

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

**REGULAR MEETING
April 13, 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:

PRESENT: Cheryl Bethea, Alan Rich, Gary Rosenthal, Robert Shepherd, Vaseem Firdaus, Michael Dougherty, and Chairman Thomas

ABSENT: Richard Procanik, Joel Reiss and Faraz Khan,

ALSO PRESENT: Ms. Rebecca Maioriello, Board Attorney, Mark Healey, Planning Director, and Christine Woodbury, Planning & Zoning Secretary

MINUTES:

- **Regular Meeting – February 2, 2023**

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, Mr. Dougherty, and Chairman Thomas

AGAINST: None

- **Regular Meeting – February 16, 2023**

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

- **Regular Meeting – March 2, 2023**

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, Mr. Dougherty, and Chairman Thomas

AGAINST: None

DISCUSSION:

Extension of Time:

- **Amy Wilmot / ZBA-19-00021 – Extension of Time**

Mr. John DeLuca, Esq., Attorney, appeared before the Board on behalf of the Applicant, Amy Wilmot. He indicated that they were seeking an Extension of Time for a Minor Subdivision approval for 190 days provided in the Municipal Land Use Law. He added that the approval was originally adopted on December 19, 2019 and expired on June 26, 2020. Mr. DeLuca indicated that the issue was that they needed an approval from the NJDEP and would give them time to file the subdivision plats.

Vice Chair Shepherd made a motion to grant an Extension of Time for 190 days, subject to paying the fee of \$250.00 for the extension. Ms. Bethea seconded the motion, and the roll was called as follows:

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

AGAINST: None

HEARINGS:

- **SOMERSET AT ATRIUM, LLC / ZBA-23-00005**

Sign Variance in which the Applicant sought approval for height and size for a sign at 240 Atrium Drive, Somerset; Block 468.01, Lot 21.11, in the B-I Zone – **CARRIED TO APRIL 20, 2023 – newspaper notification required.**

DL - 6/13/2023

- **GABRIEL MERCADO & LUZILDA MERCADO-ESPARRA / ZBA-23-00003**

“C” Variance in which the Applicant proposed to gut the existing single-story dwelling and add a full second story as well as adding a nearly equal-sized two (2)-story addition, converting the structure into a duplex at 85 Henry Street, Somerset; Block 174, Lot 38.01, in an R-7 Zone – **CARRIED TO APRIL 20, 2023 – newspaper notification required.**

DL- 5/25/2023

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

(Request for reconsideration for a request denied on March 2, 2023)

Mr. Jim Stahl, Esq., Attorney, appeared before the Board on behalf of the Applicant, Cedar Hill Holdings, LLC. He indicated that the 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.

Chairman Thomas recused himself from voting on the hearing that evening due to his home being within 200 ft. of the property.

Mr. Stahl explained that at the conclusion of the March 2, 2023 meeting, where the Application missed being granted an approval by one (1) vote, he reminded the Board that he asked Board Attorney, Mr. Frank Regan, who was in attendance that evening, to not prepare the Final Resolution yet so that the Board could consider the reconsideration. He explained that the reason he made that request was because once the Resolution was passed, the matter would have been closed. Mr. Stahl then explained that if he asked for a reconsideration, the Board could say yes or no. He then told the Board that if they grant the motion for reconsideration, he would discuss the basic points enumerated in his letter to the Board, with no witnesses, and give the Board the opportunity to ask questions

Vice Chair Shepherd agreed with Mr. Stahl that the facts stated did indeed occur at the last meeting and that a Resolution had not been presented to the Board yet.

Mr. Rosenthal indicated that he would agree to a reconsideration, with the understanding that the one (1) item he had some problems with would be discussed that evening. He went on to explain that he was not satisfied with the relationship between Cedar Hill Prep School’s Summer Day Camp and the Cedar Hill Swim Club, particularly since the swim club would be undertaking some construction that would affect their available parking that the Summer Day Camp was proposing to share.

Vice Chair Shepherd stated that he was not interested in doing a reconsideration because while there were changes that had been made and changes that were a real problem in the original Application, there was now written contract between the swim club and the summer camp. The Vice Chair stated that Mr. Stahl mentioned that there was a trust issue here. Vice Chair Shepherd indicated that he was not comfortable with going forward and reconsidering whether or not to allow this because he did not have a feeling that anything has happened as far as the trust issue was concerned. He went on to state that, unless he missed something,

Mr. Stahl's client was not even present at the meeting that evening. Mr. Stahl indicated that the Applicant was not there that evening on purpose, because he was a little bit too outspoken. Mr. Stahl did indicate that Nan Menash is the property owner and the control agent for the lease of the property for the summer camp.

Mr. Stahl stated that he understands what the Vice Chair was speaking about with a trust issue related to the summer camp, but that he would be asking the Board later on to give the Applicant one (1) more opportunity, either under a temporary agreement to last until September/October, 2023 or a permanent approval. He spoke of the temporary agreement as being something the Board may want to see if the trust was restored.

Vice Chair Shepherd then asked Mr. Stahl if the issue of reconsideration was somehow tied to the idea of the license. Mr. Stahl then reiterated his previous statements about giving the Applicant another chance to rebuild the trust. He offered that they would seek a temporary agreement should the Board want to consider giving the Applicant another chance to regain the Board's trust and then when the Temporary approval ended, that perhaps the Board would give them a Permanent approval based upon how the operations ran over the course of the upcoming summer and subject to the same conditions that were in the original proposal, i.e., no outdoor music, taking care of the safety of the children, the parking, maximum of 200 campers, etc. He added that the Technical Review Committee (TRC) and/or the Board will always have jurisdiction on the camp because the Applicant was giving it to them.

Ms. Maioriello, Board Attorney, asked to be able to discuss the legal standard for the motion for reconsideration. She explained that the doctrine of Res judicata did apply to the Board, meaning that the Applicants do not get two (2) "bites of the apple" unless substantial changes were made to the Application, however, she indicated that the doctrine of Res judicata did not bar reconsideration if there was a modification or an enlargement of an approval that was already granted or if the Applicant had shown a change in circumstances or other good cause. She added that if the Board felt that any of those conditions were satisfied that evening by Mr. Stahl's opening statement and back and forth with the Board, then reconsideration may be granted.

The roll was called to vote on whether the Board agrees to give the Applicant reconsideration, as follows:

FOR: Ms. Bethea, Mr. Rich, Mr. Rosenthal, Vice Chair Shepherd, Ms. Firdaus, Mr. Daugherty

AGAINST: None

Ms. Bethea indicated that she was ready to give another chance to reconsider the decision. Mr. Rich indicated that he, too, was okay with giving reconsideration to the Applicant. Mr. Rosenthal would give the okay for reconsideration with the understanding that a discussion will be entered into by the Applicant regarding his previously mentioned concern of the relationship between the summer camp at Cedar Hill Prep School and the Cedar Hill Swim Club. Vice Chair Shepherd was also in favor of allowing a reconsideration of the matter because he believed that they had shown some changes in circumstances with finally presenting the written agreement related to the parking as well as the diminution of the number of campers down to 200 total. Ms. Firdaus agreed that the Board should reconsider

the Application. Mr. Dougherty was also in agreement that the Board should reconsider as well.

Mr. Stahl then stated that he submitted a letter, dated March 31, 2023 and discussed the trust issue that had developed with the issues regarding bussing, using the Somerset location as a hub location to disperse children to another camp location, etc.. He explained that there would now be a new program and new oversight over the program. One of the new components of the camp program would be that a Head Counselor would be put in place should Mr. Smith, the Program Director, not be on-site who would have the power to make decisions and the power to accept criticism, comments, Police Dept. issues, safety issues on campus, TRC generated issues, the Board, etc. He added that the Head Counselor would then take the issues expressed back to Ms. Nan Menash as well as Mr. Smith. Mr. Stahl then indicated that the operation of the camp was subject to and contingent upon permission granted by his clients, the Menashes, with all of the conditions placed on the record before the vote was submitted at the last hearing. He brought up the noise issue, the safety concerns and overall safety of the children going from the swim club parking lot to the camp and back with staff to oversee those movements as well as staff to oversee drop-offs and pickups of campers and vehicle movements of both cars and busses. Mr. Stahl then testified that they would be submitting reports, as required, with a joint effort between Mr. Healey and his office.

Secondly, Mr. Stahl stated that there would be a reduction of 80 campers being brought to the site, for a total of 200 campers, and 20 less staff to effectuate a change on the site that would now have less cars and less busses traveling to and from the camp on Cedar Grove Lane along with more control and more supervision.

Mr. Stahl then discussed the contract between Cedar Hill Swim Club and the camp and that it had been in the file and had just not been given to the Board and the Township. He noted, going forward, that the Board and the Township would receive a copy of that contract letter every year prior to January 1st. He added that to the extent, for whatever reason, that there was no available parking on the swim club site during the camp season, he would have to either shut down the camp or, preferably, find a suitable location off-site to shuttle the children to the site. Mr. Stahl then noted that the swim club would be notified that any construction on their site should be accomplished in the spring or fall seasons outside of the summer season when the camp was operating or they would not be paid for the shared parking privilege.

Vice Chair Shepherd indicated that if the parking was not available for the camp use in the swim club parking lot, he was not comfortable that they would find another alternative location to shuttle the children from to the camp. He indicated that should there be no parking available at the pool club, the Applicant would have to come back before the Board for their approval of any alternative. Mr. Stahl agreed with that decision. The Vice Chair then told Mr. Stahl that he wanted to see a sidewalk put in that would allow pedestrian movement between the swim club parking lot and the Cedar Hill Prep School parking lot. Mr. Stahl then indicated that should they only receive a Temporary approval, he could not agree, on behalf of the club and his client, to put a sidewalk in. He added that if the Board gave the Special Use Permit and then they came back before the Board, as a condition of any approval, the Board could say they wanted a sidewalk or the Board could grant the "D" variance approval and have the owners put in a parking lot between the swim club and the camp. Mr. Stahl indicated that

should the Board want them to put a sidewalk in between the two sites, they would have to gain the swim club's approval and determine if there would be any variances involved.

Ms. Bethea indicated that should the parking become unavailable on the swim club site for the camp's use, they would need to come back to the Board to determine reasonable off-site accommodations.

Vice Chair Shepherd then told the Board and Applicant that there had been so many comments, amendments and proposals for the particular Resolution, whether it was a Temporary Use Variance or otherwise, he was concerned that somehow something would be missed. A discussion ensued that the agreement could be comprised of the TRC report, Mr. Stahl's memorandum and the Board's motion, and could be "tweaked" by the Board's review.

The Vice Chair then opened the meeting up to the public for comments.

Mr. Piva, 9 Wexford Way, Somerset, NJ, came forward and was sworn in. Mr. Piva stated that his backyard abuts the swim club and he stated he had a problem with screaming children and a DJ playing music all summer long. The Vice Chair told Mr. Piva that there was no music or DJ outside and no amplification of any sound outside of the school building allowed and continue to be part of any Resolution. Mr. Piva stated that it was there summer too and they kept nice yards in a nice neighborhood that they really couldn't enjoy because the camp was very invasive on their quality of life they never signed on for.

Mr. Healey then clarified that the Resolution for the Temporary Use that the camp was given for last year did not include a declaration of no sound amplification outside. He added that that condition was discussed at the last hearing in March of 2023 as a potential condition of any approval. Mr. Healey stated that if the Board was inclined to make a motion in the affirmative, whether it was a Temporary Use or a "D" Variance, the April 4, 2023 TRC report basically outlined the conditions that were discussed by the Board at the March, 2023 hearing. On top of that, Mr. Healey stated that the Applicant outline (A-E) in Mr. Stahl's March 31, 2023 letter, included the request for reconsideration with a list of items that included reducing the maximum number of campers on-site to 200, down from 280, a reduction in staff by 20 and the submittal of an agreement letter between the camp and the swim club each year on January 1st for use of the swim club parking lot. He then noted that comment "D" in Mr. Stahl's letter would be modified by comment #1 in the TRC report because they were going to come back to the Board if they could not use the swim club parking lot for some reason. He added that comment "E" in Mr. Stahl's letter that related to having a person of authority in charge on-site each camp day and the better controls they would have in place to ensure camper safety and to receive any complaints or information from local Franklin Township authorities.

Mr. Mark Maris, 179 Wilson Road, Somerset, NJ, came forward and was sworn in. Mr. Maris indicated that he was there that evening in support of the camp and am challenging the Board in requiring the Use Variance. He added that it was his understanding that the summer camp serves as an extension of the school use that was already approved and discussed he hardship on families to provide day care and educational support throughout the summer months and the training that older campers have received to help in their future careers.

Ms. Cynthia Wolf, 3 Jean Road, Somerset, NJ, came forward and was sworn in. Ms. Wolf indicated that she was a Cedar Hill Swim Club Board member (Vice President) and was in her ninth year on the Board. She wanted to address the issue of the lot not being able to be used. She stated that the swim club was a summer operation and there would never be an issue of the parking lot not being able to be used in the summer months. She then also added that the relationship between the owners of the school and the swim club had been very good in the past and currently so as well.

Mr. Rosenthal asked Ms. Wolf if there was a parking agreement in place for last season, and Ms. Wolf answered in the affirmative, stating she could send the Board a copy if they wanted one.

Ms. Bethea stated that the concern of not being able to utilize the swim club parking lot was because of the planned removal of the parking spaces currently utilized by the summer camp. Ms. Wolf assured the Board that there was plenty of parking on the swim club site as there was more parking towards the rear of the swim club site.

Mr. Stahl asked Ms. Wolf if she thought it would be an issue with the swim club Board in allowing the construction of a sidewalk between the swim club and the school site for summer camp use.

Mr. Darrin Mazzei, CME Engineer for the Township, stated that the reduction in parking at the swim club was being done as part of the cell tower project on their site, due to the Delaware & Raritan Canal Commission (DRCC)'s requirements. He added that if any sidewalk would be constructed, it would have to be approved by the DRCC as well for impervious coverage purposes and additional parking may have to be removed as a result. Mr. Stahl then indicated that any approval given by the Board would be subject to all of the conditions, including any imposed by the DRCC.

Ms. Bethea stated that it was good to hear that there was a good relationship between the swim club and the school/summer camp, however, the decision of the Board was to make a determination based on how the two organizations would conduct themselves currently and going forward and that the conditions set forth would be enforceable.

Ms. Margaret Thomas, 147 Cedar Grove Lane, Somerset, NJ, came forward and was sworn in. Ms. Thomas asked how many staff they would be employing that summer, considering the reduction in the number of students allowed on the site down to 200 from 280. The Applicant did not have a definitive answer to the number of staff being employed that summer, just that staff would be reduced. Ms. Thomas indicated that there had been a ratio of 4 children per counselor in the past and wanted to know if there would be a similar ratio of campers to counselors going forward. She stated that she lived across the street from the school and enjoyed watching all of the children's activities at the summer camp, especially being a retired schoolteacher of 40 years. Ms. Thomas noted that the person running the summer camp was disrespectful and arrogant. She added that he told her husband that he didn't have a right to stop the noise and could put a marching band on the site if he wanted to. Ms. Thomas then stated that she was an outdoor person with 2 acres to take care of and loved being outdoors in the nice weather. She stated that a bullhorn was utilized from the beginning of the camp day to the end of the camp day all summer long from when school ended to the end of August. She added that she had been recuperating from a cancer diagnosis and wanted to

walk her yard for some serenity and peace of mind and couldn't do so with all of the noise coming from the site. Ms. Thomas stated that she called the owner of the school and asked if they could lower the music and was accused of being against her camp.

Mr. Stahl answered Ms. Thomas' question of camper/staff member ratio. He indicated that there would be 103 staff on-site, minus the 20 they are reducing, for a total equal to 83 staff members who would be distributed as archery counselors, pool counselors, art counselors, group counselors, etc.

Seeing no one coming forward, Vice Chair Shepherd made a motion to close the public portion.

The Vice Chair stated that they would not conduct two (2) votes for a Resolution that would be the same whether it was for a Permanent "D" Variance or a Temporary Permit for the upcoming 2023 summer season of the camp.

Ms. Maioriello, Board Attorney, suggested that they first start with a vote for the Temporary Permit and that it could not exceed past six (6) months.

Ms. Firdaus suggested that they should vote first for a "D" Variance, and should it not pass, then vote for a Temporary Permit. The Vice Chair agreed with that reasoning.

Vice Chair Shepherd then made a motion to grant a "D" Use Variance to Cedar Hill Prep School, which would allow it to operate a summer camp, subject to all of the conditions found in the April 4, 2023 TRC report and the additional restrictions found in the March 31, 2023 letter to the Vice Chair Mr. James Stahl, Esq., Attorney for the Applicant, as well as the inclusion of a sidewalk between the school and the swim club to be constructed within a year's time of any approval. Additionally, if the school no longer were able to use the swim club parking lot, they would have to come back before the Board to propose some other alternative space to utilize. Mr. Healey added that in the restriction of no outdoor amplified music, that would also include no use of a bullhorn or starter pistol on the property. Ms. Firdaus seconded the motion and the roll was called as follows:

FOR: Ms. Firdaus

AGAINST: Ms. Bethea, Mr. Rich, Mr. Rosenthal, Vice Chair Shepherd, and Mr. Dougherty

Ms. Bethea stated that she voted "No" because she wanted to vote on the Temporary Permit. Mr. Rich voted "No" because he wanted an opportunity to vote on the Temporary Permit. Mr. Rosenthal said that although he was pleased to hear that there was a good relationship between the swim club and the school/camp, he would prefer to vote on the 6-month Temporary Permit. The Vice Chair voted "No" because he would like to give them one (1) more chance and enough information was given that evening to identify where there were issues with the summer camp, with more involvement of the owner of the school. Ms. Firdaus voted "Yes" because she felt that the summer camp was a benefit to the community. Mr. Dougherty was voting "No" in order to be able to vote on the Temporary Permit.

Motion failed and the Vice Chair then made a motion to grant Cedar Hill Prep School a Temporary Use Permit to allow it to run a summer camp over the next six (6) months. He

noted that the Temporary Use Permit would be subject to all of the conditions found in the April 4, 2023 TRC report and the additional restrictions found in the March 31, 2023 letter to the Vice Chair Mr. James Stahl, Esq., Attorney for the Applicant. Additionally, if the school no longer were able to use the swim club parking lot, they would have to come back before the Board to propose some other alternative space to utilize. Mr. Healey added that in the restriction of no outdoor amplified music, that would also include no use of a bullhorn or starter pistol on the property. Should there be a permanent approval in the future, that the inclusion of a sidewalk between the school and the swim club would be constructed within a year's time of any approval. Ms. Firdaus seconded the motion and the roll was called as follows:

FOR: Ms. Bethea, Mr. Rich, Mr. Rosenthal, , Vice Chair Shepherd, Ms. Firdaus and Mr. Dougherty

AGAINST: None

Ms. Bethea indicated that, given the testimony that evening, she felt that the Applicant made a good faith effort to make adjustments to address the concerns of the Board and the community. She stated that she felt that the Temporary Use gave everyone the opportunity for the camp to demonstrate that they would abide by all of the conditions agreed to and build the trust of the Board and the community. Mr. Rich indicated he would vote "Yes" if the Applicant would follow all of the conditions included and agreed to. Mr. Rosenthal voted "Yes" to the Temporary Use Permit for the Applicant to demonstrate that they can comply with all of the conditions put in place. Ms. Firdaus stated that she would vote "Yes" for the same reasons as everyone else on the Board had already stated.

Motion passed.

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

Mr. John DeLuca, Esq., Attorney, appearing before the Board on behalf of the Applicant, Thirukumaran Velayudhan. Mr. DeLuca indicated that the Applicant was looking to receive Zoning certification of a pre-existing, non-conforming lot size and "C" variances in which the Applicant sought to expand a two(2)-family dwelling at 21 Highland Avenue, Somerset; Block 194, Lot 20.01, in an R-7 Zone - **CARRIED FROM MARCH 16, 2023 – with no further notification required.**

Mr. DeLuca put on the record that the proper notification was given and continued and carried from the previous hearing on the matter. He indicated that the R-7 Zone permitted both single-family and two (2)-family homes and that the subject property was situated on a corner lot at the intersection of Highland Avenue and Jefferson Street, with driveway access from Jefferson Street. Mr. DeLuca also told the Board that the home was a two(2)-family home that was not currently habitable due to fire damage that occurred in 2021. He went on to explain that his client planned to take down a portion of the structure that was damaged by fire as well as take out the existing asphalt driveway, which was more like a parking lot towards the back of the property and replace it with a new driveway that would lead to a detached garage.

The relief that they were seeking was first, a Zoning certification that the property was, in fact, a two(2)-family use prior to the Township's adoption of Zoning Ordinance 3846-10, which was adopted on February 23, 2010. He explained that the delay in coming before the Board was the time to obtain documentary proof of the existence of the two(2)-story home prior to 2010 in addition to the Applicant's testimony. He explained that that ordinance reduced the required lot size in the R-7 Zone for a two(2)-family dwelling to 10,000 ft. Beyond the zoning certification, Mr. DeLuca indicated that there were a number of non-conformities, some of them existing and some of them past variances that were approved but were now being changed. He indicated that they were now seeking the following variances:

- Bulk Variance for Minimum Lot Area – where 15,000 sq. ft. was required for a two(2)-family dwelling in the R-7 Zone and 10,000 ft. was already existing and proposed.
- Bulk Variance for 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.
- Bulk Variance for 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.
- Bulk Variance for 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.
- Bulk Variance for Maximum Impervious Coverage: 30% maximum permitted, where 37.98% exists and 30.74% was proposed.

Mr. DeLuca indicated that the Applicant received the Township's Technical Review Committee report (TRC), dated January 10, 2023, which will be addressed in the testimony given that evening.

Mr. Thirukumaran Velayudhan, Applicant, came forward and was sworn in. Mr. Velayudhan testified that he bought the property in December of 2009 as a two(2)-family home. He indicated that he had brought documentation with him since the last time he was before the Board, including the November, 2009 Inspection Report, the Certification of Occupancy granted by the Fire Prevention Dept, dated October, 2009 as well as the contract that was executed in October 2009 and the mortgage company inspected that was executed in October, 2009. Mr. Velayudhan testified that all of the documents prove that the dwelling was a two(2) family home in 2009, prior to the zoning ordinance change in 2010. He then told the Board that he planned to renovate the home after the fire and move into the home with his family. He stated that he also would like to rent the smaller unit. Mr. Velayudhan then explained that the basement was going to be used for his Children's recreation purposes and keep it as an emergency exit after experiencing a fire in the home already. Mr. Velayudhan stated that both units have stairway access through the dwelling and the rental unit has its own stairway access to the outside. He said that he had no intention of converting the dwelling to a three (3)-unit dwelling and discussed the three electric meters that existed on the property, stating that the third meter was for the outside lighting and security cameras because the cost should be shared between both units. He then spoke about the driveway usage as being for himself and there was a walkway leading to the rental property from Highland Avenue. He added that there was street parking for the rental unit. Mr. DeLuca asked him about a comment in the TRC report about the possibility of widening the single-width driveway to a double width, and he agreed that he could widen the driveway for additional parking.

Chairman Thomas opened a discussion regarding the Zoning certification and if that needed to be determined first before going through the rest of the items related to the repair/renovation of the home. Mr. DeLuca interjected by stating that the ordinance change in 2010 did not change the permitted use (two(2)-family home) in the zone, it just changed the permitted lot size for a particular use. He added that they did submit the documents testified to by Mr. Velayudhan on March 23, 2023 to Ms. Woodbury and provided 15 copies of each exhibit. The Board Attorney, Ms. Maioriello, interjected that a number of the documents described by the Applicant were considered public documents and could be obtained as proof through OPRA, particularly if something was recorded with the County Clerk's office and the Certificate of Occupancy drafted for the property. A discussion ensued, and Mr. Healey stated that they were originally going to rely upon the testimony of the Applicant at the last hearing, and this time they have provided documentation from third-parties that would provide confirmation. Mr. Healey added that they did submit a tax document, dated March 15, 2019, but that it was not documentation pre-2010. He also noted that there were pictures in the inspection report from 2009 that show the existing conditions, including two (2) meters and two (2) electric boxes.

Mr. Rich asked for clarification related to the date the dwelling had to be certified that it was a two(2) family dwelling. A discussion ensued.

The Board agreed that the documentation that was given was proof that the dwelling was a two(2)-family home prior to the zoning change in 2010 and a vote was taken. The roll was called as follows:

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

Mr. Adnan Khan, Engineer, AWZ Engineering, came forward and was sworn in. The Board accepted his qualifications. Mr. Khan then utilized larger versions of the plans that were already submitted to the Board, dated May 30, 2022. He first discussed the zoning analysis that already been discussion by the Applicant, stating that there was a Minimum Lot Area change required for a two(2)-family dwelling from 10,000 sq. ft. to 15,000 sq. ft. that made the dwelling a pre-existing, non-conformity in the R-7 Zone, with the same affecting the lot frontages on both Highland Avenue and Jefferson Street. Mr. Khan then testified that the Front Yard Setback (Highland Avenue) requirement was 25 ft., with 11.44 ft. existing and 11.17 proposed, which was contradictory to what was listed on Sheet C-01 of the plans. He stated that they were not complying with the ordinance because Mr. Velayudhan wanted to re-do the covered patio in the front of the existing home. He then spoke about the slight overage of the maximum impervious coverage allowed in the zone, noting that they had reduced the existing impervious coverage significantly from 37.98% down to 30.74%.

Mr. DeLuca asked Mr. Khan if he could calculate the increased impervious coverage with the expansion of the proposed driveway from a single-width driveway to a double-width driveway. Mr. Khan stated that they were being asked to provide a 15 ft. wide driveway as opposed to the 10 ft. wide driveway currently proposed. He indicated that by doing so, the impervious coverage would increase by about 3-4% for around a total of 35% that was still below the current conditions of 37.98%

Mr. Khan directed the Board's attention to Sheet C-02 that depicted the existing home, and he indicated that they were proposing a 2.5-story addition to the rear of the existing home and a detached garage with its own driveway on Jefferson Street. The original driveway and some concrete walks and pads that would be removed. Mr. Khan then discussed the proposed gate for the access control to the driveway and garage, with the fence going around the side and rear yards. He then discussed widening the driveway curb cut to 16 ft. to accommodate parking for both units on-site in their own row.

Mr. Khan then discussed the grading plan, noting that the property drains toward the north to the lot to the north and the lot to the east away from Highland Avenue and Jefferson Street and were not altering the grading pattern. Since they were not changing the grading pattern and reducing the impervious coverage, Mr. Khan stated that they were not including a storm water management system. He then added that all utilities would be tied into Jefferson Street. He stated that the TRC report wanted to see more spot grading or a small retaining wall that they were proposing to the eastern property line and would comply with that request.

Mr. Khan then discussed a comment on the TRC report related to the height of the building, and he testified that the allowed building height was 35 ft. and they were at 31.9 ft. He added that the architectural plans had a different number, but the correct height was actually 31.9 ft. high.

Mr. Healey explained that the Residential Site Improvement Standards (RSIS) had certain parking requirements and asked Mr. Khan's review of the site's conformance with that. Mr. Khan indicated that one unit's requirement was 2.3 spaces and the other unit required 2 spaces, so technically they required 5 parking spaces on-site. He testified that they had room for parking 4 cars within the driveway and garage. He added that they could add 40 ft. of asphalt so that the second unit could park two (2) cars on that driveway in a second row. Mr. Khan conceded that they were asking for a variance for impervious coverage to provide the extra parking on-site for the second unit; however, it was still less than what existed on the property currently.

Mr. Healey then drew the Board's and Mr. Khan's attention to comment #3 in the TRC report related to the widening of the pavement to 15 ft. from road centerline and construct curbing (all to the Township standards) along the site's Jefferson Street frontage. Mr. Khan indicated that he believed that they could accommodate that.

Mr. Pietro Rosato, Architect, PIPRO Studio, came forward and was sworn in. The Board accepted his qualifications. He explained that they were partially demolishing the subject two(2)-family dwelling on the property that was damaged by fire and water. He indicated that they were keeping the existing foundation, noting that Sheet A100 showed the extent of the demolition. He indicated that the existing footprint of the dwelling was proposed to be expanded by 30 ft. towards the rear, while retaining the current width of the building with a two(2)-story addition that would add approximately 2,081 sq. ft. to the existing 2,196 sq. ft. including the basement. Mr. Rosato stated that the first floor unit would be accessed from the rebuilt porch on the front of the house facing Highland Avenue. He then indicated that the first floor unit included three (3) bedrooms that included a primary bedroom suite with its own an ensuite bathroom and walk-in closet as well as a common bathroom off the hallway, kitchen, dining room, living room, and laundry closet. Mr. Rosato noted that the first floor unit was connected to a finished basement that included a recreation room, storage room, laundry

room, exercise room, study and a bathroom. He then noted that the basement had an access to the exterior on the Jefferson Street side of the home. He then described the second floor unit that was access from the north side of the home with the same design intent as the first floor. He then described the proposed detached garage and showed Sheet A-200 that showed some of the exterior elevations using vinyl siding and vinyl clad windows and asphalt roofing.

Mr. Healey then asked about the attic, and Mr. Rosato indicated that it was the design of the roofline that was extended to the new addition. Mr. Healey indicated that the attic had direct access to the outside stairs and could be used as a rental unit because of that. Mr. Healey then asked if a bedroom would be permitted in the basement by code, and Mr. Rosato indicated that it would not without an egress window directly in sleeping quarters. When asked by Mr. Healey why there was a full bath in the basement, Mr. Rosato got information from the Applicant that it was an existing condition and wanted to keep the bathroom. Mr. Healey expressed his concern that the home was set up to be a 3-4 unit home based on the plans.

Mr. Velayudhan indicated that the attic was being used to house the second heating furnace away from the living space. He also stated that it would be used for storage for the second floor unit and the attic did not have direct outside access. He also reiterated that the basement would be used for a recreation for his three children. Mr. DeLuca also reiterated Mr. Velayudhan's previous testimony that he had already experienced a fire in the home and wanted to have outside access from the basement to get out of the basement quickly should a fire occur again. Mr. DeLuca also reminded the Board that there was no kitchen in the basement, and Mr. Velayudhan also testified that there was a utility room in the basement so that both units could access the utility room. A discussion ensued among the Board regarding what happened if it were discovered and would be given a zoning violation. Mr. DeLuca also stated he had represented clients in other jurisdictions who had run afoul of the zoning codes and that neighbors were usually the ones to have reported the violations of more than the usual number of tenants in a two(2)-unit home and that it was totally enforceable by the municipality.

Mr. James Clarkin IV, Planner, employed with Forsythe Planning, came forward and was sworn in. Mr. Clarkin's credentials were accepted by the Board. Mr. Clarkin then discussed the variances that were being sought, including two (2) new bulk variances and three (3) pre-existing conditions that were borne from the zoning change that came in 2010. Due to the agreement to add additional asphalt to accommodate two (2) vehicles for the second unit in the driveway, he was going to use the 35% impervious surface coverage as the number for the variance. He felt that the variances could be granted as three (3) were pre-existing and two (2) were minor changes from what existed on the property currently. He added that the positive and negative criteria for the C-2 bulk variances could be met, the positive criteria would further several objectives of the NJ Municipal Land Use Law (MLUL) that he described to the Board. He indicated that he felt that the granting of the variances would also further the elements of the Master Plan and Land Use ordinance that he described to the Board. Mr. Clarkin then discussed the negative criteria and felt that they could be granted without any substantial detriment to the public good, zone plan and zone scheme. He also testified that the pre-existing conditions did not seem to have any negative impacts to the neighbors and the RSIS improvements did not create any negative impacts as well. He then noted other homes in the neighborhood that had less than 25 ft. setbacks.

Mr. Healey asked why there were laundry rooms in each unit as well as one in the basement. Mr. DeLuca indicated that the first floor had a pantry closet and was labeled incorrectly as a closet for a washer and dryer. He indicated that it would be corrected on the plan. A discussion ensued regarding what was located in the utility room that included the meters and the hot water heaters.

Considering that there was no public, Chairman Thomas gave a courtesy to open to the public. Seeing no one coming forward, the meeting was closed to the public.

Chairman Thomas asked about the size of the home and how it compared to the size of the other houses in the neighborhood. Mr. Clarkin did indicate that there were other homes in the neighborhood of similar size and similar height by viewing them with 2-1/2 stories.

Mr. DeLuca gave his closing summation.

Vice Chair Shepherd made a motion to grant the needed variances to re-build a two(2) family home as well as grant Zoning Certification that the home was used as a two(2)-story dwelling prior to zoning changes in 2010 for minimum lot square footages for corner lots going from 10,000 sq. ft. to 15,000 sq. ft. Also, the Applicant must modify the plans to add the additional driveway space for a double row of parking to accommodate parking for the second unit. Ms. Firdaus seconded the motion, and the roll was called as follows:

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

AGAINST: None

The Board members all expressed concern for the way that the house was being configured and the possibility that the home could be used for more than the approved two (2)-family home.

MEETING ADJOURNED:

Vice Chair Shepherd made a motion to adjourn the meeting at 9:53 p.m. The motion was seconded by Ms. Bethea, and all were in favor.

Respectfully submitted,

Kathleen Murphy, Recording Secretary
May 15, 2023