

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

ZONING BOARD OF APPEALS

REGULAR MEETING

WEDNESDAY, SEPTEMBER 28, 2016
7:30 P.M. – VILLAGE HALL

PRESENT

MARTIN LEIBOWITZ, CHAIRMAN
ALLEN FISHKIN
RICK ELL
SOLOMON FUERST
ADAM POLLACK

ABSENT

ALSO PRESENT

JOHN LANGE, VILLAGE PLANNER
DENNIS MICHAELS, VILLAGE ATTORNEY
MIKE GALANTE, TRAFFIC ENGINEER
LORI BELLO, DEPUTY VILLAGE CLERK-TREASURER

Public Hearing – 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.

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 – 3,750 sq. ft. or 0.1 – requires 22,700 or 0.151 – impervious coverage 0.2 – proposed 0.34, parking spaces required – 170 – proposed 59. Parking required in the front and side yards.

Chairman Leibowitz read a letter from Ramapo Ophthalmology dated September 21, 2016 into the record. There are similar letters from James W. Flax, M.D. dated 9/16/16, Dr. Barry Schoenberg and Dr. Jeffrey Horowitz dated Sept. 15, 2016, Jesse M. Hackell, M.D. dated Sept. 9, 2016, William J. Schwartz, N.D. & Catherine C. Furey, M.D. dated Sept. 7, 2016, Rockland Thoracic & Vascular Associates, P.C. dated Sept. 9, 2016. All these letters basically say the same thing. We have an e-mail from Stephen Geis sent on Sept. 27, 2016, which was read into the record.

Chairman Leibowitz stated that on Sept. 15, 2016 the Building Inspector, Stephen Janis, issued a violation notice under Section 32.19 for the premises located at 945 Route 45. This is a public notification of a violation of Village of New Hempstead Fire/Bldg. Code/Zoning Ordinance notice of commercial use of a residential lot. Storage equipment use. This violation is not for the school it is for the owners of the property.

Chairman Leibowitz read into the record excerpt from the Village Zoning Code – Section 6.7 – No permit shall be issued for a Special Use Permit for a property where the Building Inspector or Zoning Enforcement Officer has found a violation of this Local Law and where such violation has not been corrected. On September 20th, the Board of Trustees of the Village of New Hempstead issued a Special Permit. At such time one of our consultants did mention the fact that a violation existed but whether or not the Trustees heard this or not, I don't know.

Chairman Leibowitz stated on June 29, 2016 the Zoning Board of Appeals granted the variances for the 200 Summit Park Rd. site. Under Section 9.5 of the Village of New Hempstead Zoning Code you have one year from the date of issue of the variances to have substantial construction on that site. Rabbi Fink stated he is still waiting for approval from the Fire Inspector.

Chairman Leibowitz asked Fire Inspector Ziegler what the status of his inspection was. Mr. Ziegler stated he has not had time since this project has taken precedence over that one. Chairman Leibowitz stated the priority is up to the Board of Trustees.

Attorney Michaels advised the applicant he may want to file for an extension.

Chairman Leibowitz read an e-mail from our former Bldg. Inspector dated 8/26/16. Same will be attached to and made a part of this record.

Chairman Leibowitz stated he has gone through the whole Bldg. Code and there is nothing that covers trailers or modular buildings.

(conversation from last night's Planning Board meeting). Leonard Jackson, Professional Engineer stated the modular buildings are not temporary structures. The fact that they are built somewhere else and then brought to the site – they are permanent structures which may be removed later on. These buildings meet NYS Building Code.

Mr. Lange does not see the modular as a permanent structure. He has no problem with the use.

Conversations regarding modular use in the rest of Rockland County.

Attorney Michaels read into the record "Unique Circumstances" that were part of the approval resolution for the Special Permit by the Board of Trustees.

Amy Mele – Attorney for Applicant

Attorney Mele advised the Board of some current changes – The number of parking spaces were changed from 48 to 59 upon the advice of Mr. Lange & Mr. McCreedy. Right now there are 37 teachers and staff. It is important to note that not all the teachers and staff are there at the same time. The most that are there are about 20 at a time. The teaching staff rotates throughout the day. Large scale events where parents would come would have to be done at another site. None of the students are permitted to drive to school. As for a Special Permit for a property with a violation, it has been agreed that the existing building will be vacated so there will not be 2 uses on the property.

Attorney Michaels read into the record a GML from Rockland County Planning dated 9/28/16 Leonard Jackson, Engineer – responded to several items of same. The "override" will be for Item 3 and the second paragraph of Item 5.

Attorney Michaels read into the record the following conditions which the Board of Trustees included in their granting of the Special Permit Use Approval for Ateres Bais Yaakov Academy of Rockland.

Chairman Leibowitz feels there is a problem in that the variances go with the land.

Attorney Michaels gave examples which showed that would not be the case.

Chairman Leibowitz asked the fire inspector if he had completed his report.

Mr. Ziegler stated he has not. He still has to review the revised site plan.

The Planning Board is waiting for the approval of the fire inspector before they make their decision.

Chairman Leibowitz stated the ZBA has to be concerned with the health, safety and welfare of the community. The fire inspector report deals with that.

Chairman Leibowitz asked Rabbi Fink if the "owned" modulares at Cherry Lane would be coming over to this site. "No".

Chairman Leibowitz asked how the food would be handled at the proposed site.

Rabbi Fink said it would be brought in.

The question arose as to where the children would go in an emergency.

An evacuation plan has to be brought in.

Chairman Leibowitz brought up the issue of traffic around 5:00 on Route 45. It is very heavy at that time. Concern should be given to this situation.

Chairman Leibowitz asked when the traffic study was done.

Harry Baker from F.P. Clark Assoc. stated Sept. 13th & 14th ; Tuesday & Wednesday – Route 45 and Pomona Rd. and Route 45 & New Hempstead Rd.

Discussion on traffic.

Chairman Leibowitz opened the hearing to the public for comment.

Martin – 65 Hempstead Rd. –speed limit is 45 mph – will there be a light to slow down buses?

Chairman Leibowitz stated that is the NYS Dept. of Transportation

Nathen Eisenberg – 18 Rovin Rd. – knows Rabbi Fink for 20 years. Concerned about revisions – keep in mind that Rabbi Fink is trying to do the right thing. Kids like the idea of moving from one building to another – they get a break by going outside.

Shoshana Schechter – 2 Keri Lane – Feels bad for Rabbi Fink – he is trying to do this the right way – He is getting played around.

Mr. Strack – 7 Rovitz Pl. asked for definition of allowances that must be made for religious use *RLUIPA*. There are 2 tests for adherence to the law – 1st. is to treat Churches & religious institutions on less or equal terms with non-religious institutions. The second test is State and Local government cannot impose a substantial burden on the religious organization. The problem is the substantial burden. He went on to quote special cases.

Attorney Michaels had no response to Mr. Strack's comments. Generally speaking educational institutions and religious institutions are afforded more flexibility. They have to comply with the NYS building codes, etc.

Mr. Strack asked if the Board would grant the size and number of variances to a commercial application. Would you do it for a private developer? Would you grant this for a non-religious entity?

Mr. Fishkin stated there are some concerns about the fire safety of the set-up.

Chairman Leibowitz asked Rabbi the cost of the 200 Summit Park property.

Rabbi Fink stated 10 million – they have been approved for a mortgage. – We must provide 25% equity . They have to raise 2 million – we already have approx. 1 million

Chairman Leibowitz asked are you going to have the funds to complete the project within the time if the Variances are granted.

Rabbi Fink – have massive funding

Chairman Leibowitz asked if the Board members are ready to vote.

Mr. Fuerst feels they are missing aesthetics.

Mr. Fishkin feels there is no alternative.

Chairman Leibowitz feels the application is unapprovable based upon the zoning regulations.

The Board went off the record for a discussion with the Village Attorney.

Chairman Leibowitz feels there are a few more items – report from the fire inspector, review the traffic study and then we can make a final decision on this project.

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

Resolution # ZBA 2016-23

Resolved, that the public hearing on application of Ateres Bais Yaakov, 236 Cherry Lane, Monsey, N.Y. 10952 will remain open and continue to a special meeting of the Zoning Board of Appeals to be held on Monday, October 10th, at 6:00 p.m. in this meeting room. Chairman Leibowitz called for a vote and the vote was 5-0. The resolution was adopted.

GML – C & R Group – 15 McNamara Road

The Zoning Board of Appeals has no comment on this GML

Approval of Minutes of August 31, 2016

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

Resolution # ZBA #2016-24

Resolved, that the minute of the meeting of the Zoning Board of Appeals held on August 31, 2016 are hereby approved and the reading of said minutes be waived. Chairman Leibowitz called for a vote and the vote was 5-0. The resolution was adopted.

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

Resolution # ZBA 2016-25

Resolved, that the meeting of the Zoning Board of Appeals, held on September 28, 2016 is hereby adjourned. Chairman Leibowitz called for vote and the vote was 5-0. The resolution was adopted.

Respectfully submitted,

Lee Mazza. Secretary