting could not proceed. Ms. Woodbury believed that it becomes a case by case basis as to a person's lack of attendance and the reasons for it. A discussion ensued among the Board. Ms. Anastasakos stated that maybe they should add the language, "without just cause" to any Board member who misses three consecutive meetings. Ms. Woodbury stated that she has to provide quarterly logs to the Municipal Clerk for Board members attendance at meetings and could provide that information to the Chairman and/or Board Attorney for review. The Chairman reminded the Board members that any decisions made should be a group effort and not placed in one person's lap.

The Chairman and Board Attorney discussed whether there was language in the Zoning Board Rules document relating to the time that Board meetings should start. Mr. Regan indicated that it did point out that meetings start at 7:30 p.m. It was agreed to keep the meeting start time at 7:30 p.m.

#### **MEETING ADJOURNED:**

Vice Chair Shepherd made a motion to adjourn the meeting at 8:37 p.m. The motion was seconded by Ms. Bethea, and all were in favor.

Respectfully submitted,

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Kathleen Murphy, Recording Secretary  
February 12, 2023