

**RESOLUTION OF THE BOARD OF ADJUSTMENT
OF THE BOROUGH OF NORTH PLAINFIELD
YESHIVA TIFERES BORUCH, INC.**

WHEREAS, YESHIVA TIFERES BORUCH, INC. (hereinafter the “Applicant”), located at 21 Rockview Avenue, North Plainfield, New Jersey, has applied to the Board of Adjustment of the Borough of North Plainfield (hereinafter the “Board”), for an interpretation of the Borough’s Land Development Ordinance (the “LDO”) as permitted by N.J.S.A. 40:55D-70b, relating to Property known as 21 Rockview Avenue, Block 134, Lot 1 on the Tax Map of the Borough of North Plainfield, and which Property is located in the R-4 Business Zone on the Land Use Map of the Borough of North Plainfield; and

WHEREAS, the Board held a hearing on the application on July 20, 2022, which was duly advertised and published in accordance with the requirements of the New Jersey Municipal Land Use Law; and

WHEREAS, after carefully considering the evidence presented by the Applicant and the general public, and the reports of the Borough Planner, whose report is incorporated herein by reference, the Board has made the following factual findings:

1. The Applicant seeks an interpretation from the Board as to whether the continuing use of the Property as a private, religious based residential school qualifies as a “religious building and use” under Section 22-103.1c of the LDO, which permits “Churches, synagogues and other religious buildings and uses” which is applicable to the R-4 Zone under Section 22-105.1(a) of the LDO;

2. In 2007, the Applicant received approval by way of use variance subject to 29 conditions to utilize the Property as a residential religious school. The Borough’s zoning officer determined that the application required a use variance. At that time, the Applicant, and therefore the Board, focused on Section 22-103.1(b), State Accredited Schools, and no detailed analysis was made whether the proposed use qualified as a “religious building and use” under Section 22-103.1c of the LDO. The Board’s Resolution noted that the proposed use had similarities to an inherently beneficial use since one component of the use was a private school. There was no site plan approval required for that application because there were no exterior modifications;

3. The Applicant’s attorney now argues that the Yeshiva’s activities constitute a permitted use, focusing on Section 22-103.1c of the LDO, i.e., that the residential private school meets the definition of “Churches, synagogues and the religious buildings and uses”. The Applicant’s attorney stipulates that the proposed construction is to provide additional space for a “private, religious-based residential school” and for no other purpose. In fact, the Applicant’s attorney stated in his memorandum in support of the application that “the Applicant is also proposing to construct additional academic space on the Property”;

4. The Board received a memorandum from the Borough’s planner, Paul Grygiel, dated July 11, 2022. Mr. Grygiel described the permitted uses in the R-4 Residence Zone and stated that the Borough’s current Master Plan includes the Property in the category {00197844.1}

of “Semi-public, fraternal organizations, group homes, and one cemetery”. Mr. Grygiel noted that the terms “churches, synagogues and other religious buildings and uses” could be interpreted broadly to include the existing and proposed use; but the Board could also find that the residential nature of the school, and the students’ ages, distinguishes the use from other private schools located within the Borough and permitted under Section 22-103.1c of the LDO, and renders the existing and proposed use more akin to a boarding school which is not a permitted use in the R-4 Zone;

5. The Board also received a memorandum from the Board Attorney, Brian Schwartz, dated July 18, 2022. Mr. Schwartz reviewed existing case law, including that cited by the Applicant’s attorney. The Board’s attorney noted that the representation of the Applicant’s attorney was that the use of the Property would not change, that it would continue to be a “private, religious-based residential school”, and therefore the previous use variance remained in effect for the additional construction, although arguably constituted an expansion of the previously granted use variance;

6. The Board determined that the combination of the previous use variance approval and the current expansive interpretation of “religious uses” dictates that the proposed expansion of the “private, religious based residential school” be considered a “religious use” under the terms of the LDO, which should fall within the jurisdiction of the Planning Board for site plan review and any bulk variances and waivers that may be required for the expansion of the existing use;

7. Members of the public were heard. They emphasized the presence of issues with the current use of the property in terms of noise at night, students entering their properties, and other activities that the neighbors felt adversely affected their lives. The Board noted that these are enforcement issues that will be addressed by the Planning Board but do not relate the narrow issue currently before the Board, that being an interpretation of the LDO.

NOW THEREFORE, for the forgoing reasons, the Board of Adjustment of the Borough of North Plainfield finds and declares that the application of YESHIVA TIFERES BORUCH, INC. seeking an interpretation of the LDO, and specifically, to have the use of the Property as a private, religious based residential school qualify as a “religious building and use” under Section 22-103.1c of the LDO, in order to have its application for construction of additional academic space on the Property heard by the Planning Board as a permitted use, be and hereby is GRANTED, for the foregoing reasons; and it is further

RESOLVED, that this determination is solely as to the interpretation of the LDO and specifically that the Applicant’s continued use of the Property and proposed expansion for additional academic space is a permitted use, and the Board has made no determination of the merits of the application, and what relief will be necessary to be obtained from the Planning Board; and it is further

RESOLVED, that the Board does not retain jurisdiction over the application since the jurisdiction of the Board was limited to rendering an interpretation of the LDO.

ROLL CALL VOTE:

Those in favor of the Application: Members Allen, Castro, Estrella, Battista, Lewis and Chairman Kenderdine.

Those Opposed: None.

APPLICATION APPROVED:



JOEL KENDERDINE, Chairman

Dated: _____

8-17-22



DAWN GAEBEL, Secretary