

Hal Ritvo

From: Edward J. Trawinski [EJT@spsk.com]
Sent: Tuesday, August 31, 2010 9:37 PM
To: 'ritvolaw@gmail.com'
Cc: Robert.Erich@duffandphelps.com; Allan.Cohen@timewarner.com
Subject: ETZ Chaim Resolution with comments.doc
Attachments: ETZ Chaim Resolution with comments.doc

Harold,

As you may recall I am in Boston until Thursday later in the pm, returning to NJ around 9 pm or so. I am forwarding to you herewith comments, corrections and concerns after reviewing the draft of the Resolution that you were kind enough to send me for your consideration.

Robert Erlich may be present Thursday evening, but by copy of this email I am reminding him of my understanding that the matter is closed to the public and that the Board's memorialization action does not allow for public comment. Would you be kind enough to confirm my recollection of what you previously told me as if I am wrong depending on the changes you are inclined to make to the Resolution my client may ask to speak.

I have also been asked to convey to you that the section of the resolution dealing with Robert Erlich's testimony reads as if our client did not notify Teaneck, which, as you may recall was not the case and the records confirm that our client did, in fact, notify Teaneck.

Thank you.

Ed T

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9/22/2010

BOARD OF ADJUSTMENT

TOWNSHIP OF TEANECK

IN THE MATTER OF THE APPLICATION OF
554 QUEEN ANNE ROAD LLC
PERTAINING TO LOT 8, BLOCK 2409
554 CEDAR LANE RS ZONE

APPEAL NO.
ZB-2009-21

WHEREAS, application has been made by 554 QUEEN ANNE ROAD LLC for relief from the Teaneck Development Regulations to permit a house of worship and in the alternative an appeal of a cease and desist order of the Construction Code Official at premises located at 554 Queen Anne Road, also known as Lot 8 in Block 2409 as shown on the Tax Assessment Map of the Township of Teaneck; and

WHEREAS, hearings were held after adequate notice to the public on December 16, 2009, January 20, 2010, March 18, 2010 and June 16, 2010; and

WHEREAS, an architectural plan entitled "Feltman Residence" dated March 30, 2009, revised through October 20, 2009, prepared by Carl Mecky Architecture & Planning consisting of five (5) sheets was submitted for review;

Comment [RM1]: Incorrect Spelling "Feldman"

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Teaneck, County of Bergen and State of New Jersey, that it makes the following findings of fact:

1. Notice and publication pursuant to the Municipal Land Use Act have been appropriately made.
2. Opportunity was provided to the applicant, as well as the public, to be heard.
3. The applicant presented exhibits:
 - A-1 Letter of June 20, 2008 from Glucksman to Steven Gluck
 - A-2 Letter from Steven Gluck to Rabbi Feltman
 - A-3 CVS Letter

Comment [RM2]: Feldman

- A-4 Notarized Parking Grants
- A-5 Shaded site plan
- A-6 Kauker Report
- A-7 Cres Cor warming oven specifications
- A-8 Site plan with 21 spaces for parking
- A-9 Queen Anne Road view of subject property
- A-10 Photo of subject property from Van Buren side
- A-11 Map of area with members' houses shown

4. The property is situate in the RS Zone.

5. The application requires the following relief :

- **SITE PLAN APPROVAL**
- **USE VARIANCE- NONCOMPLIANCE CONDITIONAL USE CRITERIA**
- **LOT AREA: 14,300 SQ FT WHERE 21780 SQ FT ARE REQUIRED**
- **FRONT YARD SETBACK: 25.26 FT. WHERE 33 FT. ARE REQUIRED**
- **OFF STREET PARKING: 6 PROPOSED WHERE 21 ARE REQUIRED**
- **EXTERIOR DESIGN: ADDITION DOES NOT MATCH HOUSE**
- **PARKING IN THE SIDE YARD: NOT PERMITTED**

6. Robert Erlich, President of 554 Queen Anne Road, Inc., testified that Rabbi Feltman lives at 554 Queen Anne Road. He further testified that the family room was an addition to be used as a typical family room. A letter provided to Steven Gluck from Joel Glucksman, Esq. regarding the family room was marked as Exhibit A-1. There are approximately 25 member families and approximately 40 people attend the services. As to parking, this is an orthodox service and driving does not occur on the Sabbath. There may be some events where people drive. The Site Plan Advisory Committee recommended that they look for alternative parking. There are currently 6 spaces but 21 are needed. An additional 50 spaces are available. Neighbors permit parking in their private driveways totaling 15 parking spaces. Within a one block radius there are 8

Comment [RM3]: Feldman

additional parking spaces. Overflow parking is permitted on the CVS site. There is a municipal parking lot which would be available for use at the time of services. The parking lot is on the corner of DeGraw Avenue and Teaneck Road. During the week there are no activities except for an occasional bris. There are no morning services on a regular basis. Periodically, there will be classes with the Rabbi and private prayer services. There are no daily services. The applicant would stipulate to the limitation of uses. There will be no renting of the facility to outside congregations. There will be an 80 person maximum except for high holidays when there could be more. There will be no cooking on premises. A contact person would be provided. Privacy walls of shrubbery will be maintained to deflect noise on the easterly and northerly sides. Mr. Erlich was recalled and testified as to the number of homes and persons shown on A-11 and he indicated that they are people who come occasionally but may be members of other houses of worship.

Comment [RM4]: Mr. Erlich stated that he believed that our highest attendance to date was 80 people. This statement was not an agreement to a maximum occupancy of 80.

7. The applicant indicated that it did not intend to utilize the adjacent premises despite statements from interested persons that activities were conducted not only at the premises but at the premises adjacent to the subject property.

8. Applicant seeks a variance for 15 parking spaces. There are 6 spaces proposed where 21 are required, 19 for the use as a house of worship and 2 for the residence. A-5 is a shaded site plan showing the use as a house of worship. The driveway has been enlarged by 1 foot to allow better ingress and egress for cars and for access by a van for the handicapped and to allow for a parking berth for that van. There is a planting berm to the north and a path from the door to the street. A 275 sq ft kitchenette was added and a 1200 sq ft family room was added. Head in stacked parking is proposed. All bulk requirements are met. There will be no stove. There will be a counter freezer/refrigerator smaller than the size of a dorm refrigerator, a sink and a warming box half the size of a refrigerator, which takes cold food and makes it warm.

Comment [RMS]: No statements as to the size of the refrigerator were made. Any reference to the size of a dorm fridge was in relation to the warming oven.

9. Applicant is seeking a house of worship use for the family room, the vestibule, rest room and former garage as a kitchenette.

10. Christopher Rodriguez, Architect, testified as to his experience. He was recalled

to discuss the warming oven as shown on A-7. The upper oven Model H-339-128-3 is the one proposed. A-8 is a diagram showing parking design with 21 spaces. The purpose of the design is to show that 21 spaces could be placed on the lot. This design, however, would create a commercial look. This diagram would result in coverage issues and a number of variances including side yard and setback variances. In Mr. Rodriguez's opinion the plan would be a negative. As to the neighborhood, the style is eclectic. Photos of the site, in Mr. Rodriguez's opinion, show that the house is in keeping with the neighborhood. There are Tudor and Colonial style houses with no fixed or common style. A-11 is a map showing where members of the congregation reside. There are 25 members. The space can accommodate 160 people depending upon how the seating is set up. The building code will allow 175 people. The meeting room is 1230 sq ft. If the Board wanted it, the applicant would move the parking spaces to the North to create a drive aisle. There would then be five spaces provided.

11. Michael Kauker, Planner, testified. This is an inherently beneficial use. It is a conditional use in the residential zone. Most lots in the Township are 7500 sq ft. The half acre lot size is larger than most of the single-family lots in the zone. Its size of 14300 sq ft. is between the minimum lot size and the required size. In Coventry Square v. Westwood the emphasis on the positive outweighs the negative. There is no substantial detriment to the public good. There is no substantial impact and the intent and purpose of the zoning ordinance have been met. The coverage meets bulk requirements, except for size. As this is an orthodox house of worship, there are unique aspects to the parking issue as people must walk to services thereby creating a lesser impact on parking requirements. The residence limits the size of the congregation. As there is less space to utilize the impact on the zone plan and neighborhood is limited. This use is dissimilar to other uses. Damages are mitigated by limited use of the premises.

12. Ellen Campeas spoke to the history of the congregation and her experiences with prior members of the congregation. She spoke to her belief about the ethics involved in the congregation in how the applicant dealt with the Township and the Construction Department.

13. William Delaney spoke to the issue of deception and the actions of the congregation and the applicant's action as being deceptive.

14. Janet Abbott spoke to the history of the actions of the congregation and the fairness of the application. She questioned the truthfulness of the applicant as to the parking plan. She spoke to the untruthfulness of the actions and the disingenuous nature of the actions. This is not about religious freedom. The basis of the application is discomfort.

15. Miriam Campeas spoke to failure to follow the rules. She spoke to deception and threats. A variance should not be granted to people who think they are above the law. She believes the Township should not grant the variance because they have previously not followed the law.

16. Rif Campeas indicated that the essence is that the process is obfuscation deception. He read purported emails but on examination they are not emails but summaries of emails to others. Mr. Campeas spoke to the lack of veracity from the applicant in terms of parking issues and the length of collations after the service, which is really 12:30 or 1 PM when there was indication of the time as a few minutes after 11:30 AM. The congregation indicated that the property was cleaned up by them but the property was cleaned up by others. There was testimony that the Rabbi did not deceive anyone but there is a cease and desist letter C-11/8/08 and a letter C-2 11/19/2008 about which the neighbors were not notified and therefore had no right to appeal. The letter was not copied to Campeas, which, in his opinion, indicates deception. He believes there is a presumption of the inherently beneficial use but because of the deception there is question as to the veracity of the testimony that on Saturday there are three at most four cars there.

17. Howard Rose spoke to six of the seven variances as being inconsequential. He suggests that 14 parking spaces should be provided. He suggests conditions and limitations. He suggests that compromise should come from both sides.

18. Lily Steinberg indicated that the history of the lot is that the property was not maintained in the past. The property is now maintained well. Having children present is wonderful.

There are many cars park in the neighborhood during the week. There are no cars there Friday to Saturday. There are many other cars during the week. Rabbi Feltman has reached out to members of the community.

19 Susan Perry spoke as a concerned citizen of this community. She is concerned about a precedent. She is concerned about property values and blockbusting. She believes this is divisive. This application in her opinion is wrong.

20. Harold Rothstein is concerned with the manner in which this occurred.

21. By stipulation of the applicant the appeal of the Construction Code Official's actions shall be dismissed as moot in the event of the approval of the application for variances. While the Board does not believe this stipulation is germane to the granting of the variances, nor did it consider this stipulation in making its determination, such stipulation is reflected here as what occurred on the record.

22. The Board is aware of the applicable law with respect to houses of worship. The Board must apply both the test as enunciated by the Supreme Court of the State of New Jersey in Sica v. Brd. of Adj. of the Township of Wall and also must be cognizant of the federal statute RLUPA. First, as to Sica, the Board must identify the inherently beneficial use and evaluate the type of inherently beneficial use. Second, the Board must indentify any negatives. Third, the Board must look to conditions it may impose to ameliorate some of the negative effects. Finally, it must balance the significance of the inherently beneficial use against the negatives as ameliorated by conditions. Houses of worship stand very high on the list of inherently beneficial uses. They are protected by the U.S. Constitution and are an integral part of our society.

23. In applying Sica the Board finds that the proposed use is for an Orthodox Jewish House of Worship where the members are limited to walking to services and events during the majority of the year. There are very few events which could result in driving. By its nature, an Orthodox Jewish House of Worship attracts persons who live in the immediate vicinity. There are very few people who drive.

24. There is limited parking on this site and the other variances required are not terribly substantial considering the neighborhood and the site itself. The bulk variances required are lot area deficiency, which is common to houses of worship in the Township, and front yard setback of 25 ft. where 33 ft. is required. Thus, the bulk variances are minimal. The issue is really one of extent of use and impact on the neighborhood and zoning plan.

25. As to identifying conditions that are potentially available, the applicant has agreed to a great many conditions. The Board can impose additional ones as it has in many applications such as this one in the past to limit the impact on the neighborhood zoning plan and scheme and to foster cooperation with neighbors.

26. On balance, therefore, with appropriate conditions the Board finds that it can grant the variances required, the result being that on balance the negative criteria are satisfied with the positive criteria having been satisfied as a result of the type of use as a house of worship.

27. When one looks at the federal statute the Board is placed in a position of having to analyze the regulations applicable to houses of worship and to determine if they are the least restrictive and inhibitive of the right to worship. It is determined that people who wish to pray together should be permitted a house of worship of their choice within walking distance of their homes, especially in the context of Orthodox Jewish practices. The application of regulations is accomplished by the imposition of conditions that limit inhibition on the congregation's practices while still serving the substantial needs of zoning in this location.

28. This is especially so because many of the conditions have been conceded by the applicant and in fact agreed to by stipulation.

29. Considering the dictates of Sica and RLUPA, the Board can approve this application subject to substantial conditions as set forth below.

FURTHER RESOLVED by the Board of Adjustment of the Township of Teaneck, County of Bergen and State of New Jersey, that the applicant's request for variances and site plan approval be and is hereby granted subject to the following conditions:

- Activities of the Congregation will be limited to those described by the President as listed below with no expansion of these activities, thus limiting the impact upon the neighborhood and the neighbors' privacy.
- Services will be limited to the Jewish Sabbath and on yamin tovim/holidays.
 - This will include:
 - An afternoon/evening service the day before and on the Sabbath or holiday
 - Morning service and an afternoon/evening service the day of the Sabbath/holiday
 - A Kiddish or collation after services which shall last no more than one (1) hour after the conclusion of services.
 - Oneg Shabbat and light meal Saturday evening
 - Classes and Study Groups shall be limited to one per month
 - Additional services holiday additional programs once per week
 - No regular weekday prayer morning nor evening, no weekday or evening activities
 - Life cycle events/ services such as weddings bar mitvahs and funeral shall be limited to congregation members
- The kitchenette will contain refrigerators and warming (holding) ovens only There will be no cooking equipment nor cooking in the kitchen
- No catering shall be permitted only warming of food
- One half garage shall be used for the warming kitchen and the other half for storage
- There will be no outdoor celebratory activities
- Strollers and carriages are to be parked in the southwest corner of the property as shown on a certain plan dated 3/20/09 marked with an "X" at the time of the hearing. The strollers shall be placed and stored so as not to inhibit access to the building.
- No tents or other structures shall be erected on the premises except for a succah during the

Comment [RM6]: We have strong concerns about the 1 hour limit as we are afraid that each week, at whatever time the neighbors deem to be one hour they will call the police. It is unduly restrictive and has great potential to bring about conflict with the neighbors.

Comment [RM7]: Caterers will not be permitted to cook food but may only warm food. Due to observance of kosher laws, we are unable to use food in the building that has been prepared in member's homes. We may only serve food that is supplied by a caterer with appropriate rabbinic supervision.

Comment [RM8]: On holidays such as succot and Simchat Torah, outdoor celebrations are customary. They are common on the Sabbath in the spring and summer months as well. We find this condition to be too restrictive and we object to it.

festival of the tabernacle

- There will be no rentals for any event to non-members. There will be no rental to nonmembers for any reason
- There will be no community events held on the property for any reason.
- Parking of cars shall only be in designated spaces. Cars shall be parked so that they may enter and leave the premises and not be blocked in by other cars.
- The property of 554 Queen Anne Road may not be combined to any other adjacent property without further application. Adjacent properties and other properties shall not be utilized for events or overflow activities
- There will be a solid 6 ft. high fence with no openings between 554 Queen Anne Road and all adjacent properties placed in the rear and side yards and conforming to zoning regulations.
- Landscaping of the property will be maintained as a single family residence. It will express the character of the neighborhood.
- There shall be no signs erected or displayed on the property or the house. without returning to this Board for approval
- As to the property to the West, holly trees are to be planted under existing trees and topping off the holly tree;
- All exterior lights shall remain of a type customarily used in residential dwellings and will be shielded so to limit visibility of the light source to adjacent homes and to prohibit sky glow.
- Any additional walkway lighting will be turned off one-half (1/2) hour post termination of activities
- There shall be a representative of the Congregation, designated as the community liaison. Designation of such person shall be made annually no later than December 31st of each year. If the representative is changed for any reason, the name of the replacement, address,

Comment [RM9]: We object to this restriction and should be allowed to apply for a tent permit as any residence is entitled to do.

Comment [RM10]: This is ambiguous and unclear. Does this mean we may not invite other congregation to join us for lectures or events at our synagogue.

Comment [RM11]: This description conflicts with the drawing of stacked parking that was submitted to the town which would block cars from freely entering or leaving the premises. Please clarify the manner in which our parking should be planned.

Comment [RM12]: We find this restrictive as we would like to put the name of the congregation on the property as is customary in other congregations in the township. Any signs would be in compliance with town ordinances.

telephone, cell phone and other contact numbers shall be provided to the Construction Code Official and to all neighbors within a 200' radius of property within 30 days. The representative shall respond to inquiries no later than 72 hours after contact.

- The relief is limited to this congregation and its operation as described during the hearings. In the event of a change in the congregation, its practices, or transfer of ownership of the property, the successor shall return to the Board for review of the use at that time.
- Notices shall be sent out at least semi-annually to the Congregation that it should respect neighbors' privacy and not park in and about other persons' driveways
- Repair of sidewalks and curbs, if necessary so to comply with Township requirements.
- Revision of the plans and approval by the Zoning official and engineer so to be in conformity with this resolution
- Compliance with all the required codes of the Township and particularly the fire sub-code and fire official's directions, as well as compliance with all ordinances and regulations of the Township of Teaneck and any and all other requirements of governmental authorities having jurisdiction over same including the engineer's recommendations above set forth and continuing review by the Construction Code Official.
- Continuing review by the Zoning Official and Construction Office to assure compliance with the terms of this Resolution.

BE IT FURTHER RESOLVED that the appeal of the Construction Code Official's actions be and is hereby dismissed with prejudice as stipulated by the applicant.

BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded to the applicants and to the Building Department of the Borough.

MOTION SECOND IN FAVOR OPPOSED ABSTAIN

BARTA		
BRAHVER-KEELY		X
COOPER		
HODGES		X
LEVINE		
MEYER		
MCCLOUD		
MULLIGAN	X	X
ROSEN		X
SENER		
SHEIKH	X	X

IT IS HEREBY CERTIFIED that this is a true and correct copy of a Resolution adopted by the Board of Adjustment of the Township of Teaneck upon a roll call vote at its regular meeting held on September 2, 2010.

ANNE SENTER

CHAIR