

**Village of Airmont
Zoning Board of Appeals
Village Hall
Thursday, August 8, 2019**

MEMBERS PRESENT: MARTY KIVELL, CHAIRMAN
ARTHUR KATZ
CHARLES PICARELLI
LAURIE DIFRANCESCO
SCOTT MEIER
ROBIN LUCHINS, AD HOC

MEMBERS ABSENT: MATT RYAN, AD HOC

PRESENT: DAN KRAUSHAAR, DEPUTY VILLAGE ATTORNEY
LOUIS ZUMMO, BUILDING INSPECTOR
SUZANNE CARLEY, P&Z SECRETARY

The meeting was called to order at 8:02 pm by Chairman Kivell which was followed by the pledge of allegiance and roll call. Arthur Katz made a motion to approve the ZBA minutes from June 24, 2019 and Scott Meier seconded it. Laurie DiFrancesco pointed that there was a typo and agreed to the minutes with it being changed. All in favor with the typo change, motion carries.

Chairman Kivell then read into the record a summary of the public hearing notice for the application of Congregation Tifereth Israel for renewal of variances from Article IV Chapter 210 Section 210-28 of the Local Zoning Code & Bulk Table regulations to expand the parking of a Residential House of Worship for the lot area variances as follows: Lot Area, Front Yard, Side Setback, Total Side Setback, Side Yard, Rear Set Back, Developmental Coverage, Floor Area Ratio, and parking in the front yard. The property is located on the west side of Monsey Heights Road, 100 +/- feet from the intersection of Route 59 and is designated at Section 56.14, Block 2, and Lot 3 on the Town of Ramapo Tax Map. The street address is 4 Monsey Heights Road, Airmont, New York 10952. The property is located in an R-15 zoning district.

The variances were previously approved back in January 2016 and they are before the ZBA for reinstatement as the variances are only good for one year from approval. Chairman Kivell read into the record the GML from RC Planning dated 8/5/19. Dan Kraushaar wanted to ensure that everyone understood #1 in terms of what the County is stating. The issue with the County is that it characterizes it as 2 distinct uses when it is not, it is still the same use. The new code cleared up the confusion that existed in the old code of sf and define residential place of assembly, a freestanding place of assembly or a neighborhood place of assembly. This application is still the same use.

Furthermore, the use that was approved for a Residential Place of Worship is still in effect by virtue of the change in the code and believes it is a non-conforming use and cannot expand beyond what is before us without applying for a revised site plan or that of which is before the

Board. #8 on the GML needs to be corrected by the applicants engineer along with GML note #10 regarding map note #9 & 10 on the plans being updated.

Also read into the record were comment letters from:

RC Sewer dated 7/31/19

NY State Thruway dated email 8/6/19

Email dated 8/8/19 from Airmont's Fire Inspector reiterating his original email from 10/31/16

RC Environmental dated 8/6/19

Chairman Kivell swore in Rabbi Goldstein. Chairman Kivell asked the applicant that if the variances are re-granted would they be ready to start today? The applicant replied that they want to do it before the winter comes and would do so.

Chairman Kivell asked if an interpretation was considered because they already approved the variances for a residential house of worship under the old code. Lou Zummo noted that nothing else can be done without a revised site plan if they use the new code. There are no additions or alterations that would change anything to affect the approved site plan. For the record they will need to apply for construction for the parking lot. They will need to supply a building permit with new engineer reports that will need to be reviewed by the Village Engineer and then do the construction. Then any items need to be closed out by the Village Engineer and the Building Inspector once inspections are done so that a CO can be issued.

Laurie Di Francesco noted that when the Rabbi was before the ZBA in 2005 originally for a residential place of worship certain things were noted for the PB such as it being utilized for Friday, Saturday and holidays only. Rabbi Goldstein advised that they have not defined when the services would be held but could say that they parking was based on the number of cars and they did make a site plan utilizing the noise based on the number of occupants. Rabbi Goldstein also advised that back in 2005 there were few neighbors at that time and there were less congregants now thru time it has grown and a need for additional parking and a safety issue.

Laurie DiFrancesco inquired as to how many family members are typically worshiping there. Rabbi Goldstein advised that there is a large crowd for shabbos and about 12 cars, not everyone comes at once but between 8-12 cars and some walk.

Looking at the resolution from 2005 it was noted that they applied for variances for 6 parking spaces a shul and a mikvah. Now they are applying for variances for a larger parking area. There was no construction other than for parking of which these variances are needed.

Dan Kraushaar clarified that the size of the congregation since 2005 increased and that was the reason why the applicant needs more parking spaces and at the same time in January 2016 when the previous variances were granted none of the space changed. The application is for a number of variances and a large amount and not minor, and the GML tells us to look at the over development as a limitation on crediting a precedence. No further extensions on the property or no further development on the land is required unless they go for a Special Permit. If they apply under the new guideline they will have to go to PB and it doesn't remove the variance, just the request for non-conforming in 1/2016 and letting it expire. Now they want to do the work and work with the NY State Thruway Authority will continue as the a

residential house of worship under the former code.

Scott Meier brought up the letter from the Fire Inspector dated 8/7/19 and noted that he agrees the fire zones need to be clearly labeled on the site plan, the handicap parking space and row facing the building is to have bollards, his # 4 that it needs to demonstrate a 24 ft. wide area for the Fire Trucks, and that no parking signs on Monsey Heights Road be shown. He also had a concern with the expansion and the do not parking zones be shown. He also brought up the items in the Fire Inspectors letter dated 10/31/16 which included photos and agreed that they need to be complied with. Dan Kraushaar asked the Rabbi if he had any objections with any of this and the Rabbi noted he did not and is in agreement with everything.

Chairman Kivell asked the Building Inspector if there were any violations issued to date and Lou responded that there were no violations but inspections needed to be done as previously discussed to provide a CO as the last CO was temporary and expired 3/2016.

Laurie DiFrancesco made a motion to open the public hearing at 8:40pm Marty Kivell seconded it. All in favor, motion carried. For the record there were no comments nor did anyone appear from the public. Arthur Katz made a motion to close the public hearing and Scott Meier seconded it. All in favor motion carried.

Arthur Katz made a motion for the application of Congregation of Tifereth of Israel that it be a Type 2 Action under SEQRA not requiring any other action. Scott Meier seconded it. All in favor, motion carried.

Laurie Di Francesco made a motion to approve re-issuing on the following:

#1 of the GML – to address it as a legal nonconforming use

-#2 of the GML – permitting development that does not comply with the applicable bulk standards can set an undesirable land use precedent and result in the over utilization of individual sites. It was noted that this was already issued in the past and the Village has considered regional impacts & notes of the subject application. The current application is not for extension, it is for the use of the site and any additions to the site strictly request to provide additional parking for the site as it currently exists. Arthur Katz seconded it, all in favor motion carries.

Dan Kraushaar pointed out that the wording of must or shall in the GML review is crucial and that the ZBA needs to determine if applicant needs it or if they grant it =, it may need and we may want to do separate resolutions stating the overriding comment and why/what the basis for the determination was.

-#3 of the GML – updated review must be completed by the NY State Thruway Authority and all required permits obtained from them. If it's included as a condition of approval no over-ride is needed.

-#4 Applicant proposing to use the NY State Thruway Authority's right of way. It is not met, cannot meet based on what the applicant has stated in the past. Can't get the lease from the

Thruway until such time the applicant gets approvals from the Board. It's a catch 22. The Village has to approve first and the County says obtain prior to any approvals. It is the exact same issue as last time in 2016. Laurie asked the Rabbi if he has had any contact with the Thruway since he had the approval over the past several years. He noted that he has been in contact with them but they will not provide anything without the approval from the Village. Laurie suggested he get a contract vendee in order to do the work. The building permit is subject to an occupancy permit or lease from the Thruway. The Building Inspector could issue a conditional building permit with no construction until and unless the applicant provides sufficient proof of either an easement, a contract of sale with an allowance for applicant to construct prior to a closing, a lease agreement or a license for the area owned by the Thruway Authority which he is proposing to disturb. This is the most important condition of approval in granting the variances. The email from Lizzy Philip NY Thruway dated 8-6-19 to the Planning and Zoning Clerk was read into the record by Dan Kraushaar which noted that they do not have an application for an occupancy permit, a lease agreement or have granted an easement for use of this Thruway Authority property. Laurie DiFrancesco summarized that that no work is to be done until there is a contract with the Thruway if the variances if granted and base this as a condition.

- #5 of the GML – have the condition
- #6 of GML must condition -submit and review the permits as a condition. -That the RC Sewer letter dated 7/31/19 was a condition of submittal and approval.
- #7 of GML – Shall require comments from the DOT; plans sent over 30 days ago no response. Clerk has made several attempts with no response. Question is what is their jurisdiction yet they have not responded.
- # 8 of GML could condition the approval based on the compliance conditions as outlined in the Fire Inspectors letter of 8/8/19 in response to his previous memo from 10/31/16
- #9 Condition for TOR comments sent to TOR with no comments and it's over the 30 days timeframe.
- #10 Condition to correct Map notes #9 & #10 to Suez on the plan
- #11 Pervious pavers if done properly. Pervious pavers count on the code originally permitted as a benefit for drainage. Building Inspector recommends that it be done however #11 is to be addressed by the Village Engineer. Any options are left to the Engineer. Clerk will coordinate with the Engineer.

Dan Kraushaar asked that the applicant to confirm his understanding of the process and what needs to occur before he is granted this lease from the NY State in order for him to build. Once he has a building permit and the variances are granted he will have a contingent receipt of the lease/easement liens and upon receipt of that from NY Thruway then the work is permitted to begin as the construction on the property is owned by someone else.

Laurie DiFrancesco asked if there was any correspondence indicating why it wasn't previously approved. Lou Zummo explained that the building permit is subject to an occupancy permit and an application which needs to be put in for, but it will take the lease for a contract vendee for legal status (contract, lease, license or easement). Essentially the board is granting variances for properties he does not own. It's a catch 22.

Laurie DiFrancesco made a motion to override GML #4 dated 8/6/19 from RC Planning based on our knowledge that the process to get the approval authority for the NY State Thruway is

based on approval for granting the variances. Any approvals the ZBA makes is based on this and will be one of the conditions of for the variance approval including the building permit on the building as well as the site work & building work which are subject to and will require approval of variances and is subject to the permission of occupancy first being obtained by the Thruway Authority. Noted that the approval for variances is required and is being overridden in order for the applicant to get this completed. The applicant is to send a copy of the occupancy permit to RC Planning once received as per the GML. Charlie Picarelli seconded it, All in favor. Motion unanimous and carries.

Discussion on #2 GML - by referencing that the Board has considered impacts and variances only related to the parking lot not to use or change the for site and is continuous with the matter previously approved. Approving the resolution approved in 2016 with modifications as the Board discussed with the engineer's narrative. The building inspector noted that one variance previously granted is not related to the parking lot is the FAR but was previously granted in 2005. He also noted that the bulk tables are the same from 2016 and the current submission.

Laurie DiFrancesco made a motion to approve the re-issuance of variances originally granted and re-issued in 2016 with the following modifications as the Board has discussed as exceptions:

- Lot Area 15,000sf required 11,507 sf. is in existence; applicant requires 3943 sf applicant is requesting to lease and area from the NY Thruway and the proposing to use this as an adjoining area.
 - Front & Rear Yard – 35 sf without any lease area there is nothing with lease 1.5 and full variances
 - Side Setback 15 ft required and 11.1 ft provided variance of 3.9 ft
 - Total Side Setback 40 ft required and 30 ft provided 10 ft variance (correction of .02 ft proposed from 2016 resolution)
 - Side yard 5 ft required and 2.5 ft provided 2.5 ft variance (correction from previous resolution error)
 - Rear Setback 35 ft. required 21.5 ft. provided; 13.5 ft variances
 - Developmental coverage .50 required and .52 provided without the lease area a variance of .02 with lease area which is contingent upon receipt of these variances.
 - One variance not related to the parking lot. The FAR for the existing building was approved back in 2005 was listed in 2015 but already addressed in 2005 so it is negated. The FAR of .41 was granted 12/8/05 and is removed from today's request.
- Parking in front yard required.

Drawing needs to be corrected to reflect the changes in the updated narrative based on the old code on what was previously approved from the 2016 variance to avoid a new site plan approval with Special Permit as well as incorporate the comments from the Fire Inspector.

All variances subject to the following: to include findings of fact and conclusions of law previously adopted in the 1/2016 resolution with certain amendments such as the 2.7 ft side yard to be corrected when applied is 2.5 inches made as part of the existing variance records. Can use the same comments in prior resolution. Arthur Katz seconded the motion with the requirement that the applicant correct the drawings to reflect the changes discussed and

comments from the fire inspector, and the side setback correction of 15 ft.

Roll call vote:

DiFrancesco – variances granted today although in appearance seem major, are basically clean up for a house that is on a non-conforming lot originally permitted in 2005. Variances issued today do not increase density or size of building it permits promotes safety & security for all. These variances are based on the act that the applicant obtain a lease, sale, contract vendee from the Thruway to assist the parcel before any construction or work on the site begins. This is all contingent on the basis that the applicant receive approvals from the Thruway. Therefore I vote yes. As required the differences in the GML approvals required the same explanation and we ask that the applicant move forward and ensure that the variance requests are completed this time before the variances expire.

Meier – agree for the same reasons member DiFrancesco stated.

Katz – Agree and for another reason that there is fear of adults and children that cross Route 59 so there are safety concerns. This will add safety for those attending worship. I vote yes.

Picarelli – Yes agree with Member DiFrancesco’s comments and changes as was previously approved in 2016.

Chairman Kivell – Yes as the waivers were previously approved in 2016 and for the reasons stated by members DiFrancesco and Katz I agree with all parties.

Motion carries unanimously. Variances approved.

Chairman Kivell made a motion to adjourn the meeting at 9:45 pm, Scott Meier seconded it. All in favor. Meeting adjourned and meeting ended.