

**READINGTON TOWNSHIP BOARD OF ADJUSTMENT
MINUTES
July 17, 2008**

A. Chairperson Fort called the meeting to order at 7:38 p.m. announcing that all laws governing the Open Public Meetings Act had been met and that the meeting had been duly advertised.

Mrs. Fort	present
Mrs. Flynn	present
Ms. Hendry	present
Mr. Hendrickson	present
Mr. Simon	present
Mr. Stettner	present
Mr. Shepherd	present
Mr. Thompson	present
Mr. Denning	present

**Donald Moore, Esq., Kelleher & Moore
Brent Krasner, Clark*Catton*Hintz
John Hansen , Ferriero Engineering**

B. APPROVAL OF MINUTES:

1. June 19, 2008 - Mr. Denning made a motion to approve the minutes as amended. Mr. Thompson seconded the motion. *Motion was carried with a vote of ayes, nays none recorded.*

C. CORRESPONDENCE:

There were no comments with regard to correspondence.

D. TECHNICAL REVIEW COMMITTEE:

1. None

E. VOUCHER APPROVAL:

Mr. Denning made a motion to approve the vouchers. Mr. Hendrickson seconded the motion. *Motion was carried with a vote of ayes, nays none recorded.*

F. RESOLUTIONS:

**1. BLN
Block 53, L. 22
Request for extension to approval**

Mrs. Flynn made a motion to approve the resolution. Mr. Denning seconded the motion. *Motion was carried with a vote of ayes, nays none recorded.*

G. EXECUTIVE SESSION:

**RESOLUTION
(Open Public Meetings Act – Executive Session)**

WHEREAS, N.J.S.A. 2:4-12, Open Public Meetings Act, permits the exclusion of the public from a meeting in certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances presently exist:

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment in the Township of Readington, County of Hunterdon, State of New Jersey, as follows:

The public shall be excluded from discussion of the hereinafter specified subject matters. The general nature of the subject matter to be discussed is as follows:

- 1. Joanzee and Waste Management v Board of Adjustment**

It is anticipated at this time that the contents of the above discussions will remain confidential.

This Resolution shall take effect immediately.

Certified to be a true copy of a Resolution adopted on July 17, 2008.

Linda Jacukowicz, Coordinator

Ms. Hendry made a motion to enter executive session. Mrs. Flynn seconded the motion at 7:40 p.m. *Motion was carried with a vote of ayes, nays none recorded.*

Mrs. Flynn made a motion to enter open session. Mr. Shepherd seconded the motion at 7:45 p.m. *Motion was carried with a vote of ayes, nays none recorded.*

H. OTHER BUSINESS:

- 1. Hunterdon Christian Church
Block 94, Lot 12.03
Request for extension to approval**

Attorney Moore stated that counsel for the Hunterdon Christian Church, Anthony Koester, wrote a letter to the board requesting a one year extension for the preliminary/final major site plan approval. Mr. Moore stated that legally they are entitled

to three (3), one (1) year extensions. Additionally, Mr. Koester was notified that he did not have to be present this evening.

Mrs. Flynn made a motion to grant a one (1) year extension to their existing approval. Mr. Hendrickson seconded the motion.

Roll call:

Mrs. Flynn	aye
Ms. Hendry	aye
Mr. Stettner	abstain
Mr. Shepherd	aye
Mr. Thompson	aye
Mr. Denning	aye
Madam Chair	aye

I. PUBLIC HEARINGS

1. CharDham Hindu Temple/Readington
Use Variance & Preliminary Site Plan
25A Coddington Road
Action date: July 17, 2008

Madam Chair announced that the board is at the conclusion of this hearing. She thanked everyone for their courtesy.

Ms. Hendry made a motion to grant the application of CharDham Hindu Temple. Mr. Shepard seconded the motion.

Roll Call:

Ms. Hendry – stated that the application was difficult to consider and analyze because there were legal and factual issues. First the board had to consider the federal statute that affects use of land by religious entities. Credibility is also a factor. She stated that the courts have held that the Board could accept or reject testimony. During the hearing, some of the testimony was difficult to understand; it was duplicative and some times had nothing to do with land use. However, the testimony that did not pertain directly to land use frequently involved credibility issues. The applicant's planner introduced the issue of religion into the record. All of the expert reports were based upon the fact that 150 worshippers would be at the site. After considering the detrimental effects to the public that may occur if a variance is granted, the balancing of the reduced detrimental effects with the inherently beneficial use, the board had to conclude if the public good was substantially impaired. The following are detrimental effects created by the temple; the amount of traffic that the temple would create; reducing the land availability allowed for small businesses; the visual effect of the proposed temple; and the size of the building. The size of the various aspects of the building is out of proportion to the proposed use. The occupancy figure was raised at the beginning of the hearing by the applicant. All of the applicant's professionals agreed

that their reports were based upon the 150 number and that they were given guidance by the applicant to use that number.

Ms Hendry went on to say that there were a number of issues that undermined Mr. Bhatt's credibility. His testimony regarding his involvement and actions at a temple in Chicago and in Florida was found not to be credible. In summation, Ms. Hendry stated that the detrimental effects or negative impacts of the proposed use of this land still outweigh the inherently beneficial use of this application. Ms. Hendry stated due to all of these reasons, her vote is no.

Mr. Shepherd – He stated for the record that he did not attend all of the meetings, however, he will attest that he has read all of the transcripts. He stated that the number of 150 people is the crux of the problem for him when he reviews the application. The applicant is proposing to build a 29,000 plus square foot building, and the board has been told that there will only be 150 worshippers in the building. He stated that there was contradictory testimony. It is difficult to assess at this point who is telling the truth. But when he looks at it from a common sense standpoint, why would a church limit the number of worshippers to 150 people. Mr. Shepherd's advice would be to build a smaller church, but the board cannot impose that condition upon the applicant. He stated that when he weighs what would ameliorate the harm to the township versus the inherently beneficial use, the balancing test for him concluded that it is not going to work. He did not feel it was credible to have a 30,000 square foot building that is only going to have 150 people occupying it at any one time. Therefore, his vote is no.

Mrs. Flynn – She stated that one of her major concerns is the 30,000 square foot building that is proposed to serve 150 worshippers. Despite the attempts by the applicant's attorney to characterize the limitations on the number of permitted worshippers as a directive of this board is not true. Every professional report generated by the applicant, with the exception of the Board of Health submission and the Althoff report, lists 150 as the maximum number of occupants in the building at any one time. In granting a variance, the Board must weigh the negative and positive criteria. The size of the building is not compatible with the number of devotees that will use the building. The variance approval will run with the land. If Mr. Bhatt and his devotees decide to move, the township would be left with an approximately 30,000 square foot building that has a real occupancy level of about 3,000 people. Also all of the professional reports were created given the 150 occupancy number. To help mitigate some of the issues, the applicant was asked to run a water line to the structure since it had been recommended by the township's fire official. The applicant declined. Instead the applicant stated that he would limit the number of people in the building, but never provided a viable plan that would help achieve it. All of the applicant's suggestions regarding limiting the number of worshippers hinted at exclusionary practices that are both ineffective and not endorsed by this Board or the township. The board never suggested limiting the number of worshippers at the temple. This practice would be discriminatory to not allow the public's freedom to worship. Ms. Flynn stated that it flies in the face and the spirit of the Religious Land Use and the Institutionalized Persons Act. She stated that the height of the four towers negatively impacted the surrounding residential neighborhood. Additionally, the applicant's traffic expert never recognized the impact of the congregation entering and exiting the temple on this narrow country road and actually appeared not to be acquainted with the conditions of the neighborhood. This expert never took into consideration the small one-lane bridge bordering on one side of the proposed

driveway and the active railroad tracks on the other side. In fact, he denied that the bridge even existed. No remedies to this situation were ever suggested to the board. The board requested that the applicant deed restrict the property restricting further development, the applicant refused. In the applicant's attorney's summation, she mischaracterized the conservation easement on the environmentally constrained portion of the property as a deed restriction. These two restrictions are not the same. Approving this application would negatively impact the township's zone plan and the master plan. The application is located on property that is not zoned to permit houses of worship. This property is only one lot of two vacant ROM-2 zone property left in the township. Additionally, there are many other areas in the township that were not explored for this temple, although such a project would be a permitted use in over one-third of the township.

Mrs. Flynn stated that there are numerous defects in the application that do not meet the applicable standards. The self-imposed conditions prove that approving this application would promote exclusionary practices, which she could not endorse. After balancing the negative and positive criteria, she stated that she would have to vote no.

Vice Chairman Denning stated that this application was before the board for two and one half years. As part of the application process, the board asked many questions in order to better understand how the building would be used and to ensure that the site was capable of handling the intensity of the proposed use. During the testimony whenever it pertained to how many people would be in the temple, it would always be modified to conform to the maximum of 150 people. Hearing this and many other incidents of changing testimony, sometimes during the same conversation, made the task of understanding the factual facts difficult. All of the applicant's professional reports based their reports on the 150 number. However, the information supplied by the Board of Health has the septic system sized for a much larger potential flow that what would be required for 150 people. The Board of Health approval was for enough capacity to satisfy the needs of 633 occupants. The increase in traffic concerned him as well. Also, the utilization of denying entry into the church as a control mechanism is a technique that has no evidence of effectiveness. Mr. Bhatt testified that he has never been denied access to a temple, nor has he ever seen this technique used before in other temples. He stated that the site will restrict the ability of the organization to expand their practice of religion by eliminating the ability to construct a community center in the future. He therefore stated that his vote is no.

Mr. Thompson stated that he concurred with the other board members that have already spoken. He stated that was inherent for him when he made his decision was when the applicant first appeared before the board, he testified that he was prepared to spend \$925,000 for 28 acres, only five of which would be utilized due to the wetland impacts. He stated that he made a request that the applicant provide demographic data so that the board could have a sense of how many people of Hindu faith were located in the surrounding counties. That request was denied. And interestingly this Board made the same request when another church came before the board to expand their building and the information was provided. The architect testified that the cost of the structure would be 8.5 million dollars. A great deal of testimony was given regarding the maximum capacity of 150 people. The applicant and architect repeatedly testified that when they reached the 150 member capacity, they would build another temple.

Mr. Thompson stated that based upon the numerous inconsistencies and weighing the negative and positive criteria, he cannot in good faith vote in favor of this application and therefore his vote is no.

Mr. Stettner stated that since there is not a lot of small business properties left, he felt that this property should stay in order to accommodate light maintenance. Again, he felt that the size of the building and the 150 devotees made him unsure of the applicant's credibility. He stated that he has lived in this area for 47 years and very familiar with Coddington Road. He knows for a fact that it is a dangerous road. He stated that he is a volunteer fireman for the township for 35 years and did not think that the fire company would ever get close enough to the building if there were a fire. For all of the previously stated reasons and for the additional reason, Mr. Stettner stated that he votes no.

Madam Chair stated that since this is a house of worship it has been declared an inherently beneficial use. When she began her deliberations, she performed the SICA balancing act, where she had to rank houses of worship along with some other types of uses. She ranked houses of worship below hospitals, trauma centers and nursing homes, etc., but above public utilities and commercial radio transmission towers. She stated that she would rank this particular house of worship low on the scale because it limited the size of its congregation. In terms of the negative impact, the ROM-2 zone in the township is already limited zone designed for small research, office and manufacturing facilities. Permitted uses in this zone would provide jobs and services as well as tax ratables for the township. Houses of worship are not permitted in this zone. Performing some research on the computer, she was able to find that this piece of property and one other on Ridge Road are the last two undeveloped properties in the ROM-2 zone. Houses of worship are permitted in the RR and R-1 zones as conditional uses and these zones comprise roughly one-third of the township. Granting this variance would negatively impact the purpose and intent of the township's master plan and zoning ordinance. The additional traffic would negatively impact the neighbors on narrow, Coddington Road. The visual impact would negatively impact the surrounding properties. The major detriment of this application is the size of the building. A building of 30,000 square feet, which has the potential for holding approximately 3,000 people per fire code, makes no sense for a congregation which the applicant and his experts repeatedly testified will not exceed 150 members. The applicant's attorney has tried to make it look as though the Board was imposing the condition of maximum 150 members on the applicant. That is not true. The Board members and the public requested that the size of the building be reduced, the applicant refused. She stated that this Board and the Planning Board in the last few years approved six applications for new or expanded houses of worship, and never imposed a maximum number upon the worshippers. Mrs. Fort stated that the variance goes with the land. If this is approved, the 30,000 square foot temple, which would be one of the largest temples in the State of New Jersey, would continue even after Mr. Bhatt's leadership has ended. The unique design of the building would prevent any reuse which would be permitted in the zone, and its size would beg usage by a larger number of congregants. She stated that her opposition to this application should not be construed as opposition to a Hindu Temple in Readington Township, but rather as opposition to this size building on this particular property in the ROM-2 zone. On balance, the negative impact of approving this application far outweighs the benefits. Therefore, Mrs. Fort voted no.

2. New Cingular Wireless PCS, LLC

**Block 17, Lot 9
384 Route 22,
Variance**

Madam Chair announced that this matter was carried to August 21, 2008

- 3. Cellco Partnership d/b/a Verizon Wireless
State Highway 31 & Foothill Road
Preliminary & Final Major Site Plan; Conditional Use;
Conditional Use Variance
Block 61, lot 5.02
Variance
Madam Chair announced that this matter was carried to August 21, 2008**
- 4. Wachovia Bank, N.A.
420 Route 22
Block 8, lots 4, 5, 6 & 7
Variance application
Madam Chair announced that this matter was carried to August 21, 2008**

J. ADJOURNMENT:

Mrs. Flynn made a motion to adjourn at 8:56 p.m. Mr. Shepherd seconded the motion.

Respectfully submitted,

Linda A. Jacukowicz