

WORK SESSION AGENDA OF MARCH 22, 2005

Mayor Ganz called the meeting to order at 8:42 p.m.

PRESENT: Mayor Ganz, Deputy Mayors Etler and Weinstein, Councilmembers Caan and McCarthy.

ALSO PRESENT: Manager/Municipal Clerk Kwasniewski, Assistant Municipal Clerk Bojanowski and Attorney Lustgarten.

Sephardic Center:

Deputy Mayor Weinstein stated the Temple on Terhune Place seems to have a different opinion on the memorialization resolution of the Planning Board was his understanding of the intent of Planning Board. There were a number of meetings held and there were conditions included in the approval.

One of the conditions was restricting the number of heavily attended events, such as weddings and only two Bar Mitzvah's or Bas Mitzvah's a year. He believed that the temple was to add some more parking in the back .

He believed because of the winter, the interior of temple was not completed and the parking was not done but they went for a permit to have a function. They were applying for a Bas Mitzvah this past Saturday and another one next Saturday. Mayor Ganz stated that would be the two they are allowed per year. Deputy Mayor Weinstein added they applied for a third one the following Saturday which is definitely against the agreement. They need to complete the temple and the parking before they can do anything. The intent of the Planning Board was to relieve the pressure of the residents of Terhune Place which is not being done.

Deputy Mayor Weinstein added last night about 9:20 p.m. he drove by the temple and there were a lot of cars parked by the Temple and he did not see anyone coming out to get into their car to leave by 9:30 p.m. He felt they are going a lot further than what was intended. The temple was also supposed to reach out to the residents of the street and warn them if they were having an event and they have not done that either.

Mayor Ganz stated in general if this was not a religious congregation it would be a very different issued. Deputy Mayor Weinstein wanted to protect both sides and felt that was what the Planning Board was trying to do. His opinion was whether it was a temple, business, non profit organization or something else because of the situation they have to continue to adhere to the conditions of their approach.

Borough Attorney Lustgarten spoke with Deputy Mayor Weinstein and Manager/Municipal Clerk Kwasniewski expedited the process and gave him the minutes and resolution. He had a discussion with Manager/Municipal Clerk Kwasniewski and they agreed to preserve evidence and authorized someone to take pictures. Deputy Mayor Weinstein advised him that the tent was there from Thursday or Friday on.

Borough Attorney Lustgarten explained to them what the minutes and the resolutions stated. He felt the reason it was important to go back into the minutes because the Planning Board specifically incorporated stipulations that were made in paragraph C, page 8. He added at the August 16, 2004 meeting Mr. Levy testified and read what part of what he stated.

Borough Attorney Lustgarten stated on November 2004, testimony reiterated types of stipulations for the use of the premises and a resident of Terhune Place asked if there would be parties during the week or weekends. He was told by a member that there would be no weddings or parties with live music and only two Bar Mitzvahs a year. He added on page 7, Deputy Mayor Etlar stated this is a permitted use and the only thing the Board can resolve is a site plan. He moved that the application be approved conditioned upon being restricted to 36 seats, no cooking or catering services to be brought in other than the collation, two parking spaces to be banked for review, no daycare center, no dumpsters etc. He read several paragraphs of the resolution that clearly summarized the testimony of the applicants, their attorney and their experts.

Deputy Mayor Weinstein stated that representatives of Temple Beth Shalom offered a cooperative parking agreement using their parking lot which the temple declined. He added they specifically stated that the congregants will not drive on Saturday, but on that particular Saturday there was parking not only on Terhune Street, but across the street on Rys Terrace all the way down to Henrietta. They led the Planning Board to believe there would only be congregants present. They also always spoke about the organization was not going to grow, so the intent on their part in his opinion was to deceive. He felt they should have to finish their parking lot and then have their next Batz Mitzah.

Borough Attorney Lustgarten stated beside from the parking issue, it was clear to him that they are allowed to have two Bar or Batz Mitzvahs a year. He did not see anywhere is the paperwork that stated the parking lot had to be done first. Mayor Ganz asked Borough Attorney Lustgarten where it states they are limited to two per year. He thought that was just in response to a question that it was just typical but not by way of limitation. Borough Attorney Lustgarten stated he read it as a stipulation by the applicants even though they did use the word typical which leaves some wiggle room and that the board incorporated the stipulation as part of its findings.

Borough Attorney Lustgarten read what the paperwork stated about parking which included they shall install a total of 10 parking spaces at this time. The adequacy of the parking shall be subject to review of the Board six months after the opening of the house of worship. He did not believe it could get much clearer as far as the food for Kidish.

Deputy Mayor Etlar stated it was his impression there would be a small amount of food brought in under the collation. That is what they agreed. Mayor Ganz asked Deputy Mayor Etlar if it was his view from being at the Planning Board meetings that they were not talking about having catered Bar or Batz Mitzvah's. Deputy Mayor Etlar stated the answer was yes. Councilmember Caan asked approximately how many people were there.

Manager/Municipal Clerk Kwasniewski stated there were 120 seats set up. Deputy Mayor Weinstein stated people on the street stated over 100, and someone who attended it told him there was only 50. Mayor Ganz stated the Manager said there was 120 seats set up, not filled.

Councilmember McCarthy felt from what Borough Attorney Lustgarten had read it sounded as though there would be a Bar Mitzvah but not a celebration there. If that was the case the ceremony is usually conducted in the morning hours on a Saturday and the event is later in the day. He added that was obviously not what happened if there were still people around at 9:30 p.m. Deputy Mayor Weinstein stated this was a different issue.

Councilmember Caan has been at Bar Mitzvahs that have been in the morning, afternoon and the evening. The main point is from what he had heard from the Planning Board minutes is their intent originally was 36 seats and gave that impression that would be the number of people that would be there at anytime for any event.

Manager/Municipal Clerk Kwasniewski stated though she agreed mostly except the temple did say that they have Bar Mitzvahs and there would be no way they would have one with only 36 people. They also said they have the high holy days which as in every religious organization they would have more people attending.

Councilmember Caan stated if they only have 36 seats then that the most they could sit. Mayor Ganz stated that was not true. Manager/Municipal Clerk Kwasniewski added the occupancy of the building is 100.

Deputy Mayor Weinstein stated the Planning Board was under a certain impression. They said 36 people in the congregation and they would not grow. The fact that they still do not have their parking and it was an issue that day along the street and did not reach out to the neighbors to explain anything so it would not have even come to the Council led him to believe they were doing something that was not allowed. He added based on all of that he would not allow them the second permit.

Borough Attorney Lustgarten stated the problem he was having with this was that the testimony about the Bar or Batz Mitzvah being in the synagogue and the celebration would be outside the premises. If they are referring to the building, then outside the premises anticipates they are going to have some celebration on the property. If premises means the building and the land then that could mean that they are going off site. Deputy Mayor Etler was sure the intent was that it was not going to be on the property. They were supposed to put parking spots there, they have not done so and now they have a huge tent there. He believed there would be a ceremony there and a larger celebration off the premise. Borough Attorney Lustgarten thought that was a reasonable interpretation and probably that the way some outsider would view this. There is nothing that says unless and until the 12 parking spaces are installed that they cannot use the place. The tent is a temporary usage. If they add a party there where food was provided beyond what people who attend services and reasonably understand to be the extent of a Kiddish then they violated that section of the approval.

Deputy Mayor Etler stated people can come in and cater all kinds of food and wanted to know how that is determined. Mayor Ganz believed you could look at that as a typical collation at the Fair Lawn Jewish Center there is a collation that happens after for the entire

congregation that is in attendance together with any visitors that were there to witness it. Typically this includes a wine, light food, sometimes pastries, what you would call a snack.

Borough Attorney Lustgarten doubted that anyone who has ever gone to a Bar or Batz Mitzvah or a wedding does not know the difference between a light affair and a sit down dinner. One thing they need to know over and above the tent is if this was a celebration under the tent for the Batz Mitzvah and if they are serving food that would reasonably understand to be beyond the size of a collation and violated sub section I of the resolution. Manager/Municipal Clerk Kwasniewski stated the person who had the Batz Mitzvah said she had the collation which is what was allowed.

Deputy Mayor Weinstein stated the issue is that they are on a residential street. They were making everyone believe that they were going to adhere to restrictions and not over abuse that street and now they are. They are there later than 9:30 at night and getting there earlier in morning. They went to Mr. Feldman at 9:30 p.m. last night to talk to him. They only did it after they were told they should. They are slapping the face of every Planning Board member after they were under a certain impression.

Councilmember Caan felt if there is supposed to be a parking lot with 10 spaces, the tent could not be erected and that was the point of the Planning Board originally knowing that if the spaces were there nothing else could be put there. Mayor Ganz stated that was not consistent because they have a dozen houses of worship in town that erect tents in their parking lots all the time. Deputy Mayor Weinstein stated it was a completely different situation. They really cannot put the tent up because that is where there is supposed to be parking. Deputy Mayor Etlar agreed with Deputy Mayor Weinstein. Mayor Ganz stated that is not what the Planning Board resolution says. Deputy Mayor Etlar repeated the resolution says there should be 10 parking spaces that were not being used, the cars were all over the street. Councilmember Caan there are issues and problems and felt they should work on what to do about them.

Deputy Mayor Weinstein stated he would not allow a permit for this week. They should finish their parking and then they can start having celebrations. Deputy Mayor Etlar agreed with him, they should put the parking in and then put the tent over it.

Borough Attorney Lustgarten asked why didn't the Planning Board address the issue of Bar or Batz Mitzvahs and indicate in its resolution that even with the 2 Bar Mitzvah's that are typically being held and the special services that the required parking would have to be in place before that would be allowed to go on. Deputy Mayor Etlar stated part of their CO was to have the parking complete. Manager/Municipal Clerk Kwasniewski stated it was a temporary CO because the building was done. Deputy Mayor Weinstein asked how long could they go with this CO. Manager/Municipal Clerk Kwasniewski stated it is good for 6 months and then renewable again.

Deputy Mayor Weinstein stated they need to compromise and not to park on the street. They should work with Temple Beth Shalom to use their parking lot for Saturday. Borough Attorney Lustgarten asked what happens if they refuse to do that. Deputy Mayor Weinstein stated then they cannot have their permit. Borough Attorney Lustgarten did not believe that was supported by the resolution.

Councilmember McCarthy felt they should not punish the child, they are innocent in this and have prepared for it for a significant amount of time. He suggested Borough Attorney

Lustgarten send a letter to the temple reminding them of their obligations under the Planning Board resolution. He felt they should advised them if they expand or fail to adhere to the requirements of the Planning Board that there will be adverse actions taken against them in the future. He did not feel they have any real grounds to prevent them from having a Bar Mitzvah this weekend.

Deputy Mayor Weinstein asked did they or not apply for a third Bar Mitzvah. Manager/Municipal Clerk Kwasniewski stated they have not applied for another one. Deputy Mayor Weinstein continued every member of that temple that showed up to the Planning Board meetings knew the concerns of the people who lived on that street. They knew that the parking was a major issue and said things to lead those people to believe that they could work with this because they were walking. Then on Saturday they were not walking. He felt what would be fair is if they could get parking on St. Leon's Church or Temple Beth Shalom and that would be the compromise.

Borough Attorney Lustgarten stated from reading the minutes it was clear that a party beyond what they understand to be a Kidish or collation violates the spirit of what was presented to the Planning Board. The excess parking violates the spirit of what was presented to the Board as reflected in the minutes and violates the probable intent of the resolution.

Borough Attorney Lustgarten stated he would send a letter tomorrow. He would advise them that the Bar Mitzvah this weekend is it for the year based on the resolution of the Planning Board if they do not get the parking lot built timely, they will be in violation of the approval and as the condition of that approval the failure to comply may result in revocation unless they give a specific time frame in which they will build it. He was not sure how to address the on street parking because they are public streets.

Deputy Mayor Weinstein stated as a good neighbor if they ask them to go to Temple Beth Shalom it would only be Wednesday morning or St. Leon's Church on a Saturday maybe they can get the parking there. Borough Attorney Lustgarten stated he did not know how they would mandate that. Deputy Mayor Weinstein stated as a good neighbor they should will try to do that.

Manager/Municipal Clerk Kwasniewski stated parking is permitted on the street. It is no different than the issue they face on every other street. She has no way of telling them they cannot park there. She has to follow what the town's rules are. The Construction Official cannot deny a permit on the tent when there is nothing that says they cannot do that.

Deputy Mayor Etlar stated the residents of Terhune were at every meeting and knew what was there and what the intent of the board was. He added everything that they feared would happened has. They have clearly abused what the Planning Board's intentions were.

Councilmember McCarthy added that may be true but they are bound by what is in the resolution or they will end up in Hackensack and Judge Harris will issue a scathing opinion against the Borough of Fair Lawn.

Mayor Ganz asked Deputy Mayor Weinstein to talk to Temple Beth Shalom about shared parking. Deputy Mayor Weinstein believed there was a person from Temple Beth Shalom who had offered to help.

Councilmember McCarthy felt they should still authorize Borough Attorney Lustgarten to send them a letter so if there is a future problem they will have something on the record. He felt it should be a very strong letter.

Borough Attorney Lustgarten asked for the authorization from the Council to tell them that based on the minutes and the resolution and the facts that have occurred they have violated the spirit and intent of their presentation to the Planning Board. He added based on the testimony and the resolution adopted they have reached their limit of two Bar or Batz Mitzvahs this calendar year and will not be issued permits beyond this Saturday. He stated also one of the conditions of the resolution was to finalize their parking lot and they want a specific schedule when it will be done and that they feel they specifically violated the spirit and intent of the number of congregants and/or guest coming on to the premises with correlative parking on public street that intrudes into the neighborhood. He could also mention the fact that the resolution is very specific that food other than the collation is not to be brought on the premises.

Councilmember Caan asked about the ongoing problem of starting and ending times. Manager/Municipal Clerk Kwasniewski stated the resolution says 9:30 or later so they cannot tell them they have to close at 9:30 p.m. Deputy Mayor Weinstein stated they should check that because he thought that was a few meetings earlier. Borough Attorney Lustgarten read the schedule and felt from his understanding of it there maybe some Bible Studies after the evening service but should only last one hour which would be 8:30 p.m.

Deputy Mayor Weinstein stated he would reach out to Temple Beth Shalom. He felt they should also include in the letter that they must remember to be good neighbors. He also asked that the letter be sent to the neighbors as well so they know they have done something. Mayor Ganz stated they will send a copy of this to all entitles under the Land Use Law, which should be about 200 people. They could get a list from tax office in the morning. Mayor Ganz stated the Manager's officer will take care of sending the letters out.

Borough Attorney Lustgarten asked if there has been a noise issue in that area. Deputy Mayor Weinstein explained there has been problem with horns honking in the morning and one the residents went over to her and asked her to stop because her kids were sleeping and the driver was nasty. She did not answer her and just went into the temple and this was about 6:00 a.m.

Borough Attorney Lustgarten stated he would include in his letter the following things, good neighbors, violation of spirit and intent, food service on site, parking on the streets, the parking lot, the length of evening meeting and latest of them, noise issue and number of Bar or Batz Mitzvahs. Borough Attorney Lustgarten asked if the consensus was to let second Bar Mitzvah go forward. Mayor Ganz asked him to put in the letter the request made to them by the Planning Board that they engage in a cooperative parking plan with Temple Beth Shalom or St. Leons Church.

Manager/Municipal Clerk Kwasniewski stated Jay Bender will also be checking for fire code violations for Saturday. Mayor Ganz stated he may find emergency circumstance. Manager/Municipal Clerk Kwasniewski stated unfortunately he was called after the fact.

Borough Attorney Lustgarten suggested these people are going to being having a spiritual/religious event on Saturday. Given what happen last Saturday as far as is it food for Kidish/collation or is it truly a party is probably going to defined by the type of food that

is being served. They will not know that factually unless they have someone there. They can have the Health Official or Fire Official take photos of what is being served and what is the intent. Councilmember Caan asked if they were actually allowed to take photos. Mayor Ganz stated you cannot take pictures on the Sabbath which would leave out the Fire Official. He felt they should give them a pass for this Saturday. Manager/Municipal Clerk Kwasniewski stated the women said it was for the Collation. Mayor Ganz stated the difference between a collation and meal is that a meal is hot food, it does not have to be but collation food is almost never hot.

Manager/Municipal Clerk Kwasniewski stated the parent is coming into get the permit for the tent, not the temple. Borough Attorney Lustgarten explained they are coming in as a agent for the temple who is allowing them to put the tent on the temple property. They cannot use a surrogate to violate the resolution. Mayor Ganz asked Borough Attorney Lustgarten if he thought the application has to be from the congregation. Borough Attorney Lustgarten it really should be. Deputy Mayor Weinstein stated when they came to them about the Kosher Supermarket in the CVS shopping center it was asked for him to first get the approval of the property owner and then he could then give a site plan and felt that was same situation. Borough Attorney Lustgarten stated if a congregant comes in without the appropriate authorization then his feeling is they should not get the permit.

Borough Attorney Lustgarten stated according to the minutes this address is 4-34 Terhune Place and he wanted to have the letter hand delivered and wanted to know if someone would be there because he did not want the letter just sitting around. Mayor Ganz stated someone has to live there. Manager/Municipal Clerk Kwasniewski stated she will call to make sure someone is there to receive it.

Closed Session:

Upon motion by Deputy Mayor Weinstein and seconded by Councilmember Caan, the following closed session resolution was unanimously adopted at 9:45 p.m.

WHEREAS, the Open Public Meetings act of the State of New Jersey permits the public to be excluded from certain matters to be discussed by the Governing Body; and

WHEREAS, the Mayor and Council of the Borough of Fair Lawn desire to discuss contract negotiations, and

WHEREAS, these matters are ones which permit the exclusion of the public from such discussions; and

WHEREAS, public disclosure of the results of these discussions shall be made upon the conclusion of these matters by the Mayor and Council of the Borough of Fair Lawn within not less than 30 days or more than 120 days excluding legal strategy;

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Fair Lawn that the public be excluded since these matters as set forth above are ones which permit the exclusion of the public from such discussions.

Adjournment:

Upon motion by Deputy Mayor Etlar and a second by Councilmember Caan, the meeting was adjourned at 10:45 p.m.

pectfully submitted,

Marilyn B. Bojanowski, RMC
Assistant Municipal Clerk

The undersigned have read and approve the foregoing minutes.

Mayor David L. Ganz

Councilmember Allan Caan

Deputy Mayor Martin Etlar

Councilmember Owen McCarthy

Deputy Mayor Steven Weinstein