

**RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE
BOROUGH OF NORTH PLAINFIELD
BA 07-02 YESHIVA TIFERES BORUCH, INC.**

WHEREAS, YESHIVA TIFERES BORUCH, INC. (hereinafter the Applicant), located at 36 Evergreen Avenue, Springfield, New Jersey, has applied to the Board of Adjustment of the Borough of North Plainfield (hereinafter the Board) for a variance from the strict application of Section 22-104-1 (uses, R-3 residence zone) of the Borough's Land Development Ordinance (hereinafter "Ordinance") so as to permit use of the property located at 22-24 Rockview Avenue, as a private religious-based, residential school (a "Yeshiva") for students engaging in Jewish and secular studies under the supervision of Rabbis on property designated as Lot 1, Block 131 on the Tax Map of the Borough of North Plainfield, which property is located in the R-3 Zone on the Land Use Map of the Borough of North Plainfield; and

WHEREAS, the Board, after carefully considering the evidence presented by the Applicant and the Applicant's witnesses and testimony of the adjoining property owners and general public, if any, and reports of the various officers and agencies of the Borough, whose reports are incorporated herein by reference, has made the following factual findings:

1. The Applicant, which is an entity operated by Rabbi Eliyohu Sorotzkin seeks to occupy the Property to provide a 24-hour experience for students engaged in intense Jewish studies including studying, praying, and living in an educational environment;
2. The Property is currently vacant but was previously utilized as a nursing home with apartments for independent living. The nursing home use became financially unfeasible and the property has been on the market for one month prior to the Yeshiva offer;
3. The Applicant proposes no exterior changes on the site. The bedrooms in the mansion (main) building were not set up as nursing home bedrooms and can be used as bedrooms for the students. It is proposed that the apartments will be used for the Rabbis or teachers and their families while the Rabbis seek other accommodations in the area;
4. The uses permitted in the R-3 zone include those permitted in the R-1 and R-2 residence zones, including but not limited to state accredited schools and uses owned or operated by the Board of Education and religious buildings (Section 22-103), and accessory buildings and structures normally incident to the principal use. The school that will be operated by the Applicant is only partially accredited because it serves students from the ages 14 through 22 and some of the studies are not included in those that are accredited by the State of New Jersey, nor is the school owned or operated by the Board of Education. Therefore, a use variance is required;
5. Rabbi Sorotzkin presently operates a Yeshiva for 60 to 70 students which was located in Springfield, New Jersey and temporarily relocated since it outgrew the location in Springfield. Rabbi Sorotzkin detailed the unique features of the Yeshiva that distinguish it from other private residential schools. Students who are admitted to the Yeshiva are highly motivated to immerse themselves in the teaching and education of the Jewish religion on a full-time basis. Admission is highly competitive and is limited to those students of the highest moral and

intellectual caliber and greatest commitment to their studies. Students will normally graduate to become religious teachers, Rabbis and students who continue to be engaged in Talmudic studies;

6. The Rabbi testified that students will be from all areas of the country. However, parents normally carpool so there will not be a great influx of traffic when the students are dropped off or picked up at the beginning and end of school terms. The students will not be permitted to have vehicles themselves and, therefore, the only vehicles that will be parked on the property are the Rabbi's and teachers' and other occasional employees (cooks or cleaning people) who temporarily visit the property;

7. Presently, there are 4 full-time teachers and 3 afternoon (secular) teachers plus the Rabbi. The teachers will serve as dormitory counselors as well as the Rabbi and his wife. The students are highly disciplined and well mannered due to their dedication to their religious studies, and there have been no discipline problems in the school in the past;

8. The school is limited to male students. There are no female students nor will there be female students in the future. The only women on the property will be the Rabbi's or other teachers' spouses or female children, or any temporary visitors or employees. The students are not permitted to have female visitors.

9. The students engage in very limited recreation due to their commitment to their studies and their only recreation is normally unstructured. They typically will go to local parks and play basketball or engage in other group recreational activities and no competitive recreational activities will take place on the property;

10. The method of teaching in a Yeshiva is through group learning. The students study in study groups that will include supervisors or teachers. The students only sleep in their bedrooms and do not have electronic equipment in the bedrooms that would cause them to stay in the bedrooms when they are not sleeping. The students study or engage in prayer most of their waking hours other than meal times. The students will pray together but there will not be a sanctuary that will be open to the public;

11. Although the Yeshiva has never had a problem with security, discipline or emergencies, the Applicant is willing to cooperate with Borough Fire and Police personnel to develop security and emergency plans for evacuation in the event such an event should occur;

12. The Rabbi's wife testified that she participates in the operation of the Yeshiva. She is primarily responsible for any health problems with the children. Although she has no formal medical education, she is experienced in caring for children and identifying conditions that require medical attention. She normally establishes a relationship with a pediatrician in the area to treat the younger children and, although there are Jewish health services in the area that would be her first choice, she would call the rescue squad or take children to the hospital emergency room if needed. (There is no religious objection to doing so.)

13. The Rabbi's wife also testified that a cleaning staff comes in to clean the entire building on a regular basis, that there are coin-operated laundry machines in the Property and the

students normally do their own laundry, that there will be a maintenance contract with a professional company to maintain all mechanical systems, and that the Yeshiva employs a professional landscaper to maintain the grounds;

14. The Applicant's architect, Steven Brawer, testified that he had had measurements made of each of the buildings in the property and provided six pages of sketches showing the room sizes. He testified that State regulations require 50 square feet "gross" in dormitories for each occupant. In using this minimum, a total of 131 occupants could fit into the second and third floors of the mansion building and nursing home. The first floor of the mansion will be used only for common areas such as study rooms, and the basement will only be used for storage and mechanical rooms;

15. The Board's consulting planner, Art Bernard, testified with regard to the application. He testified that although the Yeshiva was not an accredited school, schools are often determined to be inherently beneficial uses. The site may be particularly suitable for a school but for a limited number of students based upon the size and particular characteristics of the property. Mr. Bernard was concerned about whether students would matriculate from offsite, whether there would be outdoor recreation on site, whether group activities would be conducted outside, what the parking plan would be and where deliveries would be made, and certain concerns about traffic in and out of the property. He suggested that an infirmary or other facility for ill students be provided and a place for indoor recreation be created. Finally, Mr. Bernard referred to design standards for dormitory life at certain colleges where the minimum square footage was significantly higher than the minimum established by the International Building Code, such as Princeton, where a standard sleeping room for 2 students is 180 to 200 square feet;

16. The Applicant's planner, John Chadwick, testified. He noted that the property was located in the historic district, that the property was the "centerpiece of the neighborhood", that it had mature landscaping and that the main buildings had historic significance. Mr. Chadwick stated that the area was characterized by single-family homes and that the landscape on the property was necessary in order to maintain the character of the neighborhood. He characterized the Yeshiva as "a unique way of teaching the Jewish religion in a formula that has worked." He found that the mix of school and religion caused the proposed use to be an inherently beneficial use, thereby satisfying the positive criteria of the Statute. He felt that the negative criteria was satisfied because there are no negative issues associated with the proposed use. The proposed use will be less intense in terms of employees than a nursing home, there will be no children in the public school system so there will be a limited impact on public services, and the use is appropriate because the buildings and grounds will be kept intact. Any other school use or group shelter would be less appropriate because it would bring in people who do not share the characteristics of the highly disciplined students of the Yeshiva. Mr. Chadwick stated that once he learned how the Yeshiva works, he was comfortable with the level of occupancy of the site proposed by the Applicant, and how the use of the property would work. The unique qualities of the Yeshiva that support his conclusion is the dedication and commitment of the student's lives to studying and the particular habits of the students of the Yeshiva. Mr. Chadwick recognized that some of the bedrooms in the mansion have shapes that are not conducive to the maximum number of beds that would be permitted in the International Code on which Mr. Brawer relied. Mr. Chadwick testified that the use for which approval was sought is limited to a residential religious

school with characteristics peculiar to those testified to by the Rabbi and his wife, which characteristics were relied upon by the Applicant's planner and architect in rendering their testimony and opinion;

16. Members of the public testified that they were concerned about the Applicant's practice of isolating itself from the public and not engaging in community activities. Members of the public were also concerned about the changes that might be made to the interior of the mansion that would affect its significance;

17. The Board was concerned that the proposed use would be appropriate for a certain intensity of use and, therefore, a certain limit on the number of students. Therefore, the Board felt that the testimony was applicable to a system that worked with up to 79 students, the number the Yeshiva has served in the past, but that there could not be testimony that could be relied upon as to how the system would work with 150% as many students. Therefore, the Board, while limiting the present intensity of use that the Board would approve, was open to consideration of a future application to increase the number of students if the Applicant can show that an additional number of students could be accommodated in the same manner as was testified to at the hearings; and

WHEREAS, the Board has determined that the relief requested CAN be granted, for the following reasons:

1. The proposed use, that of a religious oriented school, has some of the characteristics of an inherently beneficial use. However, the Board did not accept the contention that it is an inherently beneficial use, since the proposed use is not specifically for an educational nor religious purpose.

2. The Board found that the proposed use shares many of the important characteristics of the permitted uses in the Ordinance, specifically, that a school will be operated and that the use is partially religious in nature. The Board finds no distinction between the permitted uses and the proposed use that would warrant denying the application.

3. The proposed use as described by the Rabbi and his wife, is particularly suited to the Property, so long as the intensity of use does not exceed that to which was testified by the Rabbi and his wife.

4. The integrity of the Property and the significant buildings on the Property will be preserved by the proposed use, so long as the limitations on the use of the Property and the buildings as testified to by the Applicant are complied with; and

WHEREAS, the Board has determined that the relief requested CAN be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance of the Borough of North Plainfield, for the following reasons:

1. The proposed use is similar to those permitted in the R-3 zone and, therefore, the intent and purpose of the zone plan will not be violated.

2. The Property and building are unique in their character and location, and the proposed use will protect the uniqueness of the Property and building.

3. The type of students that will be occupying the Property (as testified to by the Applicant), and the limitations on the students' outside activities, will serve to protect the integrity and landscaping of the Property and prevent any noise or any other negative effect upon the neighbors or neighborhood in general.

4. The application will provide a benefit to the public by allowing the unique features of the Property to be maintained rather than a breakup of the buildings and grounds that would be detrimental to the Property and neighborhood in general.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of North Plainfield, that, for the foregoing reasons, the application of YESHIVA TIFERES BORUCH, INC., for a variance from the strict application of Sections 22-104-1 (uses, R-3 residence zone) of the Land Development Ordinance be and hereby is GRANTED, subject, however, to the following conditions:

1. No exterior improvements or modifications to the exterior, roof or structure of any of the buildings on the Property shall be commenced without compliance with the review requirements of the Historic District Residence Zone, Section 22-122 *et seq.* of the Borough's Land Development Ordinance.

2. The Applicant shall provide for professional care and maintenance of all landscaping on the property, including but not limited to gardens, shrubbery, healthy trees and all other existing natural plantings, and shall not remove, alter or replace any such plantings without replacing them with similarly significant growths, subject to the approval of the Borough Engineer, with the advice (but not the consent) of the Historic Preservation Commission;

3. The basement of the main building shall be used for storage and mechanical equipment only and not for bedrooms, study rooms, meeting areas or living quarters;

4. The first floor of the main building shall be used for meeting and study areas and not for bedrooms except for the rooms for health care as described in condition number 19;

5. The use of the buildings on the Property, and the entirety of the site, shall be limited to a private religious based school with the internal disciplinary controls and structure described by the Applicant's witnesses, and to accessory and incidental uses consistent with this use. There shall be no change in the use, or expansion of the use, without a further approval of the Board. Changes or expansions of use that are NOT permitted without a subsequent Board approval shall include, by way of example only, any of the following, or similar such activities:

- A. Religious services or gatherings open to the general public;
- B. Day school for students who are not residing on the Property;
- C. Classes with, or inclusion in the Yeshiva of, girls or women, other than as day-time visitors to the students residing at the Property or employees and relatives of the teachers and

supervisors at the Property, unless adequate provision for separate bedrooms and facilities is made satisfactory to the Board;

D. Classes or schooling for students who are not involved in the same religious program as the students of the Yeshiva, or conduct of another kind of educational program, other than those described by the Applicant during the hearings;

E. Adult residents, other than teachers, rabbis and their immediate families residing on the Property solely in connection with the education and welfare of the students residing on the Property;

F. Additional numbers of students, over that which is permitted by this Resolution.

G. Any other use, or occupancy, on the Property, other than as specifically permitted by this Resolution.

6. There shall be no vehicles permitted to be stored or kept on the Property on a regular basis other than private vehicles (including passenger level vans) belonging to the rabbis and teachers and their family members who will reside on the Property. None of the students shall keep vehicles at the Property. To the extent possible, the vehicles shall be stored in garages or kept out of view near the buildings. No commercial vehicles shall be stored or kept on the Property on a regular basis;

7. The Applicant will use its best efforts to promote cultural understanding of the practices and activities of the Yeshiva through public dissemination of information, in consultation with the Borough's Board of Education and Borough Administrator;

8. The age of students shall be between 13 and 24 (at the beginning of the school session). No younger students (unless such student is able to participate in the same course of studies as the older students) and no older students (other than supervisors or teachers) shall be permitted;

9. The Applicant shall cooperate with the Borough Fire Department with regard to practicing fire drills on a periodic basis and will permit inspections by Fire Department officials periodically as required by the Fire Department to ensure good fire prevention, and fire emergency, practices;

10. The Applicant shall have in place within 90 days of the opening of the school an emergency plan for handling natural disasters and other emergencies (such as, but not limited to, weather emergencies, fire, terroristic threats or activities and outbreaks of illness or environmental emergencies), including the method of educating occupants of the Property as to such plan and practicing such emergency plan, that is reasonably acceptable to the Borough's Chief of Police, which shall include provision of adequate supervisory personnel and emergency response practices to handle such situations;

11. All mechanical systems serving the buildings on the Property shall be covered by a maintenance contract with a professional entity that will ensure that all mechanical systems shall remain in good working order;

12. All outside activities on the Property shall be limited to between the hours of 9:00 a.m. and 9:00 p.m. No active outdoor sporting activities involving more than ten participants in one

activity at a time shall take place on the Property. No public address or other sound amplifying systems shall be used outside on the Property at any time;

13. The Applicant shall have a policy in effect, which shall be enforced with the occupants of the Property and persons visiting the occupants, which will prevent the destruction or harm to any of the foliage and natural features on the site. If any such destruction or harm does occur, the Applicant will repair or replace such foliage or natural features as soon as possible, weather permitting;

14. The garden shed and storage shed on the Property shall continue to be used for their present storage purposes;

15. The apartments on the Property shall not be used for living quarters for students but only for teachers and their families without a further approval of this Board;

16. The Applicant shall submit revised architectural plans of the room sizes in the buildings prior to obtaining a certificate of occupancy or a building permit for any renovations on the site (whichever first occurs) which plans are to scale;

17. The total occupancy of the mansion and the nursing home, inclusive of all students, teachers and their immediate family (but excluding family members 6 years of age or younger) shall not exceed 95 persons, and the total occupancy of the entire property including apartments (but excluding family members 6 years of age or younger) shall not exceed 110 persons, without a further approval of this Board of an additional number of occupants;

18. It is understood that in granting this approval, the Board relied upon the specific internal controls, including internal supervision and the discipline inherent in the goals, teachings and methods of study of the Applicant Yeshiva, and that the Board would not have granted this approval, with these conditions, without these internal controls. Therefore the Applicant shall not substantially depart from the supervisory and disciplinary methods described in the testimony offered by the Applicant;

19. Two rooms shall be set aside for health care, including beds for students who should not be sleeping in their normal rooms due to illness;

20. An adult shall be on the Property at all times who is designated as the responsible person for providing health care assistance and who is authorized by the students or their guardians to make emergency health care decisions for the students;

21. Provision shall be made for indoor recreation for the students and a common area shall be designated on the architectural plans for this dedicated purpose;

22. All deliveries for the Yeshiva shall be made during normal business hours, and such deliveries shall be made by small truck or van and not by tractor trailer truck;

23. The Applicant shall arrange for private trash removal and recycling through the County program and shall house its garbage and recycling bins inside the buildings until trash or

recycling pickup days, or, if an outside container is used, it shall be enclosed from view as required by Borough ordinance;

24. A plan shall be submitted prior to issuance of a certificate of occupancy that delineates the parking and loading areas, including truck delivery location; area designated for trash pick-up; and delineated visitor, employee and resident parking spaces;

25. The driveway that empties onto the Rockview Avenue/Washington Avenue intersection shall be closed off with a chain so that its use will be limited to emergency access;

26. The parking spaces along Linden Avenue shall be oriented so as not to face toward Linden Avenue and bushes shall be planted along the Linden Avenue lot line to protect the adjacent homes from headlight glare;

27. All conditions to this Resolution shall be subject to the approval of the Borough Engineer, and shall be satisfied prior to issuance of building permits for any improvements or prior to issuance of a certificate of occupancy for the proposed use, whichever is applicable;

28. The Applicant shall permit the Historic Preservation Committee to photograph the inside of the mansion for historical record purposes, prior to the occupancy of the Property by the Applicant's students;

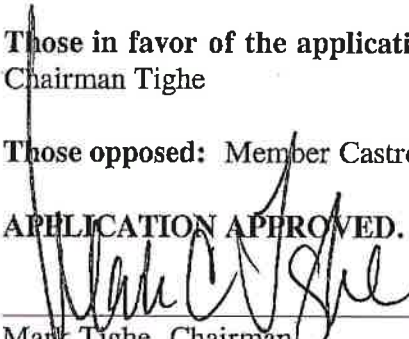
29. The Applicant shall allow the public access to the first floor interior of the Mansion once or twice a year during recesses when students are not present, at a time that is reasonably acceptable to the Applicant, to view the Mansion; however, this will not be an inspection or serve to limit the Applicant's legal rights with regard to the interior of the building.

ROLL CALL VOTE:

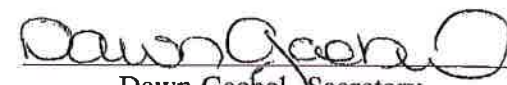
Those in favor of the application: Members D'Armiento, Fowler, Kuga, Lewis, Zarnowski and Chairman Tighe

Those opposed: Member Castro

APPLICATION APPROVED.



Mark Tighe, Chairman



Dawn Gaebel, Secretary

Dec. 215997

12/6/07