

**Planning Board
Virtual Meeting
September 27, 2023**

Meeting started at 7:02pm.

Statement of compliance read by Chairman Fagan.

Roll Call

Present:

Dave Hollod
Aimee Corzo

Chairman Tom Fagan
David Branan
Frank Kreder
Andre Mitchell
Michael Giordano
Mark Kruszczyński – entered the meeting at 7:12pm
Cheryl McKeever – entered the meeting at 7:14pm
Mayor Lawrence La Ronde

Absent:

Liz Appezzato
Mark Kruszczyński – entered the meeting at 7:12pm but immediately exited

Also present is Board Attorney Brian Schwartz.

Pledge of allegiance.

Approval of Minutes

David Branan made a motion to approve the July 26, 2023 minutes.

Seconded by Frank Kreder.

All in favor.

None opposed.

No abstentions.

Old Business

Reconsideration of the Yeshiva Tiferes Boruch, Inc application for preliminary and final site plan approval.

Brian Schwartz explained that the purpose of the hearing is for the Planning Board to hear the request of the Yeshiva to reconsider the Board's decision of June 14th. The Board denied the application for site plan and variance approval. The Yeshiva is requesting that the Board approve the application with the conditions that have been published on the Board's website.

There are three reasons for the hearing. Immediately after the hearing on June 14th, the applicant's attorney, through Brian Schwartz, approached the Board expressing a willingness to consider additional conditions to the ones proposed that night. Those conditions are in the proposed conditions as number 28, requiring the applicant to provide professional traffic personnel during events where outside people would be attending an event at the property and number 37, where the height of the new fencing would be reduced to five feet and six feet for the gate so long as the approval of the Office of Homeland Security would not be jeopardized. These conditions addressed concerns of Board members during deliberations that could have affected the Board members' decision on that night. Since the vote was 5-4, one person's decision to vote differently would matter.

The second reason is that members of the Board did not have an opportunity to review the conditions before the hearing on June 14th. It was a decision Brian Schwartz made. He normally does not give out conditions before a hearing because the conditions are fluid and very often change during the course of the hearing and he did not want to give out conditions that were then going to be changed. The first time the Board members saw the conditions was when he shared them during deliberations and he could tell some Board members were not happy with that because they felt they needed additional time to review the conditions. It may have affected their ability to make a decision because they didn't have an opportunity to fully understand and grasp the conditions.

After discussing whether another hearing might be necessary or appropriate, the Board received a letter from a national legal organization that pursues cases on behalf of Jewish groups. That is published on the Planning Board website as well. The letter points out legal and factual reasons why this group feels the Board would be exposed to a reversal of their decision and also damages and attorney's fees through a federal lawsuit under a Religious Land Use and Institutionalized Persons Act (RLUIPA). There was discussion of RLUIPA during the course of the hearings. The applicant's attorney brought it up in a subtle way. That was the subject of an Executive Session on July 26th because it was threatened litigation. The results and contents of the Executive session will not be discussed other than Mr. Schwartz gave his legal opinion to the Board during the Executive session. The Board came out of Executive session and voted to table the Resolution on the application and scheduled a hearing on reconsideration of the denial and whether the application should be approved with conditions, including the additional two stated above.

This hearing is being held to allow the Board to reconsider its previous decision and decide whether the decision should be changed. The Board's legal right and ability to reconsider a decision is well established in case law in New Jersey. There are a number of Court decisions that authorize those actions. *Garofalo vs. Burlington Township* was decided in 1985. In that case the Court said the Planning Board has the power to review, modify, and rescind its decision so long as it observes due process requirements, namely notice and an opportunity to be heard. In *Lambert vs. Borough of Beach Haven*, which was decided by an Appellate Court in 2020, cited cases that administrative agencies such as a land use Board has the inherent power to reconsider, reopen, and rehear prior decisions. The only limitation is that good cause be

established to show that reopening the proceedings would serve the ends of justice. There is no question in Mr. Schwartz's mind the Board has the authority and the right to do this. The only question is that the Board discusses whether it wants to reconsider its decision based upon the information it now has that it did not have at the time of hearing on June 14th. The public will be allowed to comment but there will not be additional testimony. The consulting professionals of the Board are not present and the applicant's attorney is not present and they will not provide testimony from any of their professionals. The evidence is closed and what was heard in the three hearings is all that will be considered. Tonight is only a matter of whether the Board wants to reconsider its decision based upon the new information it has and the public will have an opportunity to give their opinions about the process. Mr. Schwartz asks the public to direct their comments to this issue, not try to give new testimony or evidence because that would be inappropriate and cannot be considered.

David Branan made a motion to reconsider the Board's decision in denying the application for variances and preliminary and final site plan approval and approving the application with conditions as previously stated by the Board's attorney and published on the Board's website.

Seconded by Frank Kreder.

Mark Kruszczyński entered the meeting at 7:12pm but exited the meeting.

Cheryl McKeever entered the meeting at 7:14pm.

Barbara Habeeb
73 Mountain Avenue
North Plainfield, NJ

Ms. Habeeb did not look at the revisions but she wanted to question whether any revisions have been made about the amount of parking spaces that would be available. Mr. Schwartz stated no.

Francine Gargano
57 Willow Avenue
North Plainfield, NJ

Ms. Gargano stated this is the most corrupt thing she's seen in the history of North Plainfield. She cannot believe the Planning Board is doing this to them. The interest of justice was served when the Board voted and if the Board is afraid of a threatened lawsuit, they should all resign. She sat on the Historic Preservation Commission and they were constantly threatened with lawsuits. If the Board doesn't have the guts to do what's right, they don't belong here. They have met with the Mayor and Council about the parking issues. The Yeshiva is not special. Mr. Schwartz should know that every single group threatens the same thing. She doesn't see anything in the law that says they are allowed to do this because they are afraid of a lawsuit. The conditions should have never been put on there because the only time conditions get put on is after you vote to accept. Conditions will not work. They have had conditions and they have never complied. Conditions are not the answer. This is the Historic District. The building doesn't belong there. They don't need it. They have a functioning school, they make a lot of

money, and either they are lying about what their intentions are or she doesn't understand what the point of the building is. There is plenty of room on Route 22 in North Plainfield and they are more than welcome to stay here. Nobody has a problem with them being here but there are areas where they can go build their Yeshiva and not in the Historic District. She finds it offensive that they are back here again after so many people put out so much effort to appear before the Board time and time again and people told them the things that were going on. She is beyond horrified at the Mayor and Council, Mr. Schwartz, and the Board for allowing this to go on. They voted and the vote was no. It was no because that's their law and they are not special. They have to abide by the law. They have a lot of problems in the Historic District and North Plainfield. Parking is a major issue. They are going to ruin that beautiful property. They didn't keep the gardens they were supposed to keep and they have not been in compliance with one condition so why would they comply now? The best thing the Board could do is resign. The Board is offending them by doing this. If they do this now, they are setting themselves up for threatened lawsuits every time they vote against applicants. She hopes she's there to help them. The Board is disgraceful and should not be sitting on the Board. Mr. Schwartz should have taken himself out of this because he's Jewish and he cannot do the right thing and maybe he should have considered that and maybe he shouldn't be representing the Board. She is angry and it's disgraceful. If the Board votes to accept this, maybe they will all be sued.

Nicole Molina
25 Geraud Avenue
North Plainfield, NJ

She stands by Francine and what she is saying. At the end of the day, they are the people that live in this community and it's not right that certain things are getting bypassed by these leaders. They have to stand up for this. Their thoughts and what they are experiencing has to be taken into consideration and that is not happening. You can't be afraid of a lawsuit, it's not fair, and it's not fair to the people who live here. They really do have to reconsider this motion because it will affect them and it's not right and she hopes they can reconsider that.

Josh Gargano
387 Mountain Avenue
North Plainfield, NJ

What kind of message is the Planning Board going to send the people of the town, which its obligated to serve, if the town says this organization has a lack of respect for our community structure and their way of life and how it views our people. Think about all the testimony that's been said. As far as improving the fence because of security concerns, he noticed inconsistency in Mr. Schwartz's opening when he said the Yeshiva would be providing parking help when there's events where outside people attend. He was at all of the hearings and it was said there were very few events where outside members of the public were included. They are now hearing something different again. It's another version of the same misdirection and distraction that's already been done to try to suppress the people's will. He would call on the Planning Board to see right through this misdirection and vote no and stick by the people which they were elected

by. The people will stand by the Board in any legal challenges that may come their way. The people stand by the Board, not the Yeshiva.

Frank D'Amore
40 Willow Avenue
North Plainfield, NJ

He is concerned that if another applicant decided to build a building the same size as the one the Yeshiva wants to build; would the parking regulations apply to them or are they going to give everyone preferential treatment? At the beginning of the meeting it was mentioned that professional traffic people would help with events at the Yeshiva. How would residents benefit when the parking is limited. There are not enough spaces to accommodate any type of large event at the Yeshiva. Based on the size of the Yeshiva, he would imagine most of the events would be on the large size.

Mr. Schwartz stated the purpose of the traffic personnel is to stop traffic conflicts and be sure cars are not creating hazards in the street. Parking in people's driveways can be prevented. They are not looking to prevent those rare occasions where there's a lot of people from parking on the street. Any church, synagogue, or mosque will have people parking on streets occasionally. They don't want to have a situation where it's a danger or parking in driveways. This is a very common condition on many kinds of religious uses. Had he thought about it beforehand, he would have put it in the conditions he proposed on June 14th. As far as other applications being treated the same or differently, every application is different. There are a lot of unique circumstances with this application that have not been seen before in North Plainfield. Not every application will share that uniqueness. They may have different unique situations but very rarely do we see testimony and evidence such as they had in this application because of the unusual use of this property.

Wendy Schaefer
110 Willow Avenue
North Plainfield, NJ

She is floored that this meeting is happening. Mr. Schwartz feels there is good reason for this vote. She wants to know why the vote wasn't formalized in the beginning and why it is taking so long. She doesn't know if much has changed. She asked if the Board retained an attorney that specializes in this type of issue if they thought the letter was a big enough threat. She finds it hard to believe that five members will change their mind because three additional conditions were added. It does not seem like it's above board. She is disturbed that a threat of a lawsuit without speaking to a retained attorney that specializes in this and that Board members are nervous and intimidated to be able to go to Court to express why they made those decisions. If a Board member cannot explain or defend their vote, maybe they shouldn't be on the Board. She thinks North Plainfield has a very serious problem and this is a huge liability to North Plainfield. She is very concerned and it does not bode well to give the people the confidence that the Planning Board has their best interests. It's not so much the decision but how the Board handled the situation after the decision was made. It's the steps the Board took after they got a decision they did not expect.

Carla and Richard Phoenix

Mrs. Phoenix asked Mr. Schwartz if he ever walked the streets around the Yeshiva to see how big the streets actually are. The streets in the Historic District were built at a time when there were no automobiles. People used horses or a horse and carriage. Sycamore Avenue, Washington Avenue, Grove Street, and all other streets in the district were built for when people rode horses or a horse and carriage, not large vehicles. They already have a terrible problem with parking in the district. Bringing special people in who know what they're doing means that they won't know what they're doing because they don't live here. She asked if they thought about the impact this would have. This is not something they need. The Yeshiva has not been a good neighbor as she's heard repeatedly from many people. There are plenty of places in North Plainfield that would make terrific places to build the additional Yeshiva building but not in the middle of the Historic District on a property that is already at its capacity. Her other concern is about the Jewish group that threatened a lawsuit. She doesn't like anybody that threatens us. She doesn't like strangers coming in and threatening the town.

Barbara Habeeb
73 Mountain Avenue
North Plainfield, NJ

She agrees with Carla Phoenix. She wants everyone to keep in mind that a long time ago, people didn't have a lot of cars. Most families have at least three or four vehicles and don't necessarily have the driveways to accommodate the cars so there will be many cars on the street. She's lived in North Plainfield all her life and she knows how crowded the streets are even where she lives. She fears if the Yeshiva is built, she doesn't know where the people that live on that street will find parking and it's not fair to them or anyone else that lives in North Plainfield. She suggested getting an attorney that knows what they're doing and that's a strong attorney and can defend North Plainfield.

Josh Gargano
387 Mountain Avenue
North Plainfield, NJ

He would like to refresh the Board's memory of statements that were made. Referencing Mr. Schwartz's opening statement of traffic cops provided by the Yeshiva for large events to alleviate traffic problems, they were told it would only happen once or twice a year. This is an indication to him that this is not the truth. When the question was raised as to why they needed a fence surrounding the property at such an excessive height, the response of the applicant was that in the news, Jewish people have been attacked recently. If you understand North Plainfield, the motto is Proud Schools for a Proud Community. There is no one here that would be a danger to anyone in any religious institution whatsoever. Nobody is going to attack someone for the fact that they practice Judaism. The Yeshiva says they need a larger cafeteria and sitting room because we don't understand their culture. North Plainfield High School is very crowded and nobody says they need a larger cafeteria. There is a difference between what is necessary and what is extravagant. Those are the three pieces of testimony he would like the Board to keep in mind when it considers, what he would consider a general lack of respect in a secular way from

the Yeshiva towards the town of North Plainfield. The Board should vote no because they are not proud of their community.

Thomas Jones
673 Greenbrook Road
North Plainfield, NJ

He asked is this not a Historic District and does this destroy the value that people have had to abide by certain rules and regulations to maintain their property? It's a Historic District and does this development destroy that aspect? We want to preserve our culture and we want to preserve history. It's a beautiful thing to preserve something and this development upsets that.

Mr. Schwartz stated Mr. Wolfson could not make it tonight and in the interests of moving this along they shouldn't wait for a hearing night where he was available so his firm sent Ms. Coffey to speak on behalf of the applicant.

Kate Coffey, from Day Pitney is the attorney representing the applicant. She has listened to all the comments this evening and she has looked at all of the conditions posted. She has also reviewed the commentary provided in prior hearings related to the application.

With regard to the property being in the Historic District, this applicant has the utmost respect for the community and to that end has gone through the process of obtaining two separate certificates of appropriateness from the Historic Preservation Commission prior to coming before this Board. This includes making sure the proposed enhancements to its existing school comport with the standards of the Historic Preservation Commission. The proposed enhancements fully comply with the bulk standards of the zoning ordinance with respect to the size of the building and the height of the building. She understands there is a town-wide concern about a lack of parking and traffic. This application is not proposing any new traffic. The testimony provided by the applicant as well the professional traffic expert is that the proposed use of the school is not changing and there are conditions to that effect. The limit on the number of students is 100 students and it is not increasing. All of the students are residential students. Students are not permitted to have vehicles at the school. The only vehicle coming to the property are those of faculty that don't reside at the school on a regular basis. She understands there was one incident years ago that resulted in an overflow of parking. The applicant has reviewed the conditions proposed, including the new conditions that would require, in the event the applicant has an event at school which it is not expecting to have on a regular basis and there are also conditions that prohibit the applicant from having regular events that are available to the public, but in the event that there is an event where members of the public are being invited to come to the school, the applicant would coordinate to have off-duty police officers who would be familiar with the community available to direct traffic and direct traffic to legal and available parking spaces. The applicant has indicated its willing to agree to that condition to address the concerns heard throughout the course of the hearings.

There is also a question about the proposed fence at the facility. The reason for the fence is not because of any mistrust or concern about the community of North Plainfield. There are threats to all kinds of religious groups that come from outside the municipality the religious group is

located in. Anti-Semitic threats in New Jersey have increased by 10% between 2021-2022 and are currently at the highest levels ever recorded. The fence is not to keep the people of North Plainfield out, it is to keep the students safe and it's recommended by the Federal Government as a safety measure for the school. Hearing the concerns voiced, the applicant is willing to agree to the proposed new condition which would limit the fence height to five feet, assuming that the Bureau of Homeland Security permits them to do so.

The applicant has provided previous testimony that it desires to be a good neighbor within North Plainfield. There are fifty conditions proposed and the applicant is willing to agree to them, live by them, and looks forward to future years in North Plainfield abiding by those conditions.

Mr. Schwartz wants to address the idea that the Board has not had adequate council on the nature and possible outcomes of federal litigation under RLUIPA statute. He can assure the public that not only did he provide the benefit of his research, but he has had discussions with attorneys that represent municipalities in litigations such as this and who specialize in representing Boards and municipalities in litigation such as this. In each case, he gave the benefit of what he learned from his research and experience and also attorneys who specialize in such litigation. The Board has the benefit of that testimony. He will not discuss what he said to the Board. He can assure everyone that the Board has received the benefit of every source of legal information that he could obtain.

Diane Melendez stated he should not be the lawyer for the town.

Aimee Corzo asked if it would be two votes, one to reconsider, and one to discuss the conditions and Resolution and then vote on it.

Mr. Schwartz does not think it needs to be two votes. The Board has already voted at the July 26th meeting to table the vote and have the hearing. The motion is to reconsider and then grant the application. Ms. Corzo objects to that and thinks they should vote to see if most of them want to reconsider and then discuss and vote on the application. Mr. Schwartz understands and respectfully disagrees and that's his opinion. The Board Chair can separate it out, it's up to him. Ms. Corzo disagrees.

David Branan recalled in earlier discussion at a meeting that the only people who would be voting this time would be those who voted in the negative and asked if that's correct. Mr. Schwartz clarified that in memorializing a Resolution, only those who voted in the majority would vote on the memorialization. With this, everybody who voted on the initial application, 9 people, are eligible to vote on this issue.

Aimee Corzo wants the public to know, four of them, including herself voted against this. Many of them had nothing to do with the conditions or discussions of whatever is going to happen today. Condition 28 talks about hiring police officers to direct traffic to park in appropriate locations. Appropriate is very subjective. That would imply that there would be an overflow out of the parking lot. According to Ms. Coffey, it may not happen on a regular basis but it will happen. She understands they will try to park legally but there is already a problem in that area

with parking so where will the appropriate locations be? Is it obvious that they will need a little bit more than 10% of what would be required?

Chairman Fagan stated if it was under the control of the police department, they would attempt to do what they feel is reasonable for parking in that area if there was an event that had an overflow of parking. Ms. Corzo asked what is reasonable. The police officers are only going to go by what's written, whatever's an Ordinance or Resolution. She asked what is appropriate and what are those conditions. She is not concerned with the fence. She understands the objections to a higher fence but she's always been concerned with the parking. She understands the use is not changing as far as the students but a bigger building would accommodate more people. In the future, if the current Yeshiva is not the owner anymore, they too will only have 10% of what is needed. She doesn't think they can get 100% but she always thought there could be a compromise and the applicant could show good faith and increase the parking. That never happened and it would have gone a long way. The people spoke up and who live there 24/7 are experts to her. She believes them and they have to take that under consideration.

Ms. Corzo stated they are limited to immediate families that can come to events but immediate family is subjective. She wants it specified what immediate family is. She is disturbed that the original vote was not memorialized in a timely fashion. She thinks it did a great disservice to the Board. The letter was received in between and there were threats in there. She asked what it means if they don't look at this for its own merit and if they look at it for extenuating circumstances or possible outcomes or detriments to us and what it means moving forward. She has nothing against this applicant. She asked how fair it is and if they are opening themselves up for other lawsuits. It doesn't mean they can't go back to the table and try to compromise. She believes the applicant needs to compromise on the parking.

Ms. Corzo also added that the agenda states the Resolution is SPR 22-001 and the condition says a different Resolution number. She asked if they have published that they are going to vote on Resolution SPR 22-001, they can't vote on it with the other conditions. Mr. Schwartz stated the fact that he put 23 on it instead of 22, it will not affect the validity of these conditions. The point is that the conditions will be incorporated into a Resolution. Ms. Corzo stated in order to vote on a Resolution you have to advertise it. Mr. Schwartz stated they are not voting on the Resolution tonight. If the Board elects to reconsider and approve, they will memorialize the Resolution at a future meeting. He hasn't done the full Resolution.

Mr. Schwartz wanted to address the definition of immediate family. He left it at immediate family because there is a definition of immediate family which is mother, father, grandmother, grandfather, daughter, son. That is a definition for accounting purposes and that's what it and why he left it that way. Ms. Corzo stated she also looked it up and there is no consensus on one definition of immediate family. She stated it will have ramifications in the future because that's what you can bring to court and say it's open-ended. Mr. Schwartz stated that condition concerns him and there is a component of good faith. The underlying issue of this application is to what extent these conditions are enforceable. The applicant already has an existing use, that cannot be changed. It comes down to whether we are better off or worse off in approving this application with tightened up conditions and additional representations by the applicant which

will hopefully be enforceable in the future. This is what the Board has to decide, also taking in consideration the advice he has given the Board in Executive session.

Mike Giordano stated he agrees with Aimee in that five people voted no on this application and for people to say all of them should resign it's not fair. Everyone on the Board cares for the Borough of North Plainfield or they wouldn't be here. He asked what happens next if they vote on the proposals tonight and they both fail. Mr. Schwartz stated if the Board decides not to reconsider and change its vote, they will vote on the Resolution in front of the Board in July.

Mr. Schwartz stated Ms. McKeever came in after he made his opening statement. He noticed 15 minutes ago that she emailed him about letting her into the meeting and by the time he saw it she was logged into the meeting. Knowing she missed the opening statement and to be sure there was no issue about her eligibility, he wrote out notes about what he was going to say tonight, he sent it to her, and she confirmed she read it. Ms. McKeever confirmed she read it.

Mr. Schwartz stated Ms. Corzo raised a question as to if they could change the conditions. Between now and the memorialization the conditions can be tweaked as long as you aren't materially changing them. Changes such as imposing more parking is another issue and can be discussed as it is a major part of this application. He doesn't think the Board would be achieving much to impose a larger parking requirement without getting the applicant's consent. He's not sure the applicant is in a position to do that tonight. If the majority of the Board would vote differently if that were the case, they can take it up with the applicant.

Ms. Coffey stated she isn't sure if they would be able to advise as to whether additional parking is feasible given the constraints of the site. They would need the professional advice of an engineer in order to be able to discuss that. They don't think they would intelligently be able to address it.

Ms. Corzo stated if the applicant made a good faith effort to compromise and ease some of the concerns of the neighbors in parking, she would certainly reconsider. That's always been her concern. It has perturbed her that the applicant has been so rigid in that. Mr. Schwartz asked how many spaces she would be talking about. Ms. Corzo stated she cannot be put on the spot. She would like to see what they propose and see if it's adequate. One is not adequate. She understands two hundred and seventy something is out of the question. They want 10% of what is needed for the building they want to build. They aren't talking about 30% or 40%. She isn't make any commitment, she is just discussing this.

Andre Mitchell is concerned about some of the comments he heard earlier given the fact that he's been a volunteer in North Plainfield on boards and committees for over 20 years. He has been a resident for almost 25 years. The reason he volunteers, much like the others on the Planning Board is because he cares about the town. He thinks there may be a misunderstanding about what their purpose is. Their purpose is to be fair, considerate of residents, accommodate applicants when they can, and have all parties walk away pleased with the results. Unfortunately, that does not always occur. This is one of those applications where the community is very divided and emotions run high. He wants the residents to know they volunteer and they have invested many hours listening to testimony, reviewing documents, and

trying to make an informed decision. Even though people may be dissatisfied to this point, it does not represent how we care or how concerned we are about the community. He believes North Plainfield is a proud community. If anyone were to look at the years of experience of people on the Board and how long they've volunteered, he thinks they would agree that they are here sacrificing their time away from families and other responsibilities because they want the best for all parties involved.

In reference to the application, there's always been a concern about parking. He can't say for everyone that voted no that it's a bone of contention but when they look at the vast difference between 27 parking spaces and 275 parking spaces, it would be clear for anyone to have somewhat of a concern about the vast difference in those numbers. It would be ideal if a compromise was presented. Parking is an issue for the entire town and perhaps that may be why people are passionate about this application because they know the impact. He believes there may be some type of solution. It takes everyone working together for one common goal and not being as emotional and making charged comments or accusatory statements. It's divisive and will not help accomplish the goal.

Mr. Schwartz stated it would be a lot to ask for them to make a quick decision about a rather significant change in the plan to accommodate 80 or 90 parking spaces. In his opinion, were they to redo their application to show that number of spaces, it would be a significant change which would result in a new application. If that were the only issue for Board members to vote one way or another that they would rather see 90 spaces as opposed to 15, he doesn't think it can be accommodated based on the testimony with the current plan. It would not make sense to postpone this so the applicant can do that.

Ms. Coffey stated she has been having offline dialogue with the applicant because they would like to meet the Board as best they can in terms of the feedback that they've had. The Yeshiva owns the lot that is proximate to the lot that is the subject of this application. It could be used as overflow parking but it would have to be the subject of a subsequent application in order for it to be used for that purpose. The applicant would be willing to agree to a condition that it would seek approval to use that lot for overflow parking in the event that an event occurred and they would commit to pursuing approval to do that from this Board. That would likely be the best mechanism available to create additional parking if it's ever needed. Mr. Schwartz asked how large the lot is and where it's located. Her understanding is that they could possibly get about 30 additional spaces and she believes the address is 22-24 Rockview Avenue. She believes this is probably the best they can do for additional parking. It is currently owned by the Yeshiva and it's across the street from the Yeshiva. Mr. Schwartz asked if there is a house on it and Ms. Coffey stated it's currently vacant.

Mr. Schwartz stated his opinion is that rather than have the Board vote when there is this other unknown lot out there with possible accommodation for parking, he would rather the Board not vote on the application. He thinks Mr. Testa would be the one to decide whether they can amend the application. He is surprised this hasn't come up before. He doesn't know how big the lot is or what they could do. He told the Chairman he might want to think about that and whether they want to allow them to amend the application as opposed to putting it in as a condition even though they don't really know much about the lot.

Chairman Fagan wanted to confirm if the engineer would study the lot to determine exactly how many spots would be available in the lot across the street. Ms. Coffey stated she thinks so and the commentary she's been hearing is that the primary concern is the number of spaces being proposed. She does not have any engineered plans with respect to what can be accommodated on the site. In terms of a path forward, the applicant's indicated they would be willing to agree to an additional condition whereby they would pursue approval to utilize that lot for parking for events.

Mr. Schwartz stated in looking at google maps, it looks like a vacant, narrow lot. There is a significant Victorian home to its left. He doesn't know if the Yeshiva owns that or not. There is a house on the other side as well. It is something to be considered.

Chairman Fagan stated at this point they are just guessing. They would need accurate measurements on it to decide if it's feasible to consider something like this.

Mayor La Ronde stated they would first check with the Historic Commission to see if they could turn a vacant lot in the Historic District into a parking lot. He isn't sure that would go with Historic Preservation's ordinances. Mr. Schwartz stated that's a good point. Historic Preservation on applications like this have an advisory role but he doesn't know what the requirements are regarding a parking area. It significantly changes the dialogue about parking. If the applicant were to show they could put spaces on there it changes the nature of the application.

Mr. Giordano stated they would have to take the house down and take out the grass and make it a parking lot and he doesn't know that the Historic District is going to allow that. Mr. Schwartz stated it's a vacant lot. It looks like it may be a substandard lot for construction but it's vacant.

Chairman Fagan they need an engineer to look at this and make a determination as to the size of the lot and what the projected parking could be. This would not impact the condition 28, which is providing professional traffic personnel.

Mr. Schwartz stated they need to find out if the applicant is looking to adjourn this to allow them to add this to the application. This would mean re-notification because now the application would include that lot and require notice to property owners within 200 feet as opposed to having a vote tonight and based on the vote the applicant can decide what they want to do next.

Mr. Schwartz asked Ms. Coffey if she wanted a 10 minute break to consult with Rabbi Cohen. Her thinking would be amending this application or a condition that the applicant would use its best efforts to seek approval for the parking via a subsequent process in addition to all the other conditions. Mr. Schwartz stated they would reopen the application to include this lot and they would take testimony from their traffic and engineering professionals as to how that changes the parking component and then the Board would re-vote. The other option is if they want to file another application they can do that but they are going to vote on what they have right now. He thinks it's a really good opportunity to address one of the major problems with the application. The parking deficiency is a lot greater than a 1 foot variance for a fence.

Ms. Coffey pointed out there is a hand raised from the Historic Preservation Commission. Mr. Schwartz stated the Historic Preservation Commission will get an advisory role regarding this application if it's changed. He is more concerned about the procedure they have right now. Procedurally they are already in an unusual situation and the question is whether to proceed tonight or to hopefully improve the application by incorporating this lot.

Ms. Coffey asked to a short break to confer and she will get back to the Board.

Break at 8:33pm.

Back from break at 8:45pm.

Roll Call

Present:

Dave Hollod
Aimee Corzo
Chairman Tom Fagan
David Branan
Frank Kreder
Andre Mitchell
Michael Giordano
Cheryl McKeever
Mayor Lawrence La Ronde

Absent:

Liz Appezzato
Mark Kruszczyński

Ms. Coffey was able to speak with Rabbi Cohen in terms of what they can do from here given the continued concerns about parking. The applicant asked her to reiterate that any of the Board members are welcome to come to the Yeshiva and see the parking lot as it exists today to appreciate that it functions and that there is actually a surplus of spaces on a day to day basis. In addition to that, they are able to add an additional 5 spaces to the subject property. They would agree to a condition that the plans be amended to incorporate those additional 5 spaces on the subject property. With regard to the other lot that the Yeshiva owns, 22-24 Rockview, the applicant proposes a condition, similar to the condition with respect to the fence height that's subject to Homeland Security approval whereby the applicant would agree that it would coordinate with the Borough Engineer to maximize the number of spaces that can be accommodated on the site and that it would promptly make application for separate approval to permit parking on the site so there can be a separate notice process, a separate Historic Preservation process and a separate Board review process associated with the use of that lot. The applicant would agree to a condition that it would pursue permission to maximize the spaces on that parcel to serve the property. 21 Rockview Avenue, block 134, lot 1 would have 5 additional spaces. They know they can accommodate those spaces so they agree that the plans will be amended to accommodate those additional five spaces.

Mr. Schwartz stated the best he could find out on the internet is that the other lot is 28,000 square feet and it's vacant. He can't get dimensions but he thinks it's 0.65 acre. It's a significant lot and probably could house a lot of spaces. By conditioning this application on that, the applicant

hasn't complied with its conditions until that property has been the subject of an application and the application would come to the Board as a separate application to approve that lot as parking. He would have to look at the ordinance to see if that becomes a use variance by itself. He would hope if spaces are 9 feet wide and it's properly buffered with trees that they could have about 20 spaces at minimum. The applicant has offered that and the Board isn't in a position tonight to comment on that separate application other than that the lot appears that it could handle some parking, we just don't know how much. Mr. Testa would have to review it for zoning. Mr. Schwartz isn't sure if it would come to the Planning Board or the Board of Adjustment. It appears to him that it would be a lot, when properly buffered from the adjacent housing, that could be used for parking.

Ms. Corzo asked if they would also need Historic Preservation Society. Mr. Schwartz stated they would review it. It's not a Historic structure, it's not a significant structure but they would review it and provide advice to whichever board would be hearing that application. Ms. Corzo thinks they need all that before making a decision. Mr. Schwartz stated the Board's not deciding what to do with that lot other than as a condition to this approval. From a Site Plan standpoint, it needs to be properly buffered in a residential zone. There are significant trees on the lot already so there would have to be significant buffering but all they are looking to do is put cars there so it would have to be significantly buffered.

Ms. Coffey asked for a few minutes with her client.

Mr. Schwartz stated he would be adding to the conditions that the applicant agrees that it will add 5 parking spaces on the site subject to the approval of the Borough Engineer and would agree to use the lot of 22-24 Rockview Avenue for parking and will apply for approval of that lot for parking by separate application.

Mr. Giordano asked what happens if Historic Preservation knocks that down. Mr. Schwartz stated the Historic Preservation can only give advice. Their role with a land use application is to consult and give advice to whichever Board is hearing the application. That is what the statute and ordinance say.

Ms. Corzo asked what if the Borough Engineer says no and don't we need to know these things in order to consider it as a condition. Mr. Schwartz stated it's a condition so if the application doesn't get approval of it, the application is back in front of the Board for relief from that condition.

Ms. Coffey stated what the applicant had proposed is that the condition would be that it make application in order to be permitted to add these additional spots. That would be the requirement of the applicant. They would coordinate with the Borough Engineer to maximize the number of spaces and they would promptly and diligently pursue all the requisite approvals to permit the spaces to be constructed on the site. It's the best they can do in terms of additional parking.

Mr. Schwartz stated if they applied and the Board denies it or there's so many conditions that you can only fit 2 cars there, then they have approval for whatever the Board decides. Ms. Coffey stated that is correct. In the event that the application was denied, they would have the

additional 5 spaces on this subject property and knowing that the applicant had done everything it can to try to provide additional spaces. They provided all the testimony about the lack of vehicles that are coming onto the property and the ample parking that already exists. That is the proposal the applicant's making.

Mr. Schwartz stated the problem is that they know so little about this lot since it's being brought up so late and he doesn't know the zoning for the lot or the width of the lot so he doesn't know how many spaces can fit on there, he doesn't know if it's a permitted use in the zone, and he doesn't know the buffering requirements. They know so little about it. The offer has a lot less meaning because we have so little information about it. He thinks the Board is better off either postponing this decision so they can gain more information about that lot and get the opinion of our Borough Engineer or going ahead with the offer of the 5 spaces. He doesn't think that offering to apply substantially changes. If the Board feels it's a significant difference, that's fine but he doesn't think it really improves our position much based on what we know tonight.

Ms. Coffey stated that's the best they can do. Mr. Schwartz asked if they would want to put off the application until they have more information about the lot. Ms. Coffey stated they don't. Given the totality of the other 50 conditions that already exist in terms of the provisions related to limiting the events on site, making sure they only have 100 students, that the students aren't driving, and the requirement to recruit off-duty officers when they have an event, they think it makes sense to proceed with the vote at this point.

Mr. Schwartz stated to Chairman Fagan the applicant is offering to add that as a condition along with the 5 parking spaces. That would be what they would be voting on tonight for reconsideration and Site Plan and variance approval.

Mr. Schwartz stated technically they need to ask to person that made the motion and seconded the motion whether they would agree to that amendment to include the additional 5 spaces on site and that the applicant will agree to apply for approval to use 22-24 Rockview Avenue for parking.

David Branan stated he made the motion and he agrees to accept the amendments. Frank Kreder seconded it.

Roll Call Vote

Dave Hollod - yes

Aimee Corzo - no

Chairman Tom Fagan - yes

David Branan - yes

Frank Kreder - yes

Andre Mitchell - yes

Michael Giordano - no

Cheryl McKeever - no

Mayor Lawrence La Ronde - no

Yes – 5

No – 4

Abstained – 0

Mr. Schwartz will prepare a Resolution and they will have to meet to memorialize the Resolution. He will incorporate the new conditions. He will look at the conditions and the language Ms. Corzo pointed out to him to see if he can come up with better language that doesn't change the meaning but maybe sharpens up the meaning.

Chairman Fagan wasn't sure if they could set a meeting date tonight.

Mr. Schwartz stated they will notice another meeting. It won't be a public hearing, it will just be to memorialize the Resolution.

Ms. Coffey stated she believes if they do the Resolution at a regular Board meeting they don't need to re-notice for it. Mr. Schwartz stated they don't have anything pending. They can put it on a regular meeting date but Chairman Fagan isn't in a position to set which meeting that will be. He stated they should get it done within the next 30 days.

Ms. Coffey thanked the Board.

David Branan made a motion to adjourn. Seconded by Frank Kreder.

Diane Melendez yelled, "you all suck dick!"

Francine Gargano stated "you're all a disgrace!"

All in favor of adjourning.

None opposed.

No abstentions.

Diane Melendez stated "make sure you give me my \$300. You owe me \$300!"

Chairman Fagan asked if there was any way to mute that person.

Jen Bartholomew stated she has been muting them but they keep unmuting themselves.

Diane Melendez stated "the town owes me!"

Chairman Fagan stated this is ridiculous and it's an embarrassment.

Mayor La Ronde thinks there is a way to set up the meeting so that the only way you can be unmuted is by the request of the host.

Jen Bartholomew will look into how to set that up.

Chairman Fagan thanked Ms. Coffey and apologized for the rudeness of the residents.