

Board of Adjustment

Virtual Meeting

July 20, 2022

Meeting called to order at 7:06pm.

Statement of compliance read by Chairman Kenderdine.

**Roll Call**

Present:

Dr. Harry Allen  
Maria Paola Castro  
Herminio Estrella  
Daniel Battista  
Gary Lewis  
Michelle Brown (Entered meeting at 7:16pm)  
Chairman Joel Kenderdine

Absent:

Basil D'Armiento  
Bryan Carley

Also present was Board Attorney Brian Schwartz, Engineering Consultant Dave Testa, and Planning Consultant Paul Grygiel.

**Approval of Minutes**

Motion to approve March 16, 2022 minutes made by Dr. Allen. Seconded by Mr. Battista. All in favor. Minutes are approved as provided.

**Resolutions**

None

**Old Business**

None

**New Business**

Yeshiva Tiferes Boruch, Inc – 21 Rockview Avenue – Interpretation of Sections 22-103.1(c) and 22-105.1(a) of the North Plainfield Land Development Ordinance.

Peter Wolfson of Day Pitney is the attorney representing the applicant.

Attorney Brian Schwartz stated he did not believe it was necessary to take testimony on this matter. It is an interpretation of the zoning ordinance which is within the Board of Adjustment's jurisdiction under section 70b of the Municipal Land Use Law. Mr. Wolfson will present his argument. He has made

representation in his letter dated June 10, 2022 as to the proposed use. It is a proposed continued use of a private, religious based residential school. Mr. Schwartz didn't feel there was a need to go into site plan issues.

Mr. Wolfson referenced his letter dated June 10, 2022, Mr. Schwartz's letter of July 18, 2022, and Mr. Grygiel's letter of July 11, 2022 and asked that they be in the record.

Mr. Wolfson set forth that it was their thought that the clear language of the Borough's ordinance which permits churches, synagogues, and other religious buildings and uses should lead to a finding that what they are proposing, which is the construction of additional academic space, fits within the permitted uses. In addition to that plain language discussion, they set forth some of the case law that's developed regarding religious uses, generally as they intersect with zoning and planning and regulation by municipalities. He believes Mr. Schwartz reached the same conclusion that he did, which is that this application for site plan properly sits before the Planning Board and there is no need for a use variance.

No questions from the Board.

#### Public Comments:

Steven Romeo  
16 Rockview Avenue

He wanted to make the Board aware that he was available through all of the Historic Commission meetings on this project. He has serious reservations that this will be used as an academic building. He believes this will be used as a catering hall. He thinks the use of the building should be looked at a lot more carefully.

Mr. Schwartz stated Mr. Romeo's point is well taken. They are not passing on the merits of the application. Right now, they are taking the applicant's representation that it is a religious based residential school. When the application goes to the Planning Board they will get into what the new portion of the building will be used for.

Francine Gargano  
57 Willow Avenue

She stated if she is understanding correctly, the approved use in our area is for a church. This is not a church. She said it is not a school, it is a place where people are living. Inside the historic district buildings should be removed, not added to. She is not sure how you get, when it says for religious purposes that it is the same as educational purposes. She said if their argument is correct that anyone would be able to come in and say they have a school and put it in the historic district. She asked Mr. Wolfson how he is justifying a residential when there was a large funeral there. It was not educational and it was not residential. There are other things that go on there. She asked Mr. Wolfson to explain how a church is the same as a residential, because these gentlemen live there.

Mr. Wolfson stated that is correct. He wanted to address the comments regarding the Historic Preservation Commission. This application went through quite a rigorous process and emerged with an approval with a lot of revisions made through the course of those hearings.

Ms. Gargano said she couldn't get on those meetings. Her understanding from the Commission is they are not approving their use. She stated they did not believe they could approve their use, she stated she could be incorrect. They felt they had no choice. They only dealt with the design.

Mr. Romeo stated that is correct.

Mr. Wolfson agreed. The Historic Commission is not the body to approve the use. Regarding the comment that they shouldn't be adding a building, that is part of their jurisdiction for a property located within the historic district. Regarding their argument set forth in their letter, the language specifically from the ordinance for the permitted use is churches, synagogues, and other religious buildings and uses. A Yeshiva, which is a residence school for learning of the Talmud and Rabbinic Judaism is within the religious buildings and uses that are permitted under the ordinance.

Francine Gargano does not agree. She says it's a residential area where young men are housed. They may be getting some religious education but she believes it's more about housing. She is going to ask the Board to vote no. She believes they are playing with the language. She doesn't see a residential school being the same as a church and what they're referring to in the statute. She believes it's disturbing they came into our area and now they want to build. They should be removing buildings that are not consistent. She hopes they will keep the integrity of the historic district.

Mr. Wolfson noted that when this applicant came before this Board on a prior occasion for an approval, there was sworn testimony as to what activities would take place just as there will be sworn testimony before the Planning Board.

Mr. Allen asked a question from the chat from Thomas Jones. Will taxes be paid on this property?

Mr. Wolfson did not know the answer to that question. He respectfully suggested it was irrelevant to the consideration before the Board tonight.

Mr. Schwartz summarized his memorandum. In 2007 when the applicant came to the Board of Adjustment, the applicant argued that it should be a permitted use or at least an inherently beneficial use, which reduces the burden on the applicant. It essentially allows the applicant to be presumed to have satisfied the positive criteria for a use variance because it was a religious school. That was the focus of the applicant, Mr. Schwartz's analysis, and the Borough's Planner's analysis. The applicant's Planner, John Chadwick, also focused on the question as to whether it was a religious school. Because it was also a residential location, they felt that it didn't meet the definition of a religious school because it was kind of a hybrid use. The Board approved the use variance. They never focused on the other prong of the ordinance which relates to religious uses. Mr. Grygiel talks about religious uses in his memorandum. Mr. Schwartz's responsibility was to look at case law and give the Board some guidance. The case law in NJ and throughout the country is consistent with having a very broad definition of what a religious use is. In NJ, a radio station has been determined to be a religious use when operated by a religious organization. A coffee shop was considered a religious use in NY. Halfway houses have been determined to be religious uses. Catholic charities and other organizations run by churches and other religious organizations are considered a religious use. Mr. Schwartz's recommendation is based on the very clear, expansive definition of a religious use that the courts have adopted very consistently. It is against the existing common law to say that this should not be considered a religious use. A religious school is much closer to a religious use even if it's residential, such as Lawrence Academy and Peddie School. The use variance is already granted. This is consistent with the existing use variance, taking the

applicant's representation that it's going to be a continuation of the residential school. Therefore, the Board doesn't need to re-litigate the use variance application. The problem is that the Board could keep it as an amendment to a site plan but no site plan approval was needed back in 2007 because there was no exterior modification. Now there is a new exterior modification, new construction so there will be a site plan and the Planning Board deals with site plans and bulk or dimensional variances that may arise as part of that site plan.

Dr. Allen commented on Mr. Schwartz letter but the comment was unintelligible due to audio issues.

Board Planner, Mr. Grygiel, referred to his letter dated July 11, 2022. He stated the conclusion comes down to what this Board's role is and what they are asked to do in the case. The Municipal Land Use Law from NJ is very clear that there's four different subsections of section 70 of that law. Usually they deal with c and d for variances but there's also section 70b 40:55d 70b about hearing, deciding, requests for interpretation of the zoning map or ordinance. That's all the Board is looking to do here. All the Board can really rely upon is the language. A conclusion was that this question hinges on the plain language of the ordinance. The R4 zone allows various types of uses including one family dwellings, schools operated by the Board of Education, but also churches, synagogues, and other religious buildings and uses. It's a broad category. The role is to make a determination of whether this religious school, whether it's a boarding school or not, fits within this category of religious uses. He believes the language is clear in the law. There isn't much more in the Borough's Master Plan or elsewhere in zoning that would affect how the Board would rule in this case. The question being asked is whether the use is permitted.

Dave Testa had no comments.

Chairman Kenderdine noted that Michelle Brown entered the meeting at 7:16pm.

Public comments:

Steven Romeo  
16 Rockview Avenue

Mr. Romeo wanted to disagree with that was said. Almost all of the examples that were given were of schools or organizations that after a certain time period will close. He lives across the street from the property and their activities continue until 2, 3, or 4am on a daily basis. That is the problem he has. He has called the police dozens of times. He has called the fire department because they've had bonfires. The use is not just as a school or as a place to study. After 10pm, the teenagers look after themselves. There is drinking going on as well as music playing. That is his concern because it is in a residential neighborhood. They are trying to expand their organization and they don't care about trespassing. He's found them in the back of his carriage house smoking. It's more of a use than a religious organization. It's a boarding house of teenage boys that has no adult supervision after a certain time. The older kids take care of the younger kids after 10pm. They blast music at 2am and play basketball. He calls the police over and over again. After 10pm, things should quiet down because it is a residential neighborhood and they don't.

Francine Gargano  
57 Willow Avenue

Ms. Gargano stated they are really putting in apartments. Mr. Romeo is correct about the lack of adult supervision. It's a teenage boarding house. There are many problems with the facility. She knows someone who was looking to buy a house but when they found out it was by that facility they wouldn't even go look at it. There are houses across the street from the facility that are connected. There are women and children that live across the street that may or may not belong to the young men who are in there. There is a lot more going on than just a school. Ms. Gargano asked Y. Cohen why the young men are left unattended, how often they are left unattended, and how many years they've lived there. She said the Yeshiva was welcomed believing they would respect their standards and historic district. She remembers a father telling her it was the way a young man in the Jewish community got to sew his oats going to the Yeshiva. Again, she asked Y Cohen or Mr. Wolfson how the Yeshiva is run because it's not run like a school.

Mr. Wolfson stated testimony would not be presented and would not be necessary. They hear the comments but Rabbi Cohen will not comment on these issues. The appropriate forum to address these comments would be the Planning Board hearing. They think this was framed properly as a legal issue based upon an interpretation of the plain language ordinance as well as the constitutional overlay that protects this Yeshiva as it does other religious uses.

Mr. Schwartz agrees with Mr. Wolfson that these comments are site plan issues, they don't have to do with the quasi legal issue before the Board. The comments are valuable because it gives Mr. Wolfson and his client an idea of the issues that will come before the Planning Board. This Board is looking purely at what the ordinance says and what the existing case law says and interpreting the meaning of religious use.

Christine Holman  
21 Myrtle Avenue

She lives about 4 blocks away from the Yeshiva. She has found young men on her property walking around. She was concerned when she was in her garden and she turned around to a young gentleman standing behind her and she has also had people on her front lawn when she came out her front door. There are a lot of issues with the school that is more of a boarding house. Being that it's in a historic district, she's concerned about the ordinance pertaining to the legalities of having this type of business in the historic district.

Mr. Wolfson respectfully asked that at this point no testimony be taken regarding the issues that have been raised.

Chairman Kenderdine closed the public portion of the application.

Mr. Schwartz stated the motion should be that the proposed application of the Yeshiva to "construct additional academic space" for a religious based residential school, determined to be a permitted use and referred to the Planning Board for further proceedings. The motion should be in the positive and can then be discussed.

Chairman Kenderdine stated one of his concerns is that they continue with the 29 conditions that were approved in the last Board of Adjustment approval of the use of the land and asked if that should be included in the motion.

Mr. Schwartz didn't think it was part of this application. It will be addressed with the applicant during the Planning Board hearing.

Motion made by Dr. Allen that the proposed application of the Yeshiva to "construct additional academic space" is a permitted use that should be referred to the Planning Board for hearings and decision.

Seconded by Mr. Lewis.

Mr. Battista stated the people who live in the neighborhood believe their quality of life has been diminished and they should have a forum and that the Planning Board should hear from them. He hopes that they can come up with something that will make everyone happy.

Chairman Kenderdine wanted to reiterate that in 2007, the Board of Adjustment did approve the use of this property as a residential religious school. Essentially, adding a building to a residential school is in his opinion, the same as the original motion that this is an approved use and they should refer this to the Planning Board for hearings because they don't have a site plan to consider. They are just determining if it's an appropriate use as far as additional religious facilities.

Roll call vote:

A yes will be approval of the use. No would be not approving the use.

Dr. Allen – yes

Ms. Castro – yes

Mr. Estrella – yes

Mr. Battista – yes

Mr. Lewis – yes

Ms. Brown – yes

Chairman Kenderdine – yes

Motion approved.

Mr. Wolfson thanked the Chairman, Board members, and Board Professionals for their time and consideration of the application.

The Board discussed continuing zoom meetings instead of in person meetings.

Francine Gargano asked Mr. Schwartz about the documents that were not included on the website. Mr. Schwartz advised her to call Board Secretary Dawn Gaebel.

Motion to adjourn made by Dr. Allen. Seconded by Ms. Castro.

All in favor.

Meeting adjourned at 7:48pm.