

SPECIAL MEETING OF JULY 28, 2008

The special meeting of July 28, 2008, was called to order by Chairman Peter Kortright III, at 7:35 p.m. The notice of the Open Public Meetings Law was read.

Roll Call

Present: Chairman Peter Kortright III, Deputy Mayor Lisa Swain, Vice-Chairman Todd Malkin, Barry Winston, Larry Metzger, Dr. Michael Cohen, Joseph D'Arco, Alan Neggia, Barry Winston and Honey Morgenstern Absent: Joseph Baladi and Philip Cassidy

Also present: Board Engineer John Rottenbacher, Attorney Douglas Bern and Board Secretary Cathy Hochkeppel.

Congregation Darchei Noam; 10-04 Alexander Avenue; Block 4526, Lots 31 & 32; site plan

Andrew Karas, Esq., appeared for the applicant. He explained that the architect added a parking spot on site and would be testifying. Mr. Mordler will explain the agreement with the Fair Lawn Board of Education. The planner will also testify.

David Billow, 161 Main Street, was reminded he was sworn under oath. The revised site plan dated July 9, 2008, was marked as Exhibit A-7. He explained that the loading dock has been eliminated and two tandem parking spaces have replaced it. The impervious coverage goes up slightly but is still well under the standard. The number of spaces changes from two to four.

Attorney Matt DeMaria, representing the Tomescos, asked where a caterer or other truck would have access, and Mr. Billow explained that they could temporarily use the two parking spaces. Discussion ensued about the two curb cuts. Attorney Douglas Bern explained that there were different standards for houses of worship.

Mr. Mordler, PhD, was reminded he was previously sworn and still under oath. The revised parking agreement was marked as Exhibit A-8. Dr. Mordler stated he met with the B.O.E. to negotiate an agreement which includes some additional parking. The parking is for two separate sites. They are being licensed to use 25 parking spaces at Fair Lawn High School for high holy days.

The B.O.E. has also provided 14 parking spaces at Lyncrest School for Friday night and Saturdays. He explained it was approximately four blocks and within walking distance. Dr. Mordler explained the details of the agreement including that it was for a term of five years with at will termination upon 60 days notice.

Attorney Douglas Bern asked about the termination and Mr. Karas stated that reference is to the high school spaces. There is no term or termination clause for the Lyncrest spaces. Dr. Mordler explained that most of the agreements with houses of worship are verbal but the Board of Education agreed to put it in writing to satisfy the Planning Board. Dr. Mordler explained that the agreement is with them and not a future buyer. He stated that if at some future date, they sell the building, most likely it will be for a residential space or a house for a rabbi. He explained that for those living on this side of town, this will provide an orthodox service.

Barry Winston asked why the agreement expires in 2013. Dr. Mordler explained that no B.O.E. agreement can last longer than five years. He further testified that they would look ahead to renew in advance. Barry Winston stated that any variance granted by this Board runs with the land. If the applicant sells the property, this Board can't control that process of sale. If you choose to sell it to an institution that drives on their day of worship (such as a church) there might be parking issues. Mr. Winston explained that recently a synagogue whose members largely were Sabbath observers decided to sell. They sold their building to a church, and this Board did not have the opportunity to review the uses. Mr. Winston commented that there are questions not being answered. Mr. Karas explained that they would address those concerns with a planner. Attorney Karas explained that this approval could be conditional and if the property is sold to an institution that did not have the same agreements, the matter could be back in front of the Board. Mr. Karas added that the applicant can record a resolution and offer a Deed restriction so any potential buyer would be aware of the restriction. Dr. Mordler added that they made many attempts to be accommodating. Deputy Mayor Lisa Swain commented that the spaces at Lyncrest are used on a regular basis. The parking is used by All-Sports on Fridays. There is competition for the parking spots. Dr. Mordler replied that they don't believe they will actually need any of the parking but have made an attempt to accommodate the Board's requests.

Larry Metzger asked if there will be a religious school. Dr. Mordler explained that there is no plan to have any educational classes. The intent is that this is strictly a religious institution. He further explained that most children in orthodox congregations go to Yeshiva schools and receive many hours of religious instruction.

Vice-Chairman Todd Malkin asked about parking the rest of the week for early morning services and evening services. Dr. Mordler replied that they have an agreement with the Jewish Center to use the parking spots at the Center. There are four spaces on site and 25 at the Jewish Center. Vice-Chairman Todd Malkin questioned whether it was an agreement that the Jewish Center could legally enter into.

Mr. DeMaria stated his client believes that many more than 24 parking spaces are required. Considering the various uses in the building, he stated that at least 51 spots are required. He also noted that the license agreement is terminable upon 60 days notice. Mr. DeMaria believes it applies to all parking facilities.

Leonard Rosenthal, 10-05 Bellaire Avenue, Fair Lawn, questioned whether the agreement would be effected by the 2:00 a.m. to 5:00 a.m. ban and was told no because it is not public parking.

The meeting recessed for 10 minutes at 8:40 p.m. with all parties present as previously indicated.

Anthony Garrett, Planner, 161 Main Street, Ridgefield, qualified as an expert planner. He explained he reviewed the master plan and visited several houses of worship throughout the Borough of Fair Lawn. He explained that there are three variance being sought for lot size, side yard and parking. The parking calculations are based upon the sanctuary seats.

Cheryl Bergailo, of Taylor Design Group and Board Planner explained that the ordinance requires one space for every three seats or one seat per capacity. The testimony was that there will not be concurrent uses. Traditionally, houses of worship are based upon the seats in the sanctuary. Mr. Garrett stated that the applicant is maintaining a very residential character and it will not look out of place in the neighborhood. An exhibit entitled photo array was marked as Exhibit A-9. Mr. Garrett stated that the photos were taken about 3:00 p.m. that day. He further explained that to create more parking, the trees and grass would have to be sacrificed. He explained the photos in detail. Mr. Garrett also testified that the two times he has been to the site, there has been virtually no parking at the Jewish Center. He stated that the application is consistent with the master plan. It is a small, low intensity house of worship. Cooperative parking is encouraged in the business areas and by religious law the members will be walking to the facility. It is a creative parking arrangement. He added that there are a host of benefits including greenery.

Mr. Garrett testified that the side yard setback is an existing hardship and can be granted. With respect to the lot area, it is an existing condition and the applicant is not proposing a large expansion and it will not effect the light and air. It will preserve the residential

integrity of the neighborhood. Mr. Garrett pointed out that there were several variances granted by this Board to Houses of Worship even when there was zero parking on site. Mr. Garrett reviewed language in the resolution of Fair Lawn Reformed Church dated August 11, 2003, which was marked as Exhibit A-10. Attorney Douglas Bern stated each application and variance is made on the individual application as there are different nuances to each application. Chairman Peter Kortright III, commented that the application referred to was totally different as it was for an existing house of worship.

A resolution approving St. Anne's expansion date August 15, 2005 was marked as Exhibit A-11. Vice-Chairman Todd Malkin pointed out that it was an existing church and a proposed addition. The existing house of worship was on a 3 acre site. Mr. Karas read portions of the resolution. Vice-Chairman Todd Malkin stated that Mr. Karas was taking small pieces of a complicated application and twisting it for his own purposes. He stated that it was an existing institution. There was a change in the circulation. There were safety issues. The only intensive use was on Sunday. Attorney Douglas Bern added that Mr. Karas was misstating the record and the facts. This applicant provided for more than one-half of the required parking. Mr. Garrett raised RLUPA and stated that under case law, parking deficiency was not grounds to deny an application. Board Attorney Douglas Bern asked the exact deficiency of the case he was citing, and Mr. Garrett replied that the deficiency was three spaces. Mr. Garrett testified that the variances meet the C(1) and C(2) criteria. He stated that he believes that it has been clearly defined that houses of worship are a beneficial use to the community. With respect to the negative criteria, he stated that there are negative impacts to creating additional parking on this site. The congregants are going to walk to the house of worship which the applicant is not proposing. The applicant has secured arrangements to provide parking which exceeds the number needed. Mr. Garrett stated that it satisfies both the negative and positive requirements.

Barry Winston commented that all of the statements regarding the other variances granted to religious institutions were existing, and that this situation is not comparable.

Vice-Chairman Todd Malkin asked if there were any new institutions on his list and Mr. Garrett stated they were all existing.

Mr. DeMaria asked the planner if he was aware of the parking ordinance in Fair Lawn. Mr. DeMaria pointed out that there were 70 seats in the main sanctuary and that there is another section that is a social hall and shows 32 seats. There are meeting rooms. Mr. DeMaria thought that more than 24 seats were required. Board Attorney Douglas Bern stated that there was testimony that the sanctuary will not be used at the same time. The

Board is allowed to interpret the ordinances and has accepted the testimony that there will be non-simultaneous use.

Mr. DeMaria commented that the Boswell McClave report dated January 9, 2009, stated that this Board would need to consider a variance for the Jewish Center because they have deficiencies in the parking now. Attorney Douglas Bern commented that there was testimony and the Board can make a decision the impact is diminimus. If the Board wants more information the Board can request it. Mr. DeMaria stated that there is a case before the Board of Adjustment regarding the activities going on at the Jewish Center. Mr. DeMaria also commented that an inherently beneficial use does not satisfy the C(1) and C(2) criteria for the granting of the variance. In addition a single family use would be a greater benefit and would preserve the residential character of the neighborhood.

Robert Wallace, Manor Avenue, Fair Lawn, asked about the trees and was told that the applicant would preserve as many as possible.

Raymond Moore, 11-07 Norma Avenue, Fair Lawn, stated that the Jewish Center has a basketball league beginning at 3:30 p.m. until late evening year round. The lots are full during those times and the noise is deafening.

Steve Yannitsadis, 9-01 Walsh Place, Fair Lawn, stated he has lived in Fair Lawn over 40 years and does not see how the Jewish Center can provide additional parking. He commented that often there are buses in the lot taking up room.

Leonard Rosenthal, 10-05 Manor Avenue, Fair Lawn, asked how many trees would be cut down and was told the plan is to remove two trees. One is small and can be moved.

Robert Walsh, 11-06 Alexander Way, Fair Lawn, asked if the two curb cuts were permitted and was advised that since the use is different, there are different standards than the residential standards and it would be permitted.

Honey Morgenstern asked how many spots would be possible at the site and was told approximately 12. Mr. Garrett stated that he believes it is better planning to keep the area green. Board Engineer Kevin Tichacek pointed out that in order to provide 12 stalls, there would have to be deviations from the design standards and it might also trigger an impervious coverage variance.

Mr. Tomesco, 10-11 Alexander Avenue, Fair Lawn, stated he lived directly to the east. The area they live is predominantly single family homes; a residential community with the Fair Lawn Jewish Center. He stated that there was very little activity when they purchased

the home. About 2002, the Jewish Center rented out their premises to a basketball league that runs from 3:30 p.m. to 10:00 p.m. five nights a week. They have also held Bingo nights at the same time. There has been an enormous traffic impact in the neighborhood. There are more cars flowing from the lot onto the street. Every evening, with the exception of Friday and Saturday, he can hear car doors slamming. Over the years, there has been an accumulation of negative effects on the general area. Mr. DeMaria stated the residential character has changed dramatically and his client is worried as to the additional impact this use will have on the area. Mr. Tomesco added that there seems to be a parking deficiency every night.

Photographs taken by Mr. Tomesco on March 23, 2008, at the Purim Carnival between 12:30 and 1:00 in the afternoon were marked as Exhibits 0-1, 0-2 and 0-3. Mr. Tomesco stated that every Saturday there are three to four cars parked in front of his home.

Dr. Michael Cohen commented that when he bought the home, the Jewish Center was there. Mr. Tomesco stated for the first two to three years, until the commercialization of the basketball league came in, it was a peaceful neighborhood. Mr. Karas asked if Mr. Tomesco took photographs on any other day than the Purim Festival and was told no. Mr. Tomesco was shown some photographs and asked if it was his vehicle in the Jewish Center lot. Mr. Tomesco explained that he parked his commercial vehicle in the lot overnight. In response to Mr. Karas' question, Mr. Tomesco explained that he had offered to buy the property and was proposing to subdivide it in conjunction with his own property.

Chairman Peter Kortright III, asked if it was possible to have someone in authority from the Jewish Center to testify as to the parking situation since there is conflicting testimony. The Board would also be interested in the various activities at the Fair Lawn Jewish Center. Mr. Karas stated that it would be difficult to obtain testimony since the Jewish Center is involved in a contentious application before the Zoning Board and is sensitive to litigation. Chairman Peter Kortright III, suggested that perhaps the Board can get a calendar of events. It was suggested that a subcommittee be formed to look into the parking situation. Dr. Michael Cohen, Barry Winston and Honey Morgenstern volunteered for the committee.

Adjournment

It was unanimously agreed to carry the matter to the September 8, 2008, meeting without further notice. Upon motion by Dr. Michael Cohen and a second by Vice-Chairman Todd Malkin, the meeting was unanimously adjourned at 11:00 p.m.

Respectfully submitted,

Cathryn Hochkeppel
Land Use Administrator/
Secretary of the Planning Board

CH:blcl