

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

**REGULAR MEETING
September 7, 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, Joel Reiss, Alan Rich, Gary Rosenthal, Vaseem Firdaus, Faraz Khan, and Chairman Thomas

ABSENT: Richard Procanik, Robert Shepherd, and Michael Dougherty

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

MINUTES:

- **Regular Meeting – July 20, 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. Rosenthal, Ms. Firdaus and Chairman Thomas

AGAINST: None

RESOLUTIONS:

- **Cedar Hill Prep School / ZBA-19-00041 – Denial**

Ms. Bethea made a motion to approve the Resolution, as submitted. Ms. Firdaus seconded the motion, and the roll was called as follows:

FOR: Ms. Bethea, Mr. Rich, Mr. Rosenthal, and Ms. Firdaus

AGAINST: None

- **Cedar Hill Prep School / ZBA-19-00041 – Temporary Use**

Ms. Bethea made a motion to approve the Resolution, as submitted. Ms. Firdaus seconded the motion, and the roll was called as follows:

FOR: Ms. Bethea, Mr. Reiss, Mr. Rich, Mr. Rosenthal

AGAINST: None

HEARINGS:

- **VENKATESWAR & PADMAJA VAKKALAGADDA / ZBA-22-00024**

Mr. Lawrence Sacks, Esq., Attorney, appeared before the Board on behalf of the Applicant, Venkateswar & Padmaja Vakkalagadda. He indicated that they were before the Board to obtain a “C” Variance in which the Applicant proposed to construct a new two (2)-story, three(3)-bedroom single family home at 76 Battle Place, Somerset; Block 136, Lots 1-2, in an R-7 Zone - **CARRIED FROM JULY 20, 2023 - with no further notification required.**

Mr. Sacks indicated that they did have two existing, non-conformities with the lot, including Lot Area and Lot Frontage.

He enumerated the following variances that were required:

- Lot Area: 9,000 sq. ft. minimum required – 5,000 sq. ft. existing/proposed.
- Lot Frontage: 90 ft. minimum required – 50 ft. existing/proposed (Battle Place.)
- Front Yard Setback: 25 ft. minimum required – 20 ft. proposed (Davis Avenue).
- Lot (Building) Coverage: 20% maximum permitted – 24.4% proposed.
- Impervious Coverage: 30% maximum permitted – 31.02% proposed.

Mr. Marc Leber, Engineer/Planner, East Point Engineering, 11 S. Main Street, Marlboro, NJ 07746, came forward and was sworn in. The Board accepted his qualifications. Mr. Leber then described what was being proposed with respect to the Application. He entered into the record as Exhibit A-1, which was an old map. He indicated that the property was 50 ft. wide and about 100 ft. deep (5,000 sq. ft.) and described it as a corner lot at the intersection of Battle Place and Davis Avenue. Mr. Leber then introduced some photographs, taken that day, with the first one showing an aerial view. He noted that the lot was vacant covered with grass and proceeded to show photographs from various angles and viewpoints. Mr. Leber stated that they did provide plans and architectural elevations showing the proposed two (2)-story, three (3)-bedroom single family dwelling (20 ft. x 60 ft. and 1,167 sq. ft.) and a one (1)-car garage. He then spoke of the two (2) front yards that were included in the property since it was a corner lot, with a required setback of 25 ft. and an 8 ft. side yard setback, the building envelope to build a home was only 17 ft. Because of that, they had proposed a plan with a 20 ft. setback along Davis Avenue and 25 ft. along Battle Place. Mr. Leber indicated that he chose a 20 ft. front yard setback on Davis Avenue because it aligned with the setbacks of other properties along that street. Mr. Leber testified that the one (1) side yard setback was 8 ft. and the other was 14.5 ft. and met the side yard requirements. He then spoke about the

building coverage being limited to 20%, but the proposal was for 24.4% that included an overhand on the front of the house. Mr. Leber then went on to discuss the maximum allowed impervious coverage as 30%, and they were proposing 31.02%

Mr. Leber then discussed the Technical Review Committee (TRC) report, dated March 27, 2023. He explained that there was an existing non-conformity as the lot was only 5,000 sq ft. lot, but should have a minimum of 9,000 sq. ft.

Mr. Sacks then opened a discussion regarding the buy/sell letters, noting that both adjacent properties were undersized for the zone at 50 ft. x 100 ft. and both were not feasible to buy or sell property to make either conforming. The property on Davis Avenue had the home located near the lot line, which would not allow for any buy/sell opportunity.

Mr. Sacks then directed the discussion regarding item #4 to spruce up that side of the home, facing Battle Place, which Mr. Leber indicated that they could comply with. They then discussed item #5, which Mr. Leber stated they would comply with the tree replacement ordinance.

Mr. Leber then spoke about item #6 related to storm water management and noted that they had to submit a plot grading plan and agreed to do so. He also indicated that they could comply with items #7, #8, #9, #10 and #11 as well.

Mr. Sacks then directed the Board's attention to item #2 whereby they could reduce the proposed size of the home in order to comply with the bulk requirements for applicable coverage and setbacks. Mr. Leber then provided copies to the Board for an alternative home plan and entered it into the record as Exhibit A-2. Mr. Leber then went on to describe the differences in the plan shown in Exhibit A-2 and what was originally submitted to the Board and how that affected variance relief. He explained that the size of the original house was 20 ft. x 60 ft., which would have provided a house that was very shallow and very long. He described the new plan he just passed out was for a home that was 23 ft. x 48 ft., which he felt was a nicer shape for a dwelling, but more importantly it provided a better opportunity for a backyard with 25.5 ft. With the new plan, Mr. Leber indicated that he was able to reduce the building coverage from 24.4% down to 22.1%, but the positive in this was the change in the overall lot coverage (impervious coverage) where the zone allows for 30%. He added that they originally asked for 31.02 that did not include a front walkway, but the new plan included that walkway with 28.1% impervious coverage and could now eliminate that variance. He then discussed the prevailing front yard setbacks in the neighborhood, ranging from 16 ft. – 18 ft. This change, per Mr. Leber, now accommodated for the front walkway discussed in item #3 in the TRC report and eliminated the variance for impervious coverage, as mentioned previously.

Mr. Leber then handed out what was a marked-up tax map and entered into the record as Exhibit A-3. He then opened a planning discussion related to non-conforming lots. He discussed the various lot sizes in the area and how the zoning changes over the years had created undersized lots. He discussed case law, where items to address related to undersize lots should be limited to five (5) things, including positive and negative criteria, to demonstrate the effort to bring the lot into conformity with the zoning, to address layouts for the house, attempt to demonstrate compliance with the use (residential in this case) to construct similarly sized homes on similarly sized lots in the area and, finally, to demonstrate that they were not

violating any traditional zoning purposes such as light, air and open spaces. He then discussed the court's stance on how Board's should evaluate proposals on undersized lots.

Mr. Leber then reiterated that there was no additional land available to purchase, rendering a hardship. He testified that he believed that the variances could be granted without substantial detriment to the public good. He then utilized Exhibit A-3 to show the various lot sizes/home sizes in the area on the tax map that was colorized. He then stated that there was a lot size and home size that was very similar to what was being proposed and not out of character for the neighborhood. He then described their efforts to reduce and eliminate the variances that were originally proposed, along with still trying to keep the proposed home in character with the neighborhood. He then discussed the purposes of the Municipal Land Use Law (MLUL) that would be advanced. Mr. Leber then addressed the negative criteria, noting that he did not find any negatives associated with the proposal. He then discussed having vacant lots in neighborhoods leading to a place for dropping trash and dumping of other items, a magnet for loitering or possible criminal activity. He added that he felt that the positives outweighed any of these negatives.

Mr. Healey then opened a discussion regarding the determination of a hardship, which was to send buy/sell letters. Mr. Healey agreed that they addressed the "buy" side of that equation in that the house on Battle Place was already undersized and the house on Davis Avenue was fairly close to the property line and did not have any land to sell to make the subject lot more compliant. Mr. Healey added, however, that they needed to make an offer, by letter, to sell the land to adjacent properties in order to establish a hardship. Mr. Sacks indicated that they could certainly send letters as any condition of approval, but that the owners want to build a home for them to live in on the property. A discussion ensued regarding the producing of buy/sell letters to establish the hardship for the Board.

Mr. Healey then asked where they got the parking requirement for the property of two (2) parking spaces to include a garage space. A discussion ensued. Mr. Healey then reiterated the testimony of providing a 19 ft. front yard setback but wanted to know if they were requesting that under the C-1 or C-2 criteria. Mr. Leber stated that they were requesting that setback variance under the C-2 criteria.

Mr. Healey then opened a discussion regarding the new layout for the proposed home, considering they do not have any revised architectural plans for the proposed home. Mr. Sacks stated that the revised home plans were for a more conventional-looking home.

Ms. Maioriello, Acting Board Attorney, asked for the Applicant's intention to reside in the proposed home as it related to the buy/sell letters. A discussion ensued among the Board.

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

The Board and Applicant agreed to **CARRY THE MATTER TO OCTOBER 5, 2023 – with no further notification required.** The Applicant agreed to have the Architect testify as to the revised architectural plans and provide the buy/sell letters at that time.

- **PARKER at SOMERSET / ZBA-23-00015**

Mr. Bob Smith, Esq., Attorney, appearing before the Board on behalf of the Applicant, Parker at Somerset. Applicant was seeking Preliminary & Final Site Plan for re-stripping of parking and Variance for outpatient rehab facility at 15 Dellwood Lane, Somerset; Block 424.01, Lot 39.08, in an R-20 Zone.

Mr. Smith told the Board that they were repurposing 1,488 sq. ft. to provide out-patient rehabilitation services. In addition, he indicated that they were planning to re-stripe the parking lot. Mr. Smith then reminded the Board that they had been before the Board in 2018 and 2020, and that they had an existing 133,974 sq. ft. facility that was offering services for the elderly. Mr. Smith explained that they were enhancing an existing, non-conforming use in the zone.

Mr. Joshua Hanrahan, Engineer, employed with Hammer Land Engineering, 1707 Atlantic Avenue, Suite B-2, Manasquan, NJ, came forward and was sworn in. The Board accepted his qualifications. Mr. Hanrahan brought a hand-out with him and asked that it be marked as Exhibit A-1, prepared by Mr. Hanrahan, and showed the project site of 15 Dellwood Lane, Somerset, NJ. He indicated that the site was surrounded by residential uses, a religious site, and a group home (Center For Great Expectations). Mr. Hanrahan explained that they were re-purposing space within the existing facility to provide out-patient rehabilitation services to replace an inpatient rehab facility, staff break room, and classroom. He then explained that there would be no exterior changes to the facility, and the hand-out showed the location of the interior space that would be used for the out-patient facility in the middle of the building as well as the egress to the out-patient services through the main entrance on the east side that led to the main parking facility to the northeast of the existing building.

Mr. Smith then discussed an existing condition from a prior approval with regard to parking on Darlington Boulevard. Mr. Hanrahan explained that there were 29 existing parallel parking stalls along the west side of Darlington Boulevard, and as part of the previous approval, those parking stalls were supposed to be removed. He then indicated that as part of any new approval, they would mill and overlay those stalls and place "No Stopping or Standing" signs there to eliminate any parking. Mr. Hanrahan addressed Mr. Healey's concerns for any damage that might have been done to the parking facilities on-site due to the construction that was done a few years ago. He added that he had visited the site and that he did not see any kind of damage from that construction. He also testified that they would be removing those parking stalls by the end of the year, 2023. Mr. Hanrahan then handed out one (1) more exhibit, which was marked Exhibit A-2, prepared by Mr. Hanrahan, and formally submitted with the Application, showing their ADA parking layout plan. He noted that the facility had an excess of ADA parking stalls. He noted that they were able to take away two (2) handicapped spaces and a hatch style to create three (3) regular parking stalls. He added that on the east and west side, they would be gaining an additional regular parking stalls and that the facility as a whole still far exceeded the ADA requirement. He noted that on the west side of the building, there would be three (3) ADA parking stalls required where they were still providing four (4) and on the east side of the building they were required to provide five (5) ADA spaces required where they were still providing six (6). Mr. Hanrahan then detailed the total parking stalls currently being provided was 216 stalls and when removing the 29 parking stalls on Darlington Avenue and gaining two additional stalls, there would be a net result of 189 parking stalls where only 106 were required.

Mr. Rich asked how many van accessible ADA parking stalls would there be on-site, and Mr. Hanrahan indicated that there would still have two (2) van accessible on the west side and four (4) van accessible spaces on the east side.

Since the Engineer needed to leave for another commitment, Chairman Thomas then asked the Board if they had any additional questions for the Engineer, and then opened the meeting to the public for any questions or comments. Seeing no one coming forward from the public, the meeting was then closed to the public.

Mr. Tanvi Dasai, Director of Outpatient Services, Parker Health Group, 443 River Road, Highland Park, NJ, came forward and was sworn in. She described her background in rehabilitation therapy and was accepted as an expert in that field by the Board. She went on to describe the operation and what was proposed. She described her role as Rehab Director of both in-patient and out-patient services and detailed the varied services provided to the public. She then discussed the plan before the Board that evening to open up an out-patient rehab services section in the facility, working with about 20 patients a day, with some coming from the Adult Day Care services and 15-17 patients per day coming from outside the facility. She further went on to state that they would be working with about three (3) therapists and would be by appointment only and three (3) patients in a given hour with standard working hours of 8:30 a.m. to 4:30 p.m.

Ms. Bethea then asked for clarification regarding their current outpatient services. Ms. Dasai stated that they do service people from the Adult Day Car next door and do have homebound patients that they serve currently in their homes.

Ms. Elizabeth Dolan, Traffic Engineer/Principal of Dolan & Dean, 181 West High Street, Somerville, NJ, came forward and was sworn in. The Board accepted her qualifications. Ms. Dolan then handed out her supplemental Traffic Study report to the Board and entered it into the record as Exhibit A-3. She then indicated that the original report was submitted on July 11, 2023 and summarized parking accumulation counts that were performed at the site. Ms. Dolan indicated that the demand was 160 parking spaces, and that they currently had 216 parking spaces that included the 29 parking spaces along Darlington that would be removed. The updated report that was just handed out to the Board was dated September 6, 2023 took the 29 parking spaces out of the mix and concluded that there was a surplus of 15 parking spaces if they assume that 15 parking spaces were needed for the new out-patient rehabilitation services. The assumptions included that they would need five (5) therapists and five (5) patients waiting, whereas testimony just given by Ms. Dasai indicated that they would only three (3) therapists. Ms. Dolan went through the math involved to come to a required number of parking spaces needed for all uses on the site. She stated that she felt it was a compatible use that would cater to the existing uses on-site, generate very little volume of traffic and parking demand, even with taking away the 29 parking spaces, giving a surplus of parking supply on-site. Ms. Dolan then indicated that the handicapped spaces were included in all of the calculations.

A Board member asked whether there were any electric charging stations on-site. After discussions, the Applicant agreed to comply with the Township ordinance related to EV charging stations.

Mr. Healey went over what he felt were the final numbers that Ms. Dolan talked about in her testimony as the demand being 160 parking spaces, providing 189, considering the up to 15 out-patients and the restriping to produce a surplus of 14 parking spaces on-site.

Ms. Tiffany Morrissey, Planner, Tiffany Kubiello, LLC, Ms 7 Equestrian Drive, Galloway, NJ, came forward and was sworn in. The Board accepted her qualifications. Ms. Morrissey gave the justification for the grant of the Use Variance under the Municipal Land Use Law (MLUL) She indicated that the Use Variance required related to the reconfiguration of the internal space of 1,488 sq. ft. for the out-patient rehab services and was located within the R-20 residential zone, has existed as a nursing home for some time on approximately 14 acres in size and had all of the improvements necessary to accommodate the proposed development. She added that the reconfiguration of the interior for the out-patient rehabilitation services was an extension to services that were already being provided on-site within the existing nursing home for those patients in the nearby community. Ms. Morrissey indicated that nursing homes were considered inherently beneficial uses through case law, a use that promoted the purposes of zoning and promoted the general welfare. She then explained that when there is an inherently beneficial use, you go through a "seek a balancing test" to identify how inherently beneficial was the use, what were the potential impacts from that use, if there were any reasonable conditions to mitigate those impacts and then balance that and address the negative criteria. Ms. Morrissey stated that in the case before the Board, the rehab facility itself was more of a medical feature that was providing a service to the outside community. She testified that she believed that the outside rehab services was so integral and related to the nursing home, it continued to carry that aspect of the inherently beneficial use aspect, but also that there were purposes of zoning that were advanced under the strict D-1 criteria if it were not an inherently beneficial use aspect of the Application. She indicated that the site remains suitable to the services provided on-site and were particularly suitable to one another. Ms. Morrissey then stated that because the site was already developed, there was no need to make any changes to the property to accommodate the internal configuration. She added that they were also modifying the parking, but not necessarily because they needed to, but an amenity and change to the on-site circulation. She described being able to provide a service to those in the Adult Day Care program services that were already being provided to in-patient residents. She then pointed to the zoning aspect where there would be an efficient use of land to provide multiple services at the same location and not drastically changing the existing traffic patterns or parking standards. Ms. Morrissey stated that they would be removing the 29 parking stalls as a condition of approval and were agreeable to providing and addressing any needs for EV charging stations on-site. Aside from those two conditions, she did not feel there was any need to do anything further due to the small magnitude of what was being proposed. She then discussed the negative criteria, indicating that there would be no substantial detriment to the public good or impairment of the zoning plan or scheme. She discussed the 55 and older population continued to grow within the Township and need for that type of service within the community to service the needs of an aging population who wanted to age in place. Chairman Thomas made a motion to open the meeting to the public. Seeing no one coming forward, the meeting was closed to the public.

Mr. Healey then asked Mr. Smith for clarification on the time frame to remove the 29 parking spaces and the timing of when that would occur. Mr. Smith stated that it was already a condition of the Site Plan approval. Mr. Healey added that references to the 29 parking spaces needed to be taken off the Site Plan and needed to be made a condition of approval.

Ms. Firdaus made a motion to approve the Application, with D Variance, and that the 29 parking spaces would be removed and the Site Plan was updated accordingly. The Applicant should discuss with Township staff to see whether the ordinance required the inclusion of EV charging stations on-site. The motion was seconded, and the roll was called as follows:

FOR: Ms. Bethea, Mr. Reiss, Mr. Rich, Mr. Rosenthal, Ms. Firdaus, M., Khan, and Chairman Thomas

AGAINST: None

MEETING ADJOURNED:

Mr. Rosenthal made a motion to adjourn the meeting at 9:00 p.m. The motion was seconded, and all were in favor.

Respectfully submitted,

Kathleen Murphy, Recording Secretary
December 4, 2023