

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

**REGULAR MEETING
December 21, 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, Richard Procanik, Alan Rich, Gary Rosenthal, Robert Shepherd, Vaseem Firdaus, and Chairman Thomas

ABSENT: Joel Reiss, Faraz Khan and Michael Dougherty

ALSO PRESENT: Brian Hak, Acting Board Attorney, Mark Healey, Planning Director, and Christine Woodbury, Planning & Zoning Secretary

MINUTES:

- **Regular Meeting – September 7, 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, Ms. Firdaus and Chairman Thomas

AGAINST: None

RESOLUTIONS:

- **Praise Presbyterian Church, Inc / ZBA-17-00028 – Ext. of Time**

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 and Chairman Thomas

AGAINST: None

- **Parker at Somerset / ZBA-23-00015**

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

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

AGAINST: None

HEARINGS:

- **ANDAAZ CATERERS, LLC / ZBA-23-00013**

Mr. John DeLuca, Esq., Attorney, appeared before the Board on behalf of the Applicant, Andaaz Caterers, LLC. D(1) Use Variance and parking variance sought by the Applicant for a banquet facility at 3059 Route 27, Franklin Park; Block 34.01, Lots 32.02 & 34.04, in the Neighborhood Business (N-B) Zone - **CARRIED FROM NOVEMBER 2, 2023 - with no further notification required.**

Mr. DeLuca indicated that they had amended their Application to reduce the relief that they were seeking. He went on further to state that they were no longer seeking a D(1) Use Variance but were only seeking a parking variance as they were not planning to operate as a banquet hall. He added that the Application was for a restaurant to expand their seating and the requisite parking variance needed to do so.

Mr. DeLuca stated that the Applicant had begun to lease the property in October of 2022 and planned to expand the restaurant from 54 seats to add 50 additional seats with a high-end Indian cuisine.

Chairman Thomas then asked for clarification of what they were going to be hearing/voting on that evening, asking if there would also be a Site Plan presented that evening, Mr. DeLuca indicated that there would be no Site Plan presented that evening and there was no construction associated with the Application and only involved operations. He indicated that they were only seeking approval to allow to seat a certain number of people in an existing space. He added that in order to do that, they needed a parking variance.

Mr. Mehta Saxena, CEO of Andaaz Caterers, LLC, came forward and was sworn in. He stated that they were basically asking to allow for an additional 50 seats for an overflow for the fine dining restaurant for the busier weekends. He noted his hours of operation would be from 11 a.m. to 11 p.m. with approximately 15 employees that would include renowned chefs from India. He added that he wanted to create an upscale restaurant here in Franklin Township so patrons looking for a world class dining experience would not have to drive all the way into New York City. Mr. Saxena testified that the other uses on the site were for a medical dispensary and a currently empty space in a strip mall. He added that he currently rented two spaces side by side in the complex with their interiors already connected. He also testified again that there would be no banquet events held there and that it would just be a restaurant. Mr. Saxena indicated that the kitchen, bathrooms and 54-seat restaurant was

already approved, and that he was just asking for approval to add 50 chairs to the second unit that was attached.

Mr. Healey then asked how that usage of the additional space would be enforced to only allow for 50 extra seats when the original proposal was for a banquet hall that included 100 seats in the same space. A discussion ensued related to the two different proposals. Mr. Healey then asked if they would consider modifying the floor plan so that it would actually only accommodate 50 additional people. Mr. DeLuca indicated that they wanted to give their patrons additional room around their tables.

Mr. Healey then asked why their proposed floor plans included a buffet counter and a juice counter in the overflow area and not in the main restaurant area. He added that in his experience those items were usually included in a banquet hall.

Ms. Bethea then asked about how the seating capacity was determined in a space. Mr. Healey then answered that the seating capacity was determined through the fire code and construction code and was based on the use and square footage of the space.

Mr. Procanik then asked what the difference was between a banquet hall and a restaurant. Mr. DeLuca opened a discussion and referenced the Land use portion of the Township's Municipal Code, Article 1. A discussion ensued regarding the different uses.

Mr. Brian Hak, Acting Board Attorney, indicated that he didn't believe that a couple or family could go to a banquet hall to have dinner while a larger group was having an event. A discussion ensued, and Chairman Thomas stated that using the space for more than the 50 individuals that could come with friends or family and have dinner there as opposed to a larger event might overwhelm the parking situation. Mr. DeLuca indicated that the Applicant had changed the floor plan to utilize square tables as opposed to round tables, which could accommodate less people in the same space.

Mr. DeLuca then told the Board that they had eliminated a valet parking scheme and of patrons walking across multiple parking lots to get to the facility when they changed their Application from a banquet hall to an overflow restaurant space. Mr. Healey reminded Mr. DeLuca that his new submittal did not say that they were taking away these features and was silent on the plan, which was why they were questioning the use during the hearing.

Ms. Saxena, a representative of the Applicant, came forward and was sworn in. Ms. Saxena indicated that they could not have the banquet hall because they did not have the parking space for such a set up. She added that the parking lot that they had originally hoping to use no longer existed, so the plan needed to be changed. She then spoke about having the option to provide a buffet table and juice table for days like Mother's Day and was placed in the overflow area due to that additional restaurant patronage. She also explained that she would like to have more space around her table when eating at a restaurant and a larger party should also have that privacy as well. She stated that these were issues that they've experienced in the last 15 years as restaurant owners.

Vice Chair Shepherd asked if the tables in the floor plan be kept on the records to determine if any violations were taking place. She indicated that she might want to turn the tables vertically as opposed to horizontally and she might also want to introduce rectangular tables at

some point and didn't want to be held to those same floor plans. Mr. Healey then pointed out that they could make it a condition of any approval for the a maximum of 104 people allowed to occupy both spaces.

Ms. Elizabeth Dolan, Traffic Engineer, Dolan & Dean Consulting Engineers, 181 West High Street, Somerville, NJ, came forward and was sworn in. The Board accepted her qualifications. She indicated that she brought forth parking calculations based on what was the current proposal for 104 seats, prepared on October 23, 2023 report that summarized the parking calculations. She noted that her office obtained a shopping center access permit from NJDOT when the owners of the center were trying to get a liquor store in the plaza where the original access permit was for fewer trips associated with a specialty retail center. She then noted that they had 75 parking spaces on site. She the noted that the building was just over 15,000 sq. ft. that included three (3) tenant spaces; and the Applicant had 5,525 sq. ft. of space for the restaurant. There is also a space for the medical dispensary, with the fourth space intended for where the liquor store was going to go but was currently vacant.

Ms. Dolan indicated that the restaurant required 35 parking spaces based upon 104 seats. She then noted that the balance of the building was considered retail and the Township's ordinance required one (1) space for every 200 sq. ft., which calculated to 48 parking spaces, requiring a variance for the shortage of eight (8) parking spaces. She explained that if one subtracted the 48 retail spaces from the total of 75 spaces provided, that would leave 27 available spaces for the restaurant and equate to 81 seats. She then explained that if they only had 81 seats in the restaurant there would be no parking variance required. She then discussed the change in parking needs over the past few years due to e-commerce. Ms. Dolan then noted that the medical dispensary had a parking demand of 20-24 space but had more peak parking demands earlier in the day between noon and 4 p.m. She then testified that fine dining had its peak hour between 6:00 p.m. and 9:00p.m.. In analyzing the potential liquor store there, Ms. Dolan indicated that there would be a different peaking hour for that use as well. Ms. Dolan then spoke to the (Institute of Transportation Engineers) ITE's contention that you don't look at the individual user's parking needs as they each have different peak hours of demand. Because of all of these reasons, Ms. Dolan believed that the eight (8)-space variance could be granted and would accommodate for the additional 23 seats in the restaurant. In conclusions, Ms. Dolan testified that she felt that the parking variance could be granted without any negative consequences.

Vice Chair Shepherd then asked for clarification on some of Ms. Dolan's testimony for his own edification. They then had a discussion regarding the determination of parking spaces for a medical dispensary.

Mr. Healey then provided some background for that strip mall when it was approved for retail uses, and that the 75 parking spaces was based on the square footage of the building divided by the parking requirement for retail. He added that a restaurant was a permitted use, but when you put a restaurant in that space and count one (1) space for every three (3) seats, the parking requirement goes up compared to the same amount of square footage for retail.

Ms. Bethea then asked for clarification from Ms. Dolan regarding the peak hours of the different businesses that would allow for the additional eight (8) parking spaces

Mr. Procanik then opened a discussion regarding whether recreational marijuana would generate a higher number of trips to the site, and Ms. Dolan testified that the numbers that she was utilizing was for the recreational use of marijuana and would reflect that in her analysis. He then asked Ms. Dolan what percentage of the parking lot occupancy be at its highest level of use would be around 80% occupancy. A discussion ensued.

Mr. Healey then asked Ms. Dolan if the restaurant was considered a high-traffic generator by NJDOT. I believe she indicated that they did get NJDOT approval. She then spoke to the center being earmarked for specialty retail, and even if it didn't fall under the specific specialty retail, the shopping center was originally approved under the umbrella of "specialty retail" and they might have a situation with the Township approval of that shopping center. Mr. Healey opened a discussion with Ms. Dolan regarding a fine dining restaurant being considered "specialty retail", and Ms. Dolan stated that once they got approval for a "shopping center" designation, she indicated that she believed all restaurants were allowed. Mr. Healey indicated that the Resolution for the original proposal for the shopping center approval stated that it was only going to have a "specialty retail" designation and the Applicant might have an issue with zoning because their approval was only for "specialty retail". A discussion ensued. Mr. Healey then had a discussion regarding the peak hours of the medical dispensary on the weekend, with Ms. Dolan stating that the medical dispensary peaking between 12 p.m. and 2 p.m. on Saturdays and the restaurant peaking between 7:00 p.m. and 9:00 p.m. so they were offset.

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

Mr. DeLuca then gave his closing summation.

Vice Chair Shepherd made a motion to approve the Application to increase the occupancy of their restaurant from 50 people to 104 people and to approve a Variance for a deficiency of eight (8) parking spaces.. Additionally, the restaurant would not operate as a banquet hall as applied for initially but a high-end fine dining establishment that would not allow more than 50 seats in the second room.. Ms. Firdaus seconded the motion, and the roll was called as follows:

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

AGAINST: Mr. Rich

- **MUSLIM FOUNDATION, INC / ZBA-23-00017**

Mr. John DeLuca, Esq., Attorney, appearing before the Board on behalf of the Applicant, Muslim Foundation, Inc. Preliminary & Final Site Plan w/D(1) Use Variance in which the Applicant sought to make certain modifications to the area recently added to the Site Plan at 45 & 47 Cedar Grove Lane, Somerset; Block 468.09, Lot 37.02, in the R-40 Zone - **CARRIED FROM NOVEMBER 2, 2023 - with no further notification required.**

Mr. DeLuca explained that they were actually there that evening seeking a D(3) Use Variance. He noted that the property was allowed to operate under a conditional use in the zone, and they were seeking to deviate from some of those conditions. Mr. DeLuca then went on to explain that essentially the plan was to clear out some newly acquired space on a lot that had been consolidated with their lot for recreational purposes. Mr. DeLuca then added that the conditions that they were seeking to deviate from were some buffering requirements.

Mr. DeLuca then passed out copies of a Tree Removal Plan to the Board members. The Tree Removal Plan was then marked into evidence as Exhibit A-1, prepared by Van Cleef Engineering and dated November 11, 2023.

Mr. Healey addressed the Board and noted that the Technical Review Committee (TRC) and the Environmental Commission had a number of comments on the original submittal and asked if what they were presented that evening was in response to those comments. Mr. DeLuca answered in the affirmative.

Mr. William Chapin, Engineer/Planner, employed with Van Cleef Engineering, came forward and was sworn in. The Board accepted his qualifications. Mr. Chapin then went on to explain the proposal and the deviations to the Conditional Use. He went on to explain that they had originally submitted plans without any buffer and that there was very little information regarding what was on the site. In the meantime, Mr. Chapin indicated that they had sent out their field crews to locate the trees that were out there and had their Landscape Architect identify them. Mr. Chapin then directed the Board's attention to the Tree Removal Plan that was already submitted to the Board as Exhibit A-1 and now shown on the screen. He then pointed out those on the plan that were determined to be dead or diseased (Ash trees) and grayed out. He then added that those not grayed out on the exhibit were intended to be retained. Mr. Chapin then moved on to another exhibit showing the trees that would remain on the property and those that were proposed around the buffer berm and the two (2) sides to the east. He noted that there would be included 56 conifers, approximately 46 shrubs that were going to be intermixed around there to fill in spaces around trees where you could see below the lower branches and provide food for the wildlife. Mr. Chapin then explained to the Board what buffer was required and how they were going to deviate from that. He indicated that the buffer required was between 15 ft. and 20 ft. wide depending upon the number/spacing of evergreen tree screening and/or whether a 6 ft. solid fence was proposed. Mr. Chapin then testified that they were providing a 15 ft. wide buffer but were not going to provide a solid fence so that they could tie that into the fence that was being funded by the federal government for safety and security. He then noted that the fence would be running along the northwest, the northeast and the southeast sides of the subject portion of the property. He added that they were not relying on the few trees that were on the southeast portion of the property but mostly supplementing in that area. Mr. Chapin then discussed providing a little less supplemental landscaping where there were more cedar trees. He then discussed the surrounding uses to the site, to include office use, and residential. He added that the uses on the site were the mosque, the school and the daycare and noted that the open lawn area proposed was for general recreation and would be mowed, with nothing formal proposed and didn't anticipate that it would interfere with surrounding uses. He also added that there would be no formal competitions or organized groups of people out on the field, but just the local school children. Because it was intended for use by school children, it would be considered an inherently beneficial use. Mr. Chapin then testified that they were

there before the Board for Preliminary and Final Site Plan with a variance only as to the buffer requirements.

Chairman Thomas then asked if they were going to be utilizing amplified sound in the future for loud music or outdoor affairs. Mr. DeLuca indicated that they did not plan for any of those things but was amenable to put on a fact witness to testified regarding that. The Chairman indicated that he was concerned about outdoor noise because it was next to 16 townhomes.

Dr. Hussein, Representative of Muslim Foundation, came forward and was sworn in. Dr. Hussein then discussed how the outdoor green space would be utilized, noting that it would be used for the children to play and to teach them about outdoor gardening, with no plans to use the outdoor space for parties or summer camps or any use that would require outdoor amplification.

Mr. Healey then offered his testimony to give some context as to why the Applicant was there before the Board. He explained that the parcel of land that they were discussing was not part of their original site, but that they went before the Planning Board about a year or so ago for subdivision approval to acquire the rear portion of their neighbor's property and had no plans at that time for the use of that site. He added that there was a condition of approval that before anything was done to that area, they would need to get the necessary approvals. Mr. Healey then stated that that parcel was now a part of the campus that also included the place of worship and the school, and the conditional use standards that apply to those uses required the buffers they were discussing that included 15 ft. to 25 ft. evergreen buffers and fencing where the site abuts residential properties. He then explained that they had a buffer on the southerly portion, and to the east they have a combination of proposed trees and existing vegetation to remain. Mr. Healey added that they didn't plan to include a buffer to the north, but that area abutted the B-I Zone and did not require one. He then added that the Applicant needed to prove that they were going to be at least consistent with the intent of the ordinance as it related to the intended use of the space. With that said, Mr. Healey indicated that he was unclear as to where the fence was proposed on the site and what type and height of the fence were they proposing. Mr. Chapin then described the fencing as going around three portions of the property, with several gates that would be set back significantly from the road with a fence there as well to completely surround the site for safety and security purposes. He explained that they had proposed 6 ft. tall iron fence with 4-inch spacing for the vertical spindles of the fence.

Mr. Healey then spoke about the plan that was handed out that was slightly different than what they were proposing and discussing that evening. They discussed the inclusion of deciduous trees and evergreens as well as those that were proposed were in a darker shading and the ones that were proposed were of a lighter shading were existing. Mr. Healey then asked if the plan showed all the trees that existing on the site or all of the trees that would be staying on the property. Mr. Chapin indicated that the plan shown on the screen at the time showed all of the trees that exist and that were going to stay. He further explained that the other plan showed all of the trees that currently exist on the property.

Mr. Procanik then asked if there was going to be any proposed grading on the property. Mr. Chapin stated that there was no grading proposed and no stormwater management systems added because they were just going to seed the area for an open play area.

Mr. Healey then went through the TRC report that was related to the original plans submitted, but didn't include the plans that were being shown on the screen that evening. He discussed the intended use for the site, the fact that they would only be removing those trees on the site that were dead or dying, and the inclusion of buffering on the site where it was called for. Mr. Healey then questioned the size of the trees that would be proposed on the site, and Mr. Chapin indicated that they would comply with the 5 ft. height of the trees requested. He then spoke about the proposed buffering along the southerly property line where they proposed a double staggered row of trees. Mr. Healey asked the Applicant to address the subject of area lights that were on the original plan and looked like six (6) 15 ft high parking lot lights for a grassed area. He added that because the proposed lighting was placed on the property, they exceeded the ordinance for light spillage (1.7 ft. candles beyond the property line where the ordinance only allows 0 ft. candles in that area. Mr. Chapin testified that it was proposed on the property where it was to keep the area well lit and provide safety for the children when it got dark earlier. They discussed a playground area that also had that same type of lighting and Mr. Healey asked for justification for that situation as it created another variance. Mr. Chapin then discussed the one light that was in the corner that might be creating all the problems and could eliminate that to be well on their way to eliminating any problems. Mr. Chapin indicated that the area where the lighting was proposed abutted an industrial use and that it also abutted a wooded area at the back of a residential/business operation and would have no impact because the rear area where the lighting was located was wooded. Mr. Procanik then asked if there were house-side shields on the lighting, and Mr. Chapin stated that he would have to check to make sure that was the case. Mr. Procanik stated that they could make that a condition of any approval.

Mr. Healey continued, noting that there was testimony indicated that there would be no overflow parking on that area. He then went on to state that the rest of the comments were technical issues and could testify that they would comply and address it on the Site Plan to the satisfaction of the TRC. Mr. DeLuca then asked for clarification on comment #5 related to the block needing to be a minimum of 4" x 3", and Mr. Chapin stated that it was an CAD area signature block for Somerset County on the plans. He then addressed item #6 regarding what the unlabeled rectangle behind the school building was. Mr. Chapin indicated that it was the original location planned for the playground and was ultimately placed at the edge of the property line. Mr. DeLuca then indicated that they could comply with all of the comments in the TRC report.

Mr. Healey then discussed the memo from the Environmental Commission that was addressing the original submission. Mr. Chapin indicated that they had already complied and would comply with any other comments in the subject report.

Ms. Bethea then asked for clarification regarding the location of the buffer trees shown on the exhibit that evening. She stated that she didn't recall that being included in the packet the Board received. A discussion ensued, and Mr. DeLuca indicated that the buffer/landscape plan was submitted to the Township, but that they could mark it into the record as Exhibit A-2, dated November 11, 2023.

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 discussed whether the double staggered row of evergreens ran the length of the rear of the property, and Mr. Hussein answered in the affirmative.

Mr. DeLuca gave his closing statements.

Ms. Bethea made a motion to approve the Application to include Preliminary and Final Site Plan approval as well as D(3) Conditional Use Variance, as discussed, subject to the plans presented on the exhibits at the hearing and subject to compliance with the TRC report and revising the Site Plans to be consistent with the exhibits. Additionally, approval for lighting and to include the house-side shields, a variance for the fence since it was not a solid fence, and no sound amplification outside and with all the conditions that were discussed during the hearing to include the Township verifies the sufficiency of the buffer. Vice Chair Shepherd seconded the motion, and the roll was called as follows:

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

AGAINST: None

MEETING ADJOURNED:

Vice Chair Shepherd made a motion to adjourn the meeting at 9:23 p.m. The motion was seconded, and all were in favor.

Respectfully submitted,

Kathleen Murphy, Recording Secretary
February 11, 2023