

5VILLAGE OF NEW HEMPSTEAD
108 OLD SCHOOLHOUSE RD.
NEW CITY, N.Y. 10956

ZONING BOARD OF APPEALS

REGULAR MEETING
WEDNESDAY, AUGUST 31, 2016
7:30 P.M. – VILLAGE HALL

PRESENT

MARTIN LEIBOWITZ, CHAIRMAN
ALLEN FISHKIN
RICK ELL
ADAM POLLACK

ABSENT

SOLOMON FUERST

ALSO PRESENT

CAROLE VAZQUEZ

ABSENT

DENNIS MICHAELS, ESQ.

Call to Order

Roll Call

Public Hearing – Applicants Ateres Bais Yaakov, 236 Cherry Lane, Monsey, N.Y. 10952

The applicants are requesting a variance from the provisions of Section 5.2 and 6.9.4 of the New Hempstead zoning law to temporarily locate a girls religious school on a parcel with a lot area of 3.459 instead of the required minimum of 10 acres formerly known as Rockland Baptist Church, 945 Route 45, New City, N.Y. 10956. The subject property is located on the west side of State Route 45, 1,000 feet south of Pomona Rd. The property is designated on the Town of Ramapo tax maps as Section 33.19, Block 1, Lot 2 in a 1R-50 zoning district.

Chairman Leibowitz stated in addition to the variance for the acreage, there are additional variances required. Front yard – required 50' the applicant proposes 30', side yard 60', applicant proposes 5.3', FAR – 3750 sq ft. or 0.1 – requires 22,700 or 0.151 – impervious coverage 0.2 – proposed 0.34, parking spaces required – 170 – proposed 56. Parking required in the front and side yards.

Chairman Leibowitz referenced various correspondence – Letter from Rockland County, Dept. of Planning dated August 22, 2016. The final statement stated the Zoning Board of Appeals is required to have a vote of a majority plus one (super majority) in order to grant the variances to the applicant. This correspondence will be attached to and made a part of this record. There is also a letter from our Fire Inspector dated August 18, 2016 (Site Plan Review Report) and a letter from Anthony Mallia dated August 26, 2016. These will also be attached to the record.

Chairman Leibowitz also stated we have not received a SEQRA report from the Board of Trustees of the Village of New Hempstead. There was a revision in the site plan and this was forwarded to the County Planning Dept., who will issue a revised GML. We have not received notification from the Army Corp. of Engineers as to whether or not any other land has been cleared. We will have the applicant present their proposal, ask questions of the applicant, tonight, we will, then open the meeting to the public for their input. The hearing will be held over to another meeting, which will be held on September 6th. There will be three meetings on Sept. 6th. First, Board of Trustees, 2nd, Planning Board, 3rd. Zoning Board of Appeals.

Present

Ira Emanuel, Attorney for Applicant
Rabbi Fink – Applicant

Attorney Emanuel gave the presentation – he stated the property is on the west side of Route 45, opposite the entrance to Gene Levy Park. The property was approved by the Village in 2010 for use by the Rockland Baptist Church – a building was partially built pursuant to that plan and then abandoned. The proposed site plan is based upon the site plan that was approved by the Village in 2010. On the original site plan, the parking encircled the building. That is not appropriate for this school use. The applicant recently received approval for a site at 200 Summit Park Rd. for the permanent location of this school. This is a proposed temporary location while the Summit Park Rd. building is being built. We are not asking for temporary trailers. We are asking for trailers that will meet the fire code, that will be

done pursuant to the site plan and pursuant to Special Permit. The proposal is a little different than the one that was originally submitted. The original permit had a somewhat smaller parking area and also had two units in different places. The adjustments were made so that they would be more accessible to emergency units. In the process of doing that, we were able to provide some additional parking spaces. The other major change is with the location of the fire hydrants. There will be a fire hydrant right at the entrance of the school. 48 parking spaces were approved for the Summit Park location. There will be 56 parking spaces at this location. Students are not allowed to drive so more parking spaces are not needed.

Attorney Emanuel stated he did not think it was necessary to override the GML. This is a very carefully written GML. There is a lot of language about things they don't particularly like, but the result of each paragraph is that the Village shall consider this, shall consider that. It doesn't direct as other GML's do. To do one thing or another.

Chairman Leibowitz stated he will review that.

Attorney Emanuel stated the applicant is here tonight to answer questions.

Mr. Fishkin asked Attorney Emanuel what brought all this about.

Attorney Emanuel stated there was an omnibus narrative. The Village granted approval for the 200 Summit Park Road site. The school has been in existence for 15 years. It was operating in Monsey. The school was renting the property. The property has been sold. They have to leave. They need a place for 420 students. They were pointed to this location through conversations with the Village. This location was previously approved for the Rockland Baptist Church. The School District looked at it from a school bus situation. The School District said it was alright. The site works and they have made this application. The stipulation that they have made to all three Boards is that this will be for a three year period of time. Just enough time for the school to be built on Summit Park Rd. At the end of that time the school will remove the trailers and whatever infrastructure is associated with the school. The applicant is working with the Village Attorney to prepare whatever covenant is needed to protect the Village.

Rabbi Fink stated they originally were going to use modular buildings on the Summit Park Road site. At a CDC meeting in June the engineer said that was not acceptable. Therefore they had to go to Plan B to find a new location.

Chairman Leibowitz asked when the applicant found out they had to leave the Cherry Lane site. Rabbi Fink stated "about a year ago".

Chairman Leibowitz asked what other sites they looked at.

Rabbi Fink stated many but were not appropriate or available.

Mr. Fishkin asked Rabbi Fink if he would agree that the problem that exists was in part created by him because he was part owner of the school that sold the land. Rabbi Fink stated he was overridden by his partners. The other two owners wanted to make the sale.

Chairman Leibowitz stated that should the ZBA grant the variances, his knowledge is that the variances go with the land.

Attorney Emanuel stated that "in appropriate circumstances, you can put a time limit on it." These are temporary buildings; they can be removed. Some of the variances are specific because this is a school. There are additional yard requirements for a school that didn't apply to the church. The FAR and building coverage is the result of additional amount of buildings. The applicant would have no objection to it being conditioned upon the variance running with the Special Permit. The Special Permit will be for a period of about 3 years.

Chairman Leibowitz asked Attorney Emanuel should someone else come on that property after the applicant leaves can they claim, and will the courts uphold, that the variances go with the land?

Attorney Emanuel stated the applicant is agreeing to have the variances conditioned upon the restrictions of the Special Permit.

Attorney Emanuel read an Email from Attorney Michaels. Attorney Michaels apologized for not attending this evening's meeting. He thought the meeting had been cancelled.

Mr. Fishkin asked about an area of wetlands. Do they need a bridge?

Chairman Leibowitz asked for the information on the owners and the address in order to reach them.

Attorney Emanuel stated he will get the information.

Chairman Leibowitz stated he would like to have our Code Enforcement Officer issue violations to them regarding the use of the building.

Chairman Leibowitz opened the hearing to the public.

Ms. Vazquez stated the hearing was published in the Journal News on August 10, 2016. The notices and postings were timely.

Maureen Kelleher

1302 Views Way, Pomona – asked if an environmental impact study had been done on this application.

Chairman Leibowitz stated the review is being done by the Board of Trustees of the Village. The report has not been completed and turned over to us for review. It is supposed to be done at the Board of Trustees meeting on September 6th.

Maureen Kelleher asked if anyone knew how they are going to review it.

Attorney Emanuel stated a traffic study was done – It should be in the Village files.

Mrs. Kelleher asked for a copy.

Mrs. Kelleher asked about the safety of the children & the neighbors. This seems like a big change even for only 3 years.

Chairman Leibowitz stated the Board has not made a determination as to whether they are going to grant the variance.

Mrs. Kelleher was also concerned about the fire trucks – can they fit?

Chairman Leibowitz stated the fire inspector is a recent employee of the Village. He is very diligent in his job. He "breaks chops". He does not let things go by the wayside. This will be addressed by him.

Chairman Leibowitz asked how many vehicles would be going to the school.

Rabbi Fink stated 8 buses – 10 mini – 6-8 buses at 4:15 and 2 at 5:00. Pre-school - there are approx. 30 kids in pre-school – 10 cars (car pool) no school on Sunday or Saturday.

Robert Fonti

1102 Views Way, Pomona – 420 students – 3 buildings – 140 per bldg. How many are in one bldg. at one time. That sounds like a lot of students in one building.

Rabbi Fink said the smallest of the buildings is 80 x 60 (5400 sq. ft.) 35 sq. ft. per child – this meets NYS code for classroom size – The larger building is 97 x 60 (over 15,000 sq. ft.)

James Kelleher

1302 Views Way, Pomona – against the variances – it is only 1/3 of what the zoning calls for – it is not sufficient – as a land owner he thinks his property value would be affected – concerned that the variance would be given in light of the fact the study of the wetlands has not been completed.

Chairman Leibowitz stated the variances are not granted – we do not know if they will be granted – Still waiting for the Army Corp of Engineers to submit their report as to whether the wetlands have been impacted by this development.

Shlomo Pomerantz – Lt. Fire Dept.

300 N. Main St. – Against proposal – modulars don't work as schools – Temporary according to NYS Code is under 180 days. More than that is considered permanent. The Fire Dept. has not had sufficient time to do a full review of the plan. Quick review shows not enough room for fire equipment. The Village has no use for this on the books. Will probably show more when there is time for a full review.

Chairman Leibowitz asked when Mr. Pomerantz feels the study will be complete.

Mr. Pomerantz does not feel the study will be done before the 6th due to the holiday weekend. The issue of the incomplete building is not good. Would like to see the applicant find something that works better. There are a lot of concerns from a safety point of view.

Attorney Emanuel stated it is a shame that Hillcrest Fire Dept. has not responded to previous requests for review. Mr. Ziegler has looked at the plans. He attended the CDC review. What he, Attorney Emanuel is hearing now, is brand new. The plan was made by a professional engineer that shows fire trucks make the turns. Mr. Ziegler did not raise as a concern an evacuation route. The applicant is happy to work with the fire department. This is a temporary situation, the buildings are not temporary. These are modular buildings that comply with NYS Bldg. & Fire Code for this use. Modular buildings are used for school use all the time. The statement that modular buildings are not fit for school use is just not correct.

Mr. Pomerantz – Said he did not mean that modular buildings are temporary buildings. The Village is looking at this as a temporary issue. You put any kind of structure on the property for more than 180 days, it has to abide by permit rules from the State of New York. We were not invited to attend the CDC meetings – we would be more than happy to attend if we were notified. Mr. Pomerantz stated he has met, briefly, with Mr. Ziegler about the plans. Even Mr. Ziegler has not had time to complete his review. The plans we have are incomplete.

Chairman Leibowitz stated no decision will be made until we have received final status from our Fire Inspector, until we receive word from the Army Corp of Engineers, until we have received a GML from the County Planning Dept. and until the SEQRA report is issued.

Frank Youngman, Assistant Chief Hillcrest Fire Co. also Fire Inspector for the Village of Spring Valley Questioned whether Mr. Pomerantz has been in contact with Mr. Ziegler. He stated modular homes should not be allowed on this property. There is nothing in the New Hempstead code that allows this.

Chairman Leibowitz stated this will be discussed with our Village Board and our Attorney. It will be determined whether or not this is a permissible use on the property.

Mr. Youngman – “what will they do when it snows?”

Mr. Youngman – Who pays for the hydrant?

Attorney Emanuel – the applicant

Rabbi Fink – it is approx. \$8,000 to install it.

Chairman Leibowitz stated the Board will hold the public portion of the meeting open until Sept. 6th.

Mr. Fishkin offered the following motion, which was seconded by Mr. Ell:

Resolution # ZBA 2016-20

Resolved, that the public hearing on application of Ateres Bais Yaakov, 236 Cherry Lane, Monsey, N.Y. 10952 is hereby adjourned until September 6, 2016. Chairman Leibowitz called for a vote and the vote was 4-0. The resolution was adopted.

Approval of minutes of July 27, 2016

Mr. Ell offered the following motion, which was seconded by Mr. Fishkin:

Resolution # ZBA 2016-21

Resolved, that the minutes of the meeting of the Zoning Board of Appeals held on July 27, 2016 are hereby approved and the reading of said minutes be waived. Chairman Leibowitz called for a vote and the vote was 4-0. The resolution was adopted.

Motion to adjourn

Chairman Leibowitz offered the following motion, which was seconded by Mr. Fishkin:

Resolution # ZBA 2916-22

Resolved, that the meeting of the Zoning Board of Appeals held on August 31, 2016 is hereby adjourned. Chairman Leibowitz called for a vote and the vote was 4-0. The resolution was adopted.

Respectfully submitted,

Carole Vazquez, Village Clerk-Treasurer

LPM