

**Planning Board  
Virtual Meeting  
May 31, 2023**

Meeting started at 7:02pm.

Statement of compliance read by Chairman Fagan.

**Roll Call**

Present:

Mayor Lawrence La Ronde  
Dave Hollod  
Chairman Tom Fagan  
David Branan  
Frank Kreder  
Michael Giordano

Absent:

Aimee Corzo  
Liz Appezzato  
Andre Mitchell  
Mark Kruszczyński  
Cheryl McKeever

Also present is Board Attorney Brian Schwartz, Borough Engineer Dave Testa, and Planning Consultant Paul Grygiel.

Pledge of allegiance.

**Approval of Minutes**

Mayor La Ronde made a motion to approve the May 10, 2023 minutes. Seconded by Michael Giordano.

All in favor.

None opposed.

No abstentions.

Minutes approved.

**Old Business**

Continuation of SPR-22-001 Yeshiva Tiferes Boruch.

Brian Schwartz confirmed that all 6 Board members present are eligible to vote.

Peter Wolfson of the law firm Day Pitney represents the applicant in the continuance of this public hearing. Colleague, Attorney Terry Ford is also present. John McDonough, Professional Planner will testify in support of the limited relief sought in conjunction with the Site Plan application. The applicant is compliant in all ways with the Borough Site Plan ordinance except for the requested parking waiver and fence height variance. They submitted 2 new exhibits in response to comments and discussion at the last session of the hearing. The first exhibit is

revised sheets B-2 and B-3 of the interior floor plans. Terry Ford shared his screen to show the revised plans. Mr. Schwartz requested that Mr. Schreiber explain the changes in the plans.

Witness:

Lawrence Schreiber, Architect  
922 East Kennedy Boulevard  
Lakewood, NJ 08701

Mr. Schwartz reminded Mr. Schreiber he is still under oath.

Revised sheet B-2 was prepared by Mr. Schreiber's firm. Last time there was discussion about the size of the Bais Medrash. Mr. Schreiber provided testimony that there were religious platforms, bookcases, and other things that reduce the usable square footage. This exhibit was prepared to demonstrate that. The gross square footage testified to was 3,971 and now the usable square footage is 3,499.

Sheet B-3 was revised in response to the concern relative to the number of stalls in the 2<sup>nd</sup> floor female bathroom. The stalls were reduced from 4 to 2. Mr. Wolfson asked if the square footage of the multipurpose mezzanine was reduced. Mr. Schreiber stated the previous square footage was 1,843 and now it is 1,780.

Mr. Schwartz asked if the revised plans were prepared by Mr. Schreiber or under his supervision. Mr. Schreiber stated yes, by his office.

Mr. Schwartz asked what the difference was between actual square footage and usable square footage. Mr. Schreiber stated actual means the gross square footage in the space and the usable square footage is after you take away the bookcases, the stage, the reading tables, and the podium. Mr. Schwartz asked if the bookcases were permanent and if they were fixed to the wall or the ground. Mr. Schreiber stated they are built in.

Chairman Fagan asked Mr. Schreiber to explain what the Amud and Bimah are. Mr. Schreiber stated the Bimah is where people are called up to read from the Torah. It's a platform and there are 3 other people around the sides. There are usually 5 people on the platform around the reading table. The Amud is where the person leading the service would be.

Chairman Fagan asked if they are permanent fixtures. Mr. Schreiber stated the Amud is a podium that can be moved. The Bimah could be moved if needed for dancing.

Mr. Schwartz stated Mr. Schreiber contradicted himself because he asked him whether they were affixed to the ground and he said yes. He asked if they were built ins and he said yes and now he is saying they can be moved. Mr. Schreiber stated no, not everything. All of the bookcases and the stage platform where the arc is all permanent built in. He wasn't trying to be evasive. The majority of it is permanent. Mr. Wolfson understood him to say the bookcases were built in.

Mr. Schwartz asked what the size of the Bimah is. Mr. Schreiber stated it is approximately 10 ft x 10 ft. Mr. Schwartz stated it's not to scale. Mr. Schreiber stated the double doors are 6 ft wide

and are shown coming off the entry to give an idea of scale. Mr. Schwartz stated the scale is ¼ inch to 1 foot but the Bimah is not meant to be scaled out as exactly the size shown on the plan. Mr. Schreiber said he didn't say that. Mr. Schreiber stated he didn't have a dimension for the exact size but this is what they asked for. He didn't know if the Rabbi told the Project Manager from his office a specific size. He stated it is about 10 x 10. Mr. Schwartz stated in preparing a Resolution, one of the conditions will be that construction will comply with plans as presented to the Board. Mr. Schwartz stated he is telling them they can't rely on the scale of the Bimah and Amud or Aron Kodesh. Mr. Schreiber stated the Project Manager confirmed it is 10 x 10.

Mr. Schwartz asked if the bathrooms and the classroom on the second floor will be the size shown in the plan. Mr. Schreiber stated correct.

Mr. Schwartz asked where the Rabbis or teachers would be standing when they are teaching the class. Mr. Wolfson stated the testimony on operations was given by the Rabbi. If there are additional operational questions, they can discuss reopening that.

Mr. Schwartz stated it seems like Mr. Schreiber is describing a sanctuary in terms of prayers and he thought since it's supposed to be a school, he would be able to explain how the school functions. Mr. Wolfson stated the 2007 Resolution has specific anticipation of services for the Yeshiva community but not open to the public outside of the community.

Mr. Schwartz stated since this is supposed to be a school, he wants to know what the structures he is seeing for the first time coincides with the use of the space as a school. Mr. Wolfson stated there was extensive testimony of specifically what would take place. The desks are where classes are conducted.

Mr. Schwartz asked where the teacher will be standing when he is teaching.

Witness:

Rabbi Yochanan Cohen, Executive Director of the Yeshiva

Mr. Wolfson reminded Rabbi Cohen he is under oath and asked him to answer the question.

Rabbi Cohen stated in any Yeshiva they pray 3 times per day, in the morning, afternoon, and evening. During prayers, someone would be standing by the Amud and when reading the Torah they would be on the Bimah. The tables are for Talmud study, learning in partners.

Mr. Schwartz stated the Bimah is a large structure and will not be easy to move on a daily basis. Rabbi Cohen stated the intent is not to move it but it can potentially be moved.

Mr. Schwartz asked how often all of the students get together in one space. Rabbi Cohen stated the whole school is together during prayers. They have different programs based on scheduling for different ages.

Mr. Schwartz asked if Rabbi Cohen approved the design layout. He stated yes. Mr. Schwartz asked if the second floor classroom will be for a smaller group of students. Rabbi Cohen stated

yes. Mr. Schwartz asked where the other classrooms would be and if they would be in the other building where classrooms are currently. Rabbi Cohen stated yes. They will not be creating any additional dormitory space.

Witness:

Katherine Hering, Professional Engineer  
2517 Route 35  
Manasquan, NJ

Mr. Wolfson reminded Ms. Hering that she is under oath.

Mr. Wolfson stated there was discussion at the last session that some historic gardens would be lost and there were questions about maintenance on the site. They shared an exhibit to show work that has already commenced for 2 existing areas. The exhibit showed photographs and a proposed new garden area.

No questions from the public.

Witness:

John McDonough, Project Planner  
101 Gibraltar Drive  
Parsippany, NJ

Mr. McDonough has testified before the Planning Board as well as the Board of Adjustment. He is licensed as a Professional Planner in the State of NJ. His license is current and in good standing on the State level and also on the National level under AICP.

Mr. McDonough was accepted as an expert.

Mr. Wolfson asked Mr. McDonough if he has reached conclusions as to the application before the Board and if he could share that.

Mr. McDonough stated he has the benefit of a good predicate of evidence put forth before him by the witnesses that have testified. Those witnesses include a Site Engineer and a Traffic Engineer, a Historic Architect and the Architect of Record, as well as good foundational testimony provided by the Rabbi as to operational aspects of the proposal.

Mr. McDonough shared his screen to show photographs of the subject property to establish his familiarity with the site, surrounding land use context, and illustrate for the Board how the proposal is a good marriage with the site and the surrounding neighborhood. The application stacks up nicely with zoning and land use controls and also integrates very well with the site from a physical planning standpoint.

Mr. Schwartz asked Mr. Wolfson to provide hard copies of the photographs to the Borough because he didn't think they were introduced as part of the application. He asked that they be marked in sequence so they could be identified as part of the record.

Mr. McDonough stated for the record this will be a series of 12 exhibits. They are all photographs of the subject property. They consist of aerial and ground photographs.

Exhibit A-1 shows an aerial drone view of the subject site looking north from Linden Avenue. This is block 134, lot 1. It is exceptionally large in the context of the ordinance. It is more than 2.2 acres. It is developed with a Yeshiva religious school. The mansion is the centerpiece and also has ancillary school related buildings. The site was originally a residential estate and used as a nursing home. The Yeshiva has been operating since 2007. The site contains multiple buildings containing classrooms, dorms, staff apartments, and related facilities.

Exhibit A-2 shows an aerial drone view looking east from Sycamore Avenue. There is a good lining of trees along the canopy. Some will be removed and are in poor condition. Most of what is seen from the Sycamore Avenue side will remain intact. The perimeter fence is barely visible from this vantage.

Exhibit A-3 shows an aerial drone view looking southeast from Sycamore and Rockview. It shows the mansion centerpiece. They want to maintain the integrity of that building and are proposing a new complimentary building in terms of the historic fabric and reinforcing the historic quality of the site as endorsed by the Historic Preservation Commission through 2 letters of appropriateness. There is a parking lot off of Linden Avenue, off of Rockview Avenue, and Washington Avenue.

Exhibit A-4 shows an aerial drone view of the subject site looking south from Rockview Avenue. The mansion is in the foreground. The parking lot off of Washington is to the left. There is good foundational testimony by the witnesses before him that the parking capacity here substantially exceeds what the actual demand has been and will be. Ms. Dolan spoke about 9 being the maximum observed in terms of actual parking. The capacity is more than 3 times greater with 27 spaces being proposed on site. Inherent to the nature of the use is low parking demand where the students don't drive. The limited parking is for the limited faculty and is more than adequate to accommodate the actual demand. Additional parking from a planning standpoint would be wasteful and contradictory to the planning goal for the efficient use of land.

Exhibit A-5 shows an aerial drone top down view. It gives a sense of the excellent spatial capacity of the site, the multiple parking areas, the building complex, and it shows where the proposed building location is in the southwest quadrant. It will be 2 stories above ground and a basement below ground. It is approximately 18,877 square feet of floor area which will enhance the living, learning, and religious environment. There will not be living quarters in the new building. This will provide for space to allow the religious use to fulfill its religious purpose and enhance that which is already there. It will not trigger any coverage relief in terms of the building coverage. It will not trigger any relief in terms of the overall lot coverage. It will not trigger any relief related to the setbacks or the building height. It is well within the zoning code in terms of the bulk that is contemplated as appropriate on this site.

Exhibit A-6 is a ground view from Rockview showing the mansion that will be preserved and adaptively reused.

Exhibit A-7 is a ground view of the interior of the site. It shows the proposed corner of the property where the new building will go. It will be complimentary to the existing building and reinforce the historic context. It is generally cleared and generally flat and is ideally suited to accommodate the building and the development that is before the Board. Some of the gardens will be removed but they are proposing to replenish and move gardens elsewhere on the property.

Exhibit A-8 is a ground view of the existing perimeter fence on Linden Avenue. The Board has the authority to waive a replacement in kind of the existing perimeter fence which is not contributing to the historic quality of the site. The existing fence is an unattractive chain link fence.

Exhibit A-9 is a ground view of the existing stone wall and fence. The wall will be repointed and replaced with a decorative element that is more in keeping with both the wall and the historic quality of the building.

Exhibit A-10 is a ground view looking back on Sycamore Avenue showing the wall that will be preserved and enhanced and the existing fence. They believe the decorative element will present a better public face in the public realm to the surrounding historic neighborhood. They believe this will be much more in keeping with the quality of the beautiful homes in the neighborhood.

Exhibit A-11 is a ground view through the chain link fence of the historic mansion. They think a more decorative element will be more appropriate in terms of reinforcing the historic quality of the building.

Exhibit A-12 is an illustrative depiction of the proposed fence. Relief is requested to maintain a 6 ft fence around the perimeter. It is a much more attractive, appealing, and much more historically appropriate perimeter in the public eye than what's presently there. The gates are going to rise to 7 ft to create variety and context. They will have a scallop to them and demarcate and create a hierarchy identifying the entrance points off of the roadways. They believe this will be a substantial aesthetic and security improvement over that which presently exists.

The proposal is to construct a new 2 story academic building with a basement and floor area of 18,877 sq. ft. The intent is to provide for an enhanced educational and religious environment. The application will not increase the number of students, faculty, or events that are presently there. It will not intensify the use.

The property is in the R-4 residential zone which is overlaid by the H-2 Historic District residence overlay zone. The zone nests the lower R zones, the R-1, R-2, and R-3 zone districts so the permitted uses in those districts are carried up and more uses added on as they work their way up to R-4. Religious uses and schools are both permitted in the lower zones and carried up to the R-4. The Zoning Board established by resolution in 2022 that the Yeshiva is a permitted

use in the zone district. The applicant is not seeking D relief related to use and no D relief related to the floor area or the overall height of the building. In terms of the zone conformance, the list of conformances is a lot longer than the list of relief the applicant is seeking. There is use conformance, conformance with all the bulk controls, the lot size is substantially oversized above the 6,000 sq. ft that would be required in the zone and what most of the houses seen in the perimeter are developed on. This is a distinct site. Coverage, height, and setbacks will all comply. The HPC has endorsed the project by issuing certificates of appropriateness for the building and for the fence. The perimeter fence height will be 6 ft for the fence and 7 ft for the gates. Three ft is the maximum permitted in the ordinance. The existing fence has been a longstanding part of the local landscape and familiar in the public eye. They will be replacing it with a more decorative element that's been approved by the HPC and is also in accord with Homeland Security guidelines. Relief is also being requested for 27 parking spaces proposed. 275 spaces are the minimum required spaces. There is strong predicate from expert witnesses and operational witnesses sworn under oath that the supply will meet the actual demand. The students don't drive.

In terms of justifications for height relief they turn to the C aspect, NJSA 40:55d-70c. There are two aspects, the C-1 hardship or practical difficulty and the C-2 balancing provisions. An applicant has the ability and the Board has authority to approve such relief under either C-1 or C-2. It is not the applicant's obligation to meet both. In this case, he thinks the Board can find justification under both. The stronger one in his view is the C-2 balancing with the benefits of the application as a whole substantially outweighing the detriments. The Pullen case tells the Board when evaluating bulk relief under the C test, they consider the benefits of the application as a whole. The project will support and enhance what is a constitutionally protected religious use that is a permitted use in the zone. The fence height is necessary to effectuate the benefits of the project as a whole. The benefits of the fence itself include added aesthetics by replacing an existing chain link fence with a decorative element. The benefits also include historic preservation in accordance with the HPC certificate of appropriateness and the benefits also include added security by advancing the Homeland Security guidelines for this particular use.

This takes that back to the purposes of zoning and land use law under NJSA 40:55d-2. There are 2 dozen of those and he sees no violation of any of those purposes. He sees this project as especially advancing purpose A, to promote the general welfare, purpose G, to provide for a variety of uses in appropriate locations, purpose I, to promote a desirable visual environment, purpose J, to promote historic preservation, and purpose M, the planning goal to promote efficient use of land.

The detriments associated with the decorative fence along the perimeter of the property are minimal, if any. This will not be a solid fence. It will remain open, allowing for the passage of light, air, and wind. It is not going to be obtrusive and is consistent with that has been familiar in the local eye for many years. He believes the justifications for relief under the C-2 balancing test are met. To the extent the C-1 hardship relief relates to the land and the structures lawfully existing thereon, the perimeter fence is already there and has been a longstanding part of the local landscape, the application is essentially a replacement in kind of what's been there for many years and strict or literal enforcement of the ordinance would impose practical difficulties on the Yeshiva. The existing fence would serve no practical purpose in terms of strict or literal

enforcement. Strict enforcement would lessen the privacy and the security aspects of the Yeshiva. They think there are practical difficulties that are warranted in terms of the Board moving favorably under the C-1 hardship test. They have given proofs for both C-1 and C-2. Either one has to be met, not both. He believes the application is very strong in terms of relief for the fence.

In terms of the parking relief, based on the clear language of the code, the Board may if it chooses waive the need for relief altogether. He believes the more stringent test under the C aspect just given, C-1 and C-2 would also be met here as well. Both C-1 and C-2 have been met when only one needs to be met. In terms of justifications for the parking relief under the C-2 balancing, the benefits of the project as a whole substantially outweigh the detriments. This goes to the Pullen case. The project as a whole will support a constitutionally protected permitted use in the zone. The project will improve and enhance the academic environment of the Yeshiva. The project massing conforms to the ordinance and compliments the historic character of the area. The parking supply will meet the actual demand. The students don't drive, there are no commuter students, and they are not permitted to have cars. The parking capacity is more than adequate to accommodate faculty and support staff. All of the above come back to the land use law and purposes of zoning. Purpose A, G, I, J, and M would carry forth for the parking relief as well. Based on all of the testimony, the parking detriments in terms of the relief are minimal, if any. More parking supply is unnecessary in this circumstance and serves no practical planning purpose. Planning looks to be reasonable and appropriate and he thinks the Board can find that is the case here. That goes toward C-2 for parking. He thinks the Board can also move favorably under C-1. As with the fence, relief relates to the land and the structures that are lawfully existing thereon. The site is currently deficient in parking and the proposal is not increasing the staff or the number of students. The intensity of the use is not changing. The parking deficiency is an existing condition and it works. He believes strict enforcement of the code would impose practical difficulties since more parking is not needed. The Board may give deference to the Ric-Cic case. It is not 100% on point because that involved a building that had no parking and the Court found it appropriate not to impose parking on a building that had no parking in the first place but he thinks the Board may draw a rational nexus in that it may be appropriate to impose parking on a developed site that is lacking conforming parking and is not increasing the need for anymore parking. Strict enforcement of the code would impose substantial burden on the religious mission of the school. He thinks the Board can give that some consideration in the context of the law as well. That goes toward C-1. If the Board so chooses to wipe the need for relief altogether, they have power and authority in the ordinance under section 22-117.2b(15) of the code which specifically states that the Board may waive parking relief for this particular land use. The Yeshiva fits into "unlisted uses" which has a waiver provision because he thinks it recognizes the variability of unlisted uses. The unlisted uses pertain to a unique operation which is the case here. He thinks the Board can move favorably on granting the waiver as reasonable and impracticable since the site currently has adequate parking, the site is not adding more parking demand, and strict or literal enforcement of the ordinance would serve no practical planning purpose.

He thinks there is an excellent foundation for the Board to move favorably on this application. The project will improve and enhance the learning environment for the students of this protected, permitted use. The project is in substantial conformance with all ordinance standards and



requires minimal relief. He has given the basis as he sees it of the statutory tests that would apply to all of the relief. Based on that, the applicant has met its burden from a planning standpoint. He believes the approval is warranted.

Mr. Giordano asked the Board's Planning Consultant, Mr. Grygiel if he agrees with all that was said here. Mr. Grygiel agrees with the overall variances being sought with regard to relief that's required and the burdens of proof that the Board needs to demonstrate. For the most part he agrees with the validity of the testimony. He has specific questions on some items and some guidance for the Board but overall he would say the Planner did outline the relief that is required for this Board to grant the application.

Mr. Giordano asked Mr. McDonough why the building has to be so big if they are not adding more students. Mr. McDonough stated the reason rests on the foundational testimony before him. Operationally and architecturally to meet the spatial needs of the students that are already there, this is the size that is necessary for this use to fulfill its religious purpose.

Mr. Schwartz asked Mr. McDonough if regardless of how large the new building is, he is predicating his testimony on the use of the property not changing. Mr. McDonough stated yes, there are some planning considerations when they would reach a tipping point when they are at too much. They could look at bulk controls. If they start looking at relief related to floor area, setbacks, and coverage, the applicant is respecting all of the controls in the ordinance to provide the space it needs for the population that's there. He thinks the Board has strong testimony on the record and conditions that can be imposed as to population and also adhering to the plan itself that respects the ordinance but for the fence and parking which they think is reasonable and appropriate based on the actual usage. The answer is yes based on that and other things as well.

Mr. Schwartz asked if it is Mr. McDonough's assumption that the use is going to continue as it has been. Mr. McDonough stated yes.

Mr. Schwartz asked exactly how many spaces are being provided, broken down for handicapped and regular spaces. Mr. McDonough did not know the breakdown, only that there are 27 total. He can look at the plans but that will take time.

Mr. Schwartz asked if he believed there will be adequate spaces for staff, support personnel, and also trucks that are making deliveries. Mr. McDonough stated yes. He has to rely on foundational testimony of Ms. Dolan based on observations of the site. He has not heard testimony that this will increase delivery load on the site.

Mr. Schwartz asked if his testimony would be different in terms of the statutory criteria for the parking variance if his understanding of the use was that there are going to be a large number of gatherings where a larger group of people open to the Jewish community for holidays, weddings, or funerals will be present. Mr. McDonough stated his testimony would be the same. The Board can impose reasonable conditions to ensure that special events will not overload the site or will be dealt with on a parking management basis.

Mr. Schwartz asked if he could suggest what those conditions would be. Mr. McDonough stated he would have to look back at the original approval.

Mr. Wolfson noted that Mr. Schwartz's predicate is directly contrary to all of the testimony that's consistently been given and but for the one funeral for the Rabbi that brought an outpouring of affection and visitors to the site that was not fully anticipated, the Yeshiva worked with the police to minimize impacts. The predicate of the question is disturbing because the consistent testimony and expected condition is that those things are not going to happen.

Mr. Schwartz stated his question to Mr. McDonough was whether he is in the position of saying his testimony would be the same or different if those conditions that are not part of this application were present. Mr. McDonough stated he thinks the conditions are already there in condition 5 of the 2007 Resolution of approval, 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. There shall be no change or expansion of the use without a further subsequent approval of the Board. Changes or expansions that are not permitted without subsequent Board approval shall include any of the following: religious services or gatherings open to the general public, day school for students who are not residing on the premises, classes with or inclusion in the Yeshiva of girls or women, other than as daytime visitors to the students residing at the property or employees and relatives of the teachers or supervisors at the property. He believes the Resolution has reasonable controls that can carry forth.

Mayor La Ronde asked what the burden would be if the Board recommended more parking spaces. Mr. McDonough stated it's imposing a restriction on this use that will be an impediment to the fulfillment of its religious mission. Additional parking is not needed. There would be additional costs and additional use of space that is contrary to good planning. Mayor La Ronde stated if they made the building smaller, they would have more room to put parking in that the ordinance says they should have. He doesn't understand what the burden is to put at least another 5-10 parking spaces. Mr. McDonough stated the unwavering testimony of this applicant and its professionals is that a smaller building will not serve the religious mission of this inherently beneficial use. This is necessary to effectuate its religious purpose and serve the academic needs of the students that are there now. To reduce the building for the purpose of parking that's not needed is contrary to good planning and inefficient. Mayor La Ronde feels the space is too big. He's seen public schools and charter schools that have classrooms a lot smaller than that with as many students. He doesn't understand where the burden is that if they are asking for more parking spaces that they can't shrink the other property. Mr. McDonough stated there are good controls in the ordinance that the applicant is not violating in terms of the size. The applicant is respecting the ordinance in terms of the overall bulk and mass. To reduce it for the sake of reducing it is contrary to the religious purpose that the applicant is trying to fulfill.

Mr. Wolfson asked to confirm that there no parking ratio for either educational or religious. Mr. McDonough stated that is correct. They fall into the catch all category which is seen in a lot of ordinances. The Board is able to decide based on specific testimony. Mr. Wolfson stated the Board needs to consider waivers where appropriate based upon expert and factual testimony from the catch all, generic standard. Mr. McDonough stated yes, the Board has the authority in

both the statute and the ordinance to waiver certain Site Plan requirements and that's one of them.

Mr. Hollod asked if there would be a change in use of the mansion and if there would be less use of the mansion. Mr. McDonough stated his recollection is that the uses aren't changing but it may be freeing up space in the building and the breakdown of uses would remain the same in the existing building. Rabbi Cohen stated that is correct.

Mr. Hollod asked if there would be eating or cooking in the old building. Rabbi Cohen stated the intent is to move the cooking and the dining room to the new building.

Mr. Branan asked in reference to the term bulk, if Mr. McDonough was referring to the new building proposed or the aggregate total of all structures and non-permeable surfaces. Mr. McDonough stated in looking at the zone table, he believes it relates to the property and the lot as a whole at the maximum building coverage, taking an aggregate of all the buildings on the premises. They are less than the 30% threshold in the ordinance. Likewise, if they take lot coverage, they aren't asking for any relief in that regard. This is a zone that permits 2 ½ stories. They are proposing a 2 story building. They are dealing with historic buildings on the property that may or may not violate that but all relief related to the existing building is in conformance with the ordinance and the aggregate building coverage is not exceeding the ordinance requirement.

Mr. Grygiel asked for clarification that he thought he heard Mr. McDonough stated the Board could waive the variance for the fence but later he heard parking. Mr. McDonough stated they are seeking variance relief under the C criteria of the statute for the fence. For parking they are seeking the waiver first and if the Board doesn't move on the waiver, they think there is a basis for relief under the more stringent C criteria. Mr. Grygiel concurs with that conclusion.

Mr. Grygiel referred to Exhibit A-11 which showed chain link fencing and the view being blocked and asked why the pictures weren't taken from the same vantage point in A-11 and A-12. One picture was up close so the fencing was blocking the view somewhat. He asked if A-12 was taken from the same vantage point wouldn't the proposed fencing have a similar type of impact. Mr. McDonough stated there was no trickery. He cut and pasted what was on sheet SP-110.00 of the Site Plan. He was not trying to be deceptive. Mr. Grygiel stated in terms of comparison it would have been more helpful but he understands.

Questions from the public:

Francine Gargano  
57 Willow Avenue  
North Plainfield, NJ

Ms. Gargano stated to Mr. Schwartz she thinks it's a violation of the Sunshine Law to not have the exhibits 48 hours in advance. She told Mr. McDonough A-3 is actually Rockview and Washington, not Sycamore and Rockview.

Ms. Gargano asked Mr. McDonough if he was claiming the building they are in now is overcrowded. Mr. McDonough stated he is not claiming that. He is claiming they are looking to enhance the learning environment for the students that are there and this will achieve that.

Ms. Gargano asked if the students that have been there since 2007 have not had a good learning experience. Mr. McDonough stated they've had an excellent learning experience. This will enhance that. Ms. Gargano asked if this isn't approved they will still continue to have a wonderful learning experience. Mr. McDonough stated he doesn't know that for sure. Ms. Gargano asked if he believed that they've had a really good learning experience up to this point. Mr. McDonough stated he has not heard anything to the contrary. Ms. Gargano stated there is no real hardship to the Yeshiva if this isn't approved because they already have a large enough facility that is not overcrowded for the students that are there and they are doing quite well. She asked where the hardship is then. Mr. McDonough stated every land use has a right to make itself better regardless of the quality that is presently there. The Rabbi testified that this will enhance the quality of education. This is seen on campuses everywhere in NJ. It's 100% consistent with good planning principles. They always look at the counterbalance to that and he has not heard one strong reason as to why this applicant does not meet the negative criteria. Ms. Gargano stated because they haven't testified yet. Mr. McDonough states he reserves the right to come back if he hears something that would change his testimony.

Ms. Gargano asked if he was aware of the fact that there are complaints throughout the entire town about parking. Mr. McDonough asked if it was specific to this land use. Every desirable place has a parking problem. Ms. Gargano asked if he was aware that they are complaining about parking issues. Mr. McDonough stated not specifically. He has heard uncontroverted expert testimony that this will not place a demand on public streets. The site is self sufficient as to off street parking capacity.

Ms. Gargano asked if he heard the testimony by the Rabbi that this will be used by the employees, the students and their families. She stated there are 77 students and 30 employees which makes it 107 people. For the families, if they bring in 2 people, they have 214 people and if they bring 2 siblings, they have 428 people which would fit in this building. Mr. McDonough is aware of what the record states, which is that the maximum observed demand over multiple visits is way below the capacity on site and the use and operation is not changing. He had not heard about the numbers she just stated. She asked if he heard the Rabbi's testimony that it would be used to hold events and especially high holidays for the students, employees, and their families. Mr. Schwartz does not remember that testimony so he doesn't know if Mr. McDonough can rely on that characterization. He doesn't know at what times there will be over 200 people there. Ms. Gargano stated he testified that it would be for the students, employees, and their families. Mr. Wolfson noted that is consistent with what is permitted today. The categories Ms. Gargano indicated are called out in the Resolution of 2007.

Ms. Gargano stated there is a difference because there is a restriction on the number of people that could be in the building today so that's not true.

Ms. Gargano stated she was confused because the mansion is not going to be used for cooking but yet the use isn't going to change. She asked if they were abandoning the mansion. She

asked if there were going to be empty rooms in the mansion. Mr. McDonough doesn't know that he heard there will be empty rooms in the mansion. There will be more spatial capacity for the people who are there. Ms. Gargano asked what they are going to do with the mansion. Rabbi Cohen stated there will be additional space for classrooms or other functions but nothing else. Ms. Gargano asked what the other functions would be. Rabbi Cohen stated there are a lot of rooms that schools have that could be all done in one room or various rooms if there is more space. He stated they could have a recreational room, a computer room, or a library. They have not discussed that as of yet.

Ms. Gargano asked Mr. McDonough if he knew that in a Historic District when you remove an item that is not historically correct, you can put up something that is historically correct but that is also in conformance with the Historic District and if he was aware of their rules. Mr. McDonough stated he wasn't sure what she meant by her rules but he aware that the Historic Preservation Commission had issued a letter of appropriateness or endorsement for the fence. He relies upon their expertise more than his own. Ms. Gargano stated she believed the only thing they did not say that they could have 6 feet because it's not allowed in the district. Ms. Gargano stated there is no reason they can't replace the fence with the required 3 ft fence as per the Historic District ordinance. If they approve it for the Yeshiva, they better approve it for those that live in the district. Mr. McDonough stated the proposed fence is the same fence the Historic Preservation Commission has endorsed. He stated the height is no different, it is the same as what the Historic Preservation Commission has seen and endorsed.

Barbara Habeeb  
73 Mountain Avenue  
North Plainfield, NJ

Ms. Habeeb asked what has changed to need a building of that magnitude if there are the same number of students and faculty. Mr. McDonough stated land use evolves, it doesn't stay still. The applicant is looking to improve the quality of its educational environment. Ms. Habeeb stated she thinks with a building that large there will not be enough parking. Mr. McDonough stated that's unfounded based on the testimony.

Wendy Wright-Schaefer  
110 Willow Avenue  
North Plainfield, NJ

Ms. Wright-Schaefer asked if the variance goes with the property and not with who is residing on the property at the time. She asked if the variance stays with the property if the Yeshiva moves. Mr. McDonough stated yes, the variance runs with the land. She asked how a responsible Planner justifies a variance for 275 parking spaces knowing someone else may own the buildings in the future. Mr. McDonough thought she was going to ask about the fence. Regardless of the use it's a much better integration. For the protection of the neighborhood and the consideration of the Board, if the use changes, they are back in front of the Board. While the relief runs with the land, the parking relief is specific to this use. The Board has the power to put in reasonable conditions and he thinks they are already there in the 2007 approval. Mr. Grygiel concurs that variances do run with the land but approval by this Board or the Board of

Adjustment relates to the specifics of the application. The justification is based on all testimony provided. If the use changed on the property, 27 parking spaces permitted would not be for a different use that is not materially the same.

Janice Allen  
83 Willow Avenue  
North Plainfield, NJ

Mrs. Allen stated she is a member of the Holy Cross which is at the corner of Washington and Mercer and Park Place, two blocks away from the Yeshiva. They share their space with a Hispanic congregation and they have many problems with parking because they also share space with a Greek Orthodox Church on the other corner. On a Sunday morning when there are services, it is very crowded and difficult to park. She stated they will not have the same Holy days as the Yeshiva but they will have weddings, burials, and social events and the parking goes down Washington Avenue where the Yeshiva is located. Mrs. Allen pointed out there are 92 spaces for students on the first floor and 75 spaces on the 2<sup>nd</sup> Fl for a total of 167 spaces. She would like to have it stated clearly that there will be no additional students or staff on the property. She asked if that was correct. Mr. McDonough stated that is correct.

Barbara Habeeb  
73 Mountain Avenue  
North Plainfield, NJ

Ms. Habeeb asked what happens if they have this very large building with 27 parking spaces and the school moves and someone else wants to purchase the property. How does the lack of parking get rectified. Mr. Schwartz stated any approval is specifically tailored to the limitations of this use. An applicant would come in and say what they are going to do and these are the reasons why the variances are merited. They hold the applicant to those reasons. If the Yeshiva were to move out and another religious use comes in, they would be limited and curtailed by those same conditions. He cannot think of any kind of residential school that would have the limit of students that were old enough to have cars or not have cars but it is unusual that you have a religious organization that doesn't drive on major holidays. He is carefully holding the applicant to no synagogue, no congregation representations that each witness and the attorney have made. There are a lot of unusual characteristics of this use that would make it very difficult for another use to come in and meet those limitations. If someone else were to come in, it would not be nearly the same kind of use or extent of the use because they would be limited by these constraints. Ms. Habeeb stated she is concerned about the parking also because there seems to be a large parking issue in North Plainfield.

Mr. Testa asked Mr. McDonough if he stated there would not be any undue hardship to the surrounding properties by parking from the site. Mr. McDonough stated yes. Mr. Testa asked if the workers that would be constructing the building would be parked on the street during the 6 months it would take to complete the construction. Mr. McDonough stated he would be overstepping if he answered an Engineering or construction question like that. Mr. Wolfson stated he is sure there would be vigorous pre-construction meetings between the administration in North Plainfield that would deal with that issue and others.

Christine Holman  
21 Myrtle Avenue  
North Plainfield, NJ

Ms. Holman asked if the footprint of the building and proposed parking areas were going to be on existing already developed parts of the property or are they going to be totally or in part on the open ground. Mr. McDonough stated on the open ground.

Ms. Holman stated all of the water will no longer have a place to sink into the ground and asked how it will be dealt with. Mr. McDonough stated the drainage system will be designed in consideration of that increased coverage on site. Ms. Holman stated that's a lot of ground water that will have to be dealt with.

Ms. Holman stated the Historic District only allows a 3 ft fence on property lines. There is an elevation from the sidewalk or street level by the stone wall. She asked if the fence is going to be 6 ft on top of the elevated wall. Mr. McDonough stated yes. Mr. Wolfson stated no, the fence will be behind the wall. Ms. Holman asked if the bottom of the fence will be at street level. Mr. Wolfson stated the bottom of the fence will be at grade. Ms. Holman asked if the grade is equal to street level. Mr. Wolfson stated not in all places. Ms. Holman asked if it will be higher than 6 ft in some places. Mr. McDonough stated slightly, if at all. It's 6 ft from grade which is the way you measure fence height. Ms. Holman asked if it will appear to be higher than 6 ft in many places from the street. Mr. McDonough stated it will not appear any higher than the fence that is already there. Ms. Holman stated the fence is non-conforming and once you remove an existing fence that's non-conforming, the new fence needs to be conforming. Mr. McDonough stated that is right but they always look for opportunities for improved zoning and the benchmark is not 3 ft. The benchmark is a 6 ft chain link fence. A 6 ft decorative fence is better than a 6 ft chain link fence. Ms. Holman stated it's not conforming. Mr. McDonough stated that's the test. Ms. Holman stated tests don't work in a Historic District. Mr. McDonough stated that's why they have relief in the statute. Just because an application needs relief doesn't mean relief should be denied. There is language in the statute that gives reasons why a Board should grant relief and it's all in the application.

Ms. Holman stated there will be so many people that will put up a stone wall and ask for a 6 ft fence because it will be on grade. Mr. McDonough stated the Board can deny it because it doesn't relate to a distinct piece of property like this one is. Ms. Holman stated they can deny this one as well.

Ms. Holman stated she still hasn't seen justification for such a huge building on the property. She is hoping someone will tell her why this building will be beneficial to the neighborhood and how it is going to increase property value and quality of living that the owners are seeking for themselves. Mr. Wolfson stated this property owner has a right to develop or add on to their property in accordance with the ordinances. They are doing so in compliance with almost every provision and all of the provisions that relate to the size of the building.

Ms. Holman asked if there is a reason the existing buildings cannot be dismantled in order to make space for this building. Mr. Wolfson stated the questions are speculative and are of the

same vein as questions they've heard as to why they are building the building they are building. Ms. Holman stated she wasn't able to be at all meetings and she would like her questions satisfied. Ms. Holman asked if there is a reason why the proposed building can't be placed where existing buildings are, like the single floor buildings which are not conforming. Mr. McDonough stated the development proposal before the Board is necessary to effectuate the religious mission of this land use. This is the programmatic of this end user and this is the proposal before the Board. The positives benefit the centerpiece of the community with no negatives. There is no relief being requested with respect to any of the intensity of use controls, including parking. They are not adding to the parking load on the site.

Ms. Holman stated if you have relatives to the students and the support staff, it will impact the neighborhood and the quality of life of the existing residents.

Mr. Schwartz asked Ms. Holman to reserve those comments to the public comment portion.

Wendy Wright-Schaefer  
110 Willow Avenue  
North Plainfield, NJ

Ms. Wright-Schaefer asked if there is currently no chain link fence in front of the Yeshiva today and none behind it by the apartments. Mr. McDonough stated there are sections around the perimeter where it is broken and there is no fence. She asked if the proposal is to put a 6 ft fence around the whole property. Mr. McDonough stated that is correct, for continuity. She asked if the fence is going to be behind the brick wall in the front, on top of the brick wall on Sycamore, on the ground on Linden, and how it would be on Washington. Mr. Wolfson stated there was extensive testimony regarding the configuration of the fence and the orientation to the grade and the wall. She asked what area he was referring to when he said the fence was going to be behind the stone wall and if it was in the front. Mr. Wolfson stated where the stone wall exists. Mr. McDonough stated the stone wall is not going away and the fence will not penetrate it, it is going behind it. The integrity of the wall will remain intact. Ms. Wright-Schaefer stated they will have to remove dirt to put it behind the stone wall and that is her confusion. Mr. McDonough stated dirt will be removed to install the posts. Ms. Wright-Schaefer stated along the stone wall on Sycamore, the chain link fence is on top of the stone wall. She heard the fence is going behind the stone wall. She was asking if it is going on top of the stone wall or if they have to remove dirt along the stone wall to put the fence. Mr. Testa stated on Sycamore near Rockview, the Yeshiva property behind the wall is at grade of the wall and the chain link fence is on top of the wall on their property. His understanding from looking at the plan and the testimony is that in that area the new fence is going to be on top of the wall at grade on the Yeshiva property. Everywhere else on the site it will be at grade, behind the wall.

Chairman Fagan asked if it is correct that the new fence will be sitting on top of the stone wall at some points. Rabbi Cohen stated that is not correct. All fence will be behind the stone wall. The chain link fence is not on top of the stone wall, it's right behind it. They are going to pull back 2 ft to put up the new fence. There is no fence right now that is currently on top of the stone wall and there will be no fence erected on top of it. It will be 6 ft from the ground.



Mr. Schwartz asked if the fence in all aspects will be 6 ft from ground level except for the gates which will be 8 ft. Rabbi Cohen stated the arches requested by the HPC will be 7 ft.

Katherine Miller  
Historic Preservation Commission  
108 Myrtle Avenue  
North Plainfield, NJ

Ms. Miller wanted to clarify that the grade of the property on the Rockview side and part of Sycamore is actually at level with the rock wall. The fence is always going to be 6 ft and the gates will arch to 7 ft. On Linden where the ground is level with the street, the fence is going to be on the ground and 6 ft tall and on Rockview where the ground is level with the rock wall it will be 6 ft above the wall. It is on the ground and it's behind the wall. No area of it is on top of the wall.

Frank D'Amore  
40 Willow Avenue  
North Plainfield, NJ

Mr. D'Amore stated the footprint of the building is going to require the removal of a lot of trees, plants, and shrubs. He asked if anyone had an inventory of how many plants, shrubs, or natural growth that is going to be removed to accommodate the footprint of the building. Mr. McDonough stated there was testimony on the record in that regard. He stated approximate numbers are 18 trees will be removed and 33 will go back on the site. Some of the existing trees are compromised. The ash trees have been hit hard by an insect and disease. There is also a gigantic Sycamore tree off of Linden that has outlived its useful life. It is trending towards a hazard. None of the trees are specimen trees. Mr. D'Amore stated he understands about the trees but he is talking about the plants and shrubs. He asked how many of those are going to be removed and where on the property will they be replaced. Mr. McDonough stated the proposal is to relocate gardens on the grounds as shown in the exhibit before he testified. There are also evergreens going around the perimeter.

Break at 9:00pm.

Back from break at 9:11pm.

### **Roll Call**

Present:

Mayor Lawrence La Ronde  
Dave Hollod  
Chairman Tom Fagan  
David Branan  
Frank Kreder  
Michael Giordano

Absent:

Aimee Corzo  
Liz Appezzato  
Andre Mitchell  
Mark Kruszczyński  
Cheryl McKeever

Comments from the public:

Francine Gargano  
57 Willow Avenue  
North Plainfield, NJ

Ms. Gargano was sworn in by Mr. Schwartz.

She has lived in the Historic District for 30 years. She is an attorney and sat on the Historic Preservation Commission and was one of the people who designed the original law being dealt with. The applicants have one of the most beautiful properties in the district. Part of the beauty is the way the wall is designed without fences and the size of the property and the gardens that were once there. The property is a valuable historic piece of property. All of North Plainfield has changed tremendously over the 30 years she has lived here. One of the biggest problems is parking. People tell her they can't leave their house during certain hours because they lose their parking in front of their homes. She is going to push for permit parking so no one can park in front of someone else's home. She finds it insulting for them to bring in an expert to say it would be ok to use everyone else's parking. People think because it's a public street they can do whatever they want in front of people's homes.

In the past 8 months there has been a dramatic change. When the Yeshiva came into the Historic District, Frank D'Amore arranged for the Washington Park people to go in there. They were the only females and the Rabbi did not seem pleased to have females in there and was not very friendly towards them. The fact that she is seeing females in and out of the Yeshiva indicates there has been a dramatic change in the nature of what is happening in there. She saw a little girl running across the street going into the Yeshiva at 4:30. She believes they are doing something other than educating boys in there.

They testified that the Yeshiva will be for students, faculty, and their families. It's impossible for them not to expand the building and use it for events and high holidays and not have people come in with cars.

They didn't abide by the Board's rules the first time so for everyone to say restrictions can be put in place, they didn't abide by them to begin with. They will not know how many people are in there. The restrictions cannot be enforced just like they couldn't when they had the funeral.

There is no justification to go against the laws and rules of the Historic Preservation Commission as far as the fence. They can replace the fence they had with a 3 ft fence. They have to do it according to the rules. If they make an exception for them, you will have to make an exception for everybody else. No one in the district will want to comply. This is why they used to send letters to the buyers and sellers and the sellers attorney that they were coming into a Historic District. She has heard testimony that this has enhanced the district but she has no idea how anybody can believe that this has enhanced the district.

She had someone who was selling a house by there and she tried to get them a person she knew who was looking for a house and as soon as they saw where it was, there was no way they

wanted to live there. The boys run rogue over there and everyone knows it so no one wants to live there. They do nothing with the community. They have only been invited there once. They are not part of the community and they are not concerned with the Historic District. There is nothing that is going to enhance this. There is no way they need this size building. The Rabbi is very articulate and a nice young man. He got a great education there and there is no reason why they need to expand except that they want to. If they want a bigger building, 22 is loaded with places willing to go and there is plenty of land in North Plainfield and Green Brook. They can build a beautiful new facility. Why do it in the Historic District and jeopardize all of them because they know there is going to be a parking problem. There are already issues over there she hopes other people will testify to.

She has no problem with the boys. She has spoken to them and invited them into her home when they ask her about it. This is about our laws, our rules, our problems here and this is just going to make it worse. They were before the Council complaining about parking. They have gone to other Planning Board meetings when parking has been an issue and asked the Board to vote no. Everyone claims hardship but there is no hardship. They already have a beautiful building and they are being well educated. She hopes the Board votes no.

Mr. Schwartz asked Ms. Gargano if she could tell him of specific instances when there has been a significant amount of on street parking by vehicles that she can identify as associated with the Yeshiva and to what extent. Ms. Gargano cannot identify any that have to do with the Yeshiva but at night time when she goes down Sycamore, two cars cannot go down Sycamore. She can't say they belong to the Yeshiva.

Mr. Schwartz said it sounds like there are lot of residents that park on the street. Ms. Gargano stated yes, residents park on the street and they have a problem with the Plainfield park. The people from the Plainfield park use a lot of parking on weekends. There is also a problem on Rockview and Greenbrook and they are not sure who is parking there. Parking is a humongous problem in general.

Mr. Wolfson disagrees with many of the statements made by Ms. Gargano but he has no questions.

Barbara Habeeb  
73 Mountain Avenue  
North Plainfield, NJ

Ms. Habeeb was sworn in by Mr. Schwartz.

Ms. Habeeb has live in North Plainfield for 66 years, her entire life. She has noticed over the years things have changed. She is really concerned about parking. If the Yeshiva is being truthful and honest in saying they are not going to use the building for parties and other religious activities then parking would not be a problem. She doesn't see the point of having that huge building on that property in a residential area and then saying it won't be used for other things. That is her concern. Her opinion is to vote no on a building that large and having no ample parking for something of that magnitude.

Steven Romeo  
16 Rockview Avenue  
North Plainfield, NJ

Mr. Romeo was sworn in by Mr. Schwartz.

Mr. Romeo stated this is a residential neighborhood. He attended the meetings in 2007 when the Yeshiva moved in. They assured the neighborhood that there would not be a noise problem and there would not be issues with the activity at the Yeshiva. This was all put in the 2007 agreement. He has been a resident for 20 years and he was here when they moved in. For the last 15 years there have been so many things in the agreement that have not been followed. His major concern is that all of the testimony is not going to happen.

He lives across the street from the Yeshiva and they've had weddings and events. They've had events where there has been parking. For Rosh Hashana and a few of the holidays there were a lot of cars parked on Rockview Avenue. He is confused on the downplaying of the funeral because the police blocked off Washington and Linden for the funeral and the Yeshiva parked their buses blocking Rockview Avenue at Grove and they used their buses to block off Washington a few blocks down. He could not get of his house and past the library because they parked the school buses blocking the street and they completely took over the entire neighborhood. It wasn't just the 1 square block Yeshiva property that had the crowds. It wasn't just people parking on the street. They actually used their buses to block off the entire neighborhood so nobody could get in or out. They do what they want to do and there is nothing to stop them. On May 10<sup>th</sup>, the last meeting the Board had ended at 10pm. At 1 o'clock in the morning he had to call the police. Three police cars showed up because of the noise after the meeting and the testimony from the Rabbi saying all activity stops at 9pm. This happens on a weekly basis. He doesn't understand how if they can't follow the 2007 agreement, how you could say the building is not going to be used for events. The Yeshiva has already been used for other events. There have been events with parking. He lives here and he can see it across the street. It doesn't matter what guidelines are put up and what is being said, he doesn't feel it's going to be followed.

The Yeshiva has 21 Rockview Avenue, 22 Rockview Avenue, 26 Rockview Avenue, 30 Rockview Avenue, 32 Rockview Avenue, 49 Rockview Avenue, 53 Rockview Avenue, and 159 Sycamore Avenue. The organization has grown to take over most of Rockview Avenue in houses they don't pay property tax on and the North Plainfield homeowners are subsidizing their business. He doesn't understand why their testimony and things they say are dismissed.

He does not think there is a security problem in North Plainfield to have a 6 ft fence. Why not have a 6 ft fence on the other properties they own. He sees where this is going. He hopes the Board members vote no because they have not followed agreements from the past.

Chairman Fagan asked Mr. Romeo to tell him about the disturbance that occurred on May 10<sup>th</sup> after the meeting. Mr. Romeo stated the kids were playing a guitar or a stereo. This happens every week. It may be a basketball game, a stereo, chanting, or singing. On that night he heard guitar music and a bunch of kids came outside and started singing at 1am. Mr. Romeo let it go

for 15 minutes because sometimes it comes and goes. Then he called police and went outside to meet 3 police cars. The police officer came out and told him his body cam was on. He listened to the noise, walked over, and spoke to them. When he spoke to them he took a photograph and sent it to the Mayor. He couldn't believe that it happened right after the meeting and there is no adult supervision. The kids do whatever they want. He only calls police when the noises are constant. He usually calls after 10:30pm. On the 10<sup>th</sup>, they did go inside when the police spoke to them.

Mr. Schwartz asked how many other times he has called. Mr. Romeo stated when the weather is good, probably once or twice every 2 weeks.

Mr. Schwartz asked if it's happening late at night or in the evening and asked him if he could tell them more about what is happening. Mr. Romeo stated in the past, the police officer told him at 10pm their studies stop and the adults go away. The older kids look after the younger kids and they are on their own.

Mr. Schwartz stated the 2007 Resolution specifically says that they are not to be doing any outside activities after 9pm and there is supposed to be adult supervision. Whether this application is approved or not, it's not going to change what is going on there right now. This Board does not have enforcement power. This is an enforcement issue that concerns him because the Board approves many applications with conditions. All they can do is hope that it's enforced. He is hopeful that the comments will resonate with the Mayor and Council and the police can patrol even better. He also hopes Rabbi Cohen is hearing this and he tells his staff that this is not helping the situation here if they are not supervising and they are not complying with the Resolution and the boys are outside after 9pm making noise. Rabbi Cohen understands. He also stated the Rabbis stay on the property until 12am every night. They do have adults on site until 12am. Mr. Schwartz stated the Yeshiva has committed itself to complying and these conditions will continue in this application if approved and the staff has to do better.

Mr. Schwartz stated the incident with the buses bothers him. There are a number of Jewish holidays where practicing Jews do not drive. If they are going to come to the site for a special function, they are going to be taking buses. He asked him how many times he has seen bus activity where the buses stick around as opposed to dropping off and leaving. Mr. Romeo stated during the funeral there were 5 or 6 buses blocking the street. He has seen buses come in at all hours and they leave their engines running. The bus will come in at 1am and sit in the parking lot and leave the engine running while picking up or dropping off kids. That was happening a few years ago but he has not seen it recently. A lot of the activity that he is talking about happens after midnight. He made a phone call at 4am and the kids were do drunk that they were wandering around the parking lot. They were concerned that they would have to call EMS because the kids couldn't even stand up because they were so drunk. When you have teenage kids left alone, things are going to happen and he understands that but the lack of adult supervision after 10pm bothers him. In the 2007 agreement it lists what can and cannot be done. That was a major concern about this organization moving in to a residential area. It's not that it's a religious organization but the fact that it's a 24/7 facility. He thought it was taken care of in the 2007 agreement but living across the street he knows that's not how it happens.

They are times when the kids are not there and it is very quiet. He may go a month without making any phone calls or hearing any noise, or any parking. When the weather is nice, the kids are out playing basketball from 4pm until after this meeting started. He has no problem with that but once it gets past 10:30pm, it's a residential area and being woken up at 1 or 2 am with kids chanting and singing is a problem. He thought the 2007 agreement would take care of that and it's not. His concern is that once the approval is made, it doesn't really matter. He knows it is a catering hall and he knows it will be used for large events and it will be something they will have to live with if the building is built.

Mr. Wolfson asked Rabbi Cohen to express what steps he is prepared to take to improve the operations on the site to be in conformance with those requirements. Rabbi Cohen stated to clarify, they have Rabbis on site until 12am. There are multiple people there. In regard to noise, it is something they take into consideration. If someone reaches out to let them know the students are disturbing people, they will relay messages to them. It has happened and they are not saying there has never been issues. They may have been over dramatized tonight but if there are issues the staff members will discourage it and they will continue to do that. They work with the police and fire departments very well. If someone has an issue they can call the office and they will take care of it.

Mr. Wolfson asked the Rabbi if he will undertake with his staff to have an affirmative program to repeat from time to time what the ground rules are for the operation of the Yeshiva to the students. Rabbi Cohen stated yes.

Mr. Romeo stated years ago he made 3 phone calls in 1 week to the police department. On the 3<sup>rd</sup> phone call, the police officer got angry and said they are going to stop this now. He brought Mr. Romeo and the kids over and had the kids wake the Rabbi at 12:30am. The police officer told the Rabbi next time they are getting a summons. The Rabbi gave him his phone number and said if there are any problems to call the number. The next 2 weeks there were no problems. Then it happened again and he called the Rabbi. The Rabbi said he would take care of it and he did. It happened again and the person who answered the phone said, I'm in Brooklyn, what do you want me to do? He hung up the phone and called the police. Having the phone number of the Rabbi did nothing and it didn't work. He was told never to call there again. It was not Rabbi Cohen, it was the previous Rabbi.

Mr. Schwartz stated in the previous conditions from 2007 that there's supposed to be staff there 24/7. He asked Rabbi Cohen if there are staff that reside on site 24/7. Rabbi Cohen stated yes. Mr. Schwartz stated he assumed these people are trained by the administration and know what their responsibilities are in terms of the students remaining inside or being told they have to come indoors after 9pm and not make noise. Rabbi Cohen stated yes and they look to enforce that.

Mr. Schwartz asked what they could do about the buses that could be a burden in a residential neighborhood. Rabbi Cohen stated as far as he is concerned, the buses typically pick up and drop off during day hours in between semesters or if there is a break for a weekend. He doesn't recall any trips but if they want to include that buses should not drop off after 9 or 10pm, that's something they can do. Mr. Schwartz stated that's what he was looking for.

Barbara Habeeb  
73 Mountain Avenue  
North Plainfield, NJ

Ms. Habeeb stated the Rabbi said there are adults only until 12am and now he just said they are there 24 hrs. Rabbi Cohen stated there are Rabbis in the study hall until 12am and there are people that reside on campus in the residential apartments after 12am. At times they walk through the building to make sure everything is well. Ms. Habeeb asked if there are adults there all night, how come they weren't saying anything to the kids that were making noise at 9 or 10pm. If they are being supervised by an adult, she doesn't think an adult would allow the kids to be out there that late. She said obviously the adults aren't monitoring the way they should be. This is only because it's a residential area. Rabbi Cohen stated he understands. Their goal as a religious school is to educate kids properly. They study the Talmud, they have great quality of character, and there is no where that says you shall make noise for your neighbor at night. They teach them constantly that they should respect the neighbors and they should not make noise. They are willing to work if someone feels they are being disturbed. All adults on site try to implement this as much as possible. If they need added enforcement they will do it.

Greg Feldman  
97 Willow Avenue  
North Plainfield, NJ

Mr. Feldman has been a resident for 58 years. If kids are playing basketball at 12am, they shouldn't and that should be resolved. He has made calls to the police for car crashes into parked cars on Willow, speeding 24 hrs. a day. He has the utmost respect for the police department, fire department, and EMT's. Illegal housing has been a problem for 30-35 years.

Mr. Feldman has heard a number of times people saying "these people". If comments about "those people" are moving in and breaking the block were being made at a public hearing about any other ethnic group, he thinks the town might be subject to federal lawsuits and investigation by other governmental entities. Some of the things being said should be thought through. It isn't coming across very well and it's shameful because it sounds like they are talking about breaking the block. There would be an outcry if that were any other ethnic group. His observations are that he sees students walking the streets and they are polite and refined. He can only say positive things from what he's seen. There are other problems in town that are much more serious. His only comment to the kids is that they should walk on the sidewalk and on the street because all of the speeding in town is out of control and he's amazed someone hasn't been run over. He has driven by and it doesn't look horrible to him. The plans he has seen look pretty good and the Historic Preservation Committee has approved the plans. Great lengths are being pursued to comply and make it look consistent with historic properties and well maintained historic properties. He has only seen positive things. There are a lot of other problems in town. Overall he thinks any religious organization is good to have and are a benefit. He thinks there should be one consistent standard and not multiple. He thinks the Yeshiva and other religious organizations are a positive benefit and if they want to invest with capital in this community it's

a good thing. They need to address the other things going on in town that have nothing to do with any religious organizations.

Wendy Wright-Schaefer  
110 Willow Avenue  
North Plainfield, NJ

Ms. Wright-Schaefer states she doesn't live near the basketball playing and if she lived near it she would be annoyed. The young gentlemen that do walk by her house are always polite and they wave. They are very cordial. With what's being asked for, North Plainfield has a huge overcrowding problem. Where the Yeshiva is, the single family houses are now multiple family houses. Some are legal and some are not. There has been a life lost in an illegal house. With that, vehicles and parking become an issue. She can't go to Quick Chek without snapping pictures of cars that are almost parked in the middle of intersections. At 7am on Saturday and Sunday mornings this occurs and it's dangerous to the residents. She snaps the pictures on Sycamore past the Yeshiva, on Washington past the Yeshiva, and on Linden. She knows it's an issue over there. As much as they try not to have events, they are going to happen. She was there when the funeral happened and it was horrendous. She asked what conditions can be put in to this approval that would stop this from happening. The police are not going to be able to enforce this. She doesn't know that conditions could be put in that could stop it. She thinks this should be taken into consideration when making the decision and they owe it to the residents of North Plainfield to have an open mind and to know how they live on the weekends when they can't park their car in front of their house.

Janice Allen  
83 Willow Avenue  
North Plainfield, NJ

Mrs. Allen stated having been here when the Yeshiva first came in, the gardens were maintained for 1 or 2 years but then never maintained again, which was a requirement. The property wasn't really kept up. They said the community would be invited in to see the building when the school wasn't functioning and none of those things happened. Mr. Schwartz did an excellent job putting the requirements in but they are not able to be enforced and she is afraid the same thing is going to happen again.

She does not have a problem with the Yeshiva and she has found the boys to be very pleasant. Her concern is that it's going to expand and the size of the building is way too big. Blueprints show seating for 167 people and they are saying there will only be 77 students. To her, they are trying to expand. She has no problem upgrading the facility but this building is way too big and not needed unless they are going to expand.

She is a member of the Church of the Holy Cross. They became a church in North Plainfield in 1868. They have maintained the building for over 150 years. They do not have parking. There are hitching posts on the property because everyone in the Historic District at that time had a horse and buggy. Currently, people have 4 or 5 cars. There is no parking in the Historic District. At Holy Cross they have a school, another congregation they share space with, all of which have



events. They are 1 block away from the Yeshiva. They park on Washington Avenue and it becomes very confined. Parking is a concern for her also. She is hoping they will all give it considerable thought. She has no problem with the Yeshiva, her problem is with the size of this building.

Christine Holman  
21 Myrtle Avenue  
North Plainfield, NJ

Ms. Holman was sworn in by Mr. Schwartz.

Ms. Holman stated the church on Washington Avenue has no fence. They have a school and they didn't need to expand. The County has rented space for the elections there and they didn't need to expand for that. The other church on the corner of Grove doesn't have a fence and they have their events and didn't need to expand. She finds it conflicting what is being said about the amount of students and quality of their education since 2007. It's a huge building and it's going to be an eyesore. Parts of the property don't have a fence. She doesn't know how a 6 ft fence can be justified. She has more of a problem with security with her property than they will ever have. She has people crossing over the brook from Plainfield, drug addicts, prostitution, criminals, people robbing from her barn, and issues with noise. She has called the police for various events going on in the neighborhood and across the brook in Plainfield. The Yeshiva is in a quiet area compared to where she lives and she only has a short fence between neighbors on both sides. She has no fence on the front or back of her property. She deals with a lot of noise and she calls police. The people responsible for the children at the Yeshiva need to tell them in detail what repercussions there will be for the students when they repeatedly break the rules. She isn't hearing anything specific. She sees no reason for a building that size or a fence that high. She understands the apartments are nowhere near the parking lot Mr. Romeo is talking about and the people in charge are sleeping and don't hear anything. Ms. Holman says they need to make more specific and stronger rules for the kids and have a smaller building. She doesn't see how the building justifies the volume of children.

Josh Gargano  
387 Mountain Avenue  
North Plainfield, NJ

Mr. Gargano stated the Yeshiva hasn't adhered to provisions of the 2007 Resolution. Schools are overcrowded. He thinks the Planning Board should vote no because they don't fit in with the moniker "proud schools for a proud community".

Katherine Miller  
Chairperson, Historic Preservation Commission

Mr. Schwartz asked Ms. Miller if she could explain what the scope of review of the Historic Preservation Commission is, what they have jurisdiction over, and what the process is to approve, deny, or approved with conditions an application.

Ms. Miller stated they approve the design of anything external on a building. She doesn't feel that they can say someone can't build a building but they can say what the building should look like. She realizes the building is large but they just approved the design of the building. They didn't endorse the building or say it could be built but if it were approved it would have to look a certain way. The same is true for the fence. They can't approve the variance but they can approve the design of the fence, which is what they did.

Mr. Schwartz stated in other words, the Historic Commission is concerned with the compliance of the structures with the parameters of historic design as contained in the ordinance. Ms. Miller stated yes.

The Historic Preservation Commission doesn't handle zoning issues. They handle exterior architectural issues.

Mr. Schwartz asked what the outcome of the meetings with the applicant was. Ms. Miller stated they had multiple meetings. They had about 8 sets of plans. The building and fence went through many different design changes so it would be approved by the Historic Commission. They voted that what they presented was appropriate for the area should it be approved.

Mr. Schwartz asked Ms. Miller if she has seen the plans that are before they Board and if they are compliant with the requirements of the Historic Preservation Commission. Ms. Miller stated yes. They did not approved any landscape plans, they only approved the fence and the building. They approved the fence and the building in 2022 but then the plans were changed so they went through the process again and approved the plans in front of the Board.

Ms. Miller feels it would be necessary for someone with historic architectural knowledge and expertise to oversee the project should it be approved. She feels it's very important for the plans to be adhered to and the COA's that were approved. She does not feel that the architect of record has enough experience with historic architecture and she is respectfully asking that the Planning Board put that as a condition.

Mr. Schwartz stated any approval of the Board always says that the construction shall comply with the plans and identify specifically what plans as a condition of approval. Mr. Schwartz doesn't think they can appropriately say that Commission should be involved in that but he thinks it is appropriate that Mr. Testa gets the Commission involved in that level of review of the construction. He will leave that to Mr. Testa as Zoning Officer. Ms. Miller thinks it would be helpful for someone on the Yeshiva's staff to have somebody who has some expertise in historic buildings. Mr. Schwartz does not think they can do that but can monitor it for compliance. It will be in the Resolution if the application is approved in any manner.

Mr. Testa stated as Engineer for the Board he has made an Engineering review of the proposed Yeshiva building and site improvements. His Engineering review letter of April 17, 2023 does list items concerning tree removals, landscaping, lighting, fencing, utilities, sidewalks, curbing, and grading and storm drainage. The project as its proposed is not considered a major development by NJ DEP standards and Borough ordinance definitions. The project has been designed to ensure there is no increase as compared to the pre-construction condition in the peak

runoff rates of stormwater leaving the site for the 2, 10, and 100 year storm events. He is satisfied that the proposed stormwater design they are putting forward is fully compliant with DEP and Borough stormwater regulations. The only zoning issues with the proposed development as submitted were the lack of required parking and the proposed 6 ft high fence around the property. From a site engineering, design, and zoning standpoint, he is satisfied that the applicant has provided satisfactory testimony regarding both of these items as well as all of the comments and concerns laid out in his April 17, 2023 Engineering review letter.

Mr. Grygiel prepared a review letter dated December 20, 2022 revised through March 28, 2023. He reiterated the proposed use was deemed a permitted use as a religious institution. The Zoning Board of Adjustment made that interpretation this past year that in the R-4 as well as the H-2 zone, churches, synagogues, and other religious buildings and uses are permitted. He mentions that because the review, since it's a permitted use, is focused more on the site plan aspects that are required, the building design, and all the types of things dealt with through the Borough Engineer's review, this Board's review, the comments from the public, etc. These are valid areas of concern when evaluating the application, whether with regard to parking and circulation layout, the landscaping, and fencing, it's been addressed. The other two aspects are the variances. He concurs with the applicant's Planner as well as Mr. Testa about the 2 areas of relief for the fence and the parking. He suggests that although the ordinance talks about a waiver from a parking standard, he doesn't think it's appropriate. There is no standard he is aware of to have a Board waive a requirement. The variance proofs were put on the record but he would consider from the Board's consideration point of view whether the C-1 and/or C-2 proofs are demonstrated for both the parking and the fence standards. With regard to parking, the issue comes down to whether they are satisfied with the testimony of the experts regarding parking demand for a use of this type. If any approval were to be granted, there would be conditions that have been talked to about and any conditions they would like to set forth regarding this particular use and the parking demand. From a Planning point of view, the applicant has been asked to make changes and has agreed to a number of them. It's the Board's decision as to whether the changes as regard to layout of buildings on the property etc. have been adequate to address concerns about the fence height, fence location, as well as number of parking spaces. The Board's focus should primarily be on those issues with regard to the application.

Mr. Wolfson thanked the Chairman, Board members, and Board professionals on behalf of the applicant and himself for the time and attention given to the application and hearing. The Planning Board does not decide what uses are appropriate or desirable in particular locations nor does it enforce Borough ordinances concerning operations. The Board is charged under the Municipal Land Use Law with reviewing Site Plan applications for compliance with ordinances and consideration of any associated relief. The MLUL does not give Planning Boards the "general power to require that Site Plans adhere to the Board's vision of the general welfare". That's *Pizzo Mantin v. Township of Randolph*. A Planning Board's role in considering a Site Plan application is circumscribed. That's *Shim v. Washington Township Planning Board*. Aside from the parking waiver and fence height relief, this Site Plan fully conforms otherwise to the Site Plan and Zoning ordinances. The Board heard expert testimony in support of the Site Plan, design and expert testimony in support of the relief sought. The applicant takes seriously all the comments from Board members and the public. They respectfully contend that none of those concerns are grounds for denying this application. On parking, expert testimony by Betsy Dolan

was heard and not refuted by an other expert testimony on the record and was confirmed by one of the members of the public as not being a problem except on the acknowledged funeral situation. Betsy also informed the Board that the proposed parking layout and traffic circulation terms of a possible intensification of the use, this Site Plan should not be denied based on concerns or fears that the new building will result in intensification of the use. The applicant and its witnesses testified that the new building will not be used for any purpose other than the religious educational activities that the applicant already conducts on the property. No other uses of the property are proposed. The application will not increase student enrollment or the number of personnel on the site. The Yeshiva will not host and events on the property except for religious events for members of the Yeshiva community. No events open to the general public and this is consistent with the conditions of 2007 but for the funeral of the former beloved Rabbi, has been substantially complied with. The applicant has acknowledged the funeral which resulted in an outpouring of love and reverence and resulted in more people coming to the site than anticipated. The applicant has also pledged on the record that if they anticipate such an outpouring in the future, they will not go forward with those events. The testimony is unrefuted that other than the funeral there have been no other events of that type.

The addition of a bigger building on the property is not grounds for denying the Site Plan. Under the MLUL, the Board cannot deny a Site Plan or the building on the basis that the building is too intensive for the site so long as the project is a permitted use and does not exceed coverage FAR or other bulk requirements. That is reference *Stochel v. Planning Board of Edison*. The North Plainfield Borough Council has already decided by its legislation that a building of this size for this purpose is appropriate for this property.

The Site Plan should not be denied based on comments made relative to the Yeshiva from time to time making noise and concerns about maintenance. These are enforcement issues subject to the jurisdiction of Borough agencies like the police department and code enforcement officers. Nothing in the MLUL or the Borough's ordinances expects this Board to deny a Site Plan based on such enforcement matters. From *Cox and Koenig NJ Zoning and Land Use Administration*, Section 23-10, a Site Plan may not be denied premised on concerns related to a municipality's police as opposed to land use powers. The policing of activities on and around the property is the responsibility of law enforcement officials. Such considerations are not relevant to the approval of a Site Plan.

John McDonough gave is unrefuted opinion, based on Betsy Dolan's testimony that the catch all generic parking requirement is not specifically tailored to this use and significantly overstates the parking actually required. The requirement poses undue hardship because there are no students with cars, no commuter students, and daily parking demand both during the week and on the weekends is extremely limited. The applicant's proposed parking layout is more than adequate to satisfy the actual parking demand. Even if the Board deems the parking issue to be a variance, the relief is justified under the C balancing test as well as hardship based upon the testimony of Betsy Dolan and John McDonough.

In terms of the height issue, consistent with the March 20, 2023 certificate of appropriateness from the HPC, the applicant proposes a 6 ft high fence with 7 ft arches at the gates around the perimeter of the property. The applicant is seeking a grant funding from the Office of Homeland

Security & Preparedness which requires the fencing to be a minimum of 5 or 6 ft in order to qualify for that grant. Mr. McDonough explained that the variance is justified based on the positive and negative criteria because there is an existing 6 ft chain link fence which will be greatly improved by its removal and replacement with an aesthetically pleasing fence, which has been approved by the HPC. The Homeland Security height requirement is outside of the applicant's control and serves as a governmental standard that is highly relevant to the Board's consideration of the relief. The fence will not impair the general welfare or zoning plan as it was specifically designed to align with the neighborhood and was approved by the HPC as historically appropriate for the zone.

The First Amendment affords the applicant and its educational institution constitutional protections for freedom to exercise its religion. The proposed new building falls within the applicant's constitutionally protected religious use. Where religious uses are permitted on a particular property, municipal oversight of the religious activity conducted on property must be strictly limited so as to not violate the First Amendment. Municipal action violates the First Amendment if the action "frustrates a religious activity", Burlington Assembly of God Church v. Zoning Board of Township of Florence. In that case, that church, a permitted use, sought to install a radio tower to broadcast church services and related content which the Board of Adjustment denied. The Court concluded the tower constituted a religious use such that the Board's denial of the variance, while simultaneously allowing churches themselves, unreasonably limits the religious use of the land. Municipalities may limit religious activity only if it has a "overriding governmental interest with no alternative available means to combat the claimed undesirable use". Municipal oversight of religious uses is limited and intended to be subject to a standard of strict scrutiny. "The ends of municipal zoning regulations seldom are considered important enough to justify restrictions" on the manner of religious activity. Burlington Assembly of God Church v. Zoning Board of Township of Florence. Additional activities such as the Yeshiva beyond ordinary worship gatherings are considered more important than "the ends of municipal zoning regulation". "All lawful conduct founded in religious belief" is considered to advance the public morals and the general welfare. Burlington Assembly of God Church v. Zoning Board of Township of Florence. The First Amendment protects not only the Yeshiva's right to use the property for religious education but also its right to "conduct additional activities founded in religious belief in connection with that use". The additional activities include the construction of this new, modern building in which to conduct religious education. The Board should not and cannot frustrate this activity unless it has a clear "overriding governmental interest in doing so". Respectfully, there is no such overriding governmental interest here.

Mr. Wolfson again thanked the Board and its professionals for their patience and attention throughout and respectfully requested an approval of the Site Plan along with the waiver or variance for parking and the variance for fence height.

Mr. Schwartz stated this application has a lot of components to it. He had requested the transcripts of the hearings so it would assist him in preparing conditions to any approval. He only received the May 10<sup>th</sup> transcript, not the transcript from the April meeting. He has not been able to review the transcripts to prepare any conditions to the approval. Mr. Schwartz recommends that they adjourn to another night because of this and due to the late hour. He

wants the Board members to express how they feel about the application before they vote. He believes it's important to have in the record and it helps him do a resolution.

Mr. Wolfson granted an extension of time through the June 14, 2023 meeting. An announcement was made and there is no need for further notice. The same zoom link will be used. Mr. Schwartz asked Mr. Wolfson to provide the transcript for the April meeting tomorrow and for this meeting when it is available.

Mr. Schwartz stated they will go right into deliberations at the next meeting but if Mr. Wolfson had something brief to add at the next hearing that he would be able to.

Mr. Schwartz suggested everyone look at the 2007 Resolution very carefully because if they are going to grant any approval with conditions, they are going to want to start with them and see what was left out that they need to buttress based on the representations made by the applicant in these hearings that will further allow enforcement. They can look to refine the conditions to make it very clear to the Yeshiva what they need to do. He believes Rabbi Cohen is going to want to cooperate. It will also make it easier for the administration and police to enforce the conditions.

Mayor La Ronde made a motion to adjourn the meeting. Seconded by Frank Kreder.

All in favor.

Meeting adjourned at 10:51pm.