

SPECIAL MEETING: 7:00 P.M. Township of Ocean High School
Gymnasium and Cafeteria
550 West Park Avenue
Oakhurst

MEMBERS PRESENT: Maureen Bonney, Alt I
Jane Grabelle
Eric Menell
John Napolitani, Alt II
Peter Siano, Alt III
Richard Van Wagner
James Worrell
Warren Goode, Chair

MEMBERS ABSENT: John Fuller, Alt IV
Russell Malta
Henry Schepiga, V Chair

OTHERS PRESENT Mark A. Steinberg, Esq., Zoning Board Attorney
James Higgins, P.P. Board Planner
William Fitzgerald, P.E. Board Engineer
Marianne Wilensky, P.P., Planning Administrator
Rachel Montemarano, Board Secretary
Recording Secretary

Chairman Goode announced that the notice requirements for the Open Public Meetings Act have been satisfied, a copy of the notice was sent to the Asbury Park Press and the Coaster, posted in the Township Hall, and filed in the Office of the Township Clerk on November 3, 2015.

CONTINUED CASE

**Yeshiva Gedola Na'os
Yaakov, Inc.**
Block 216 Lot 19
1515 Logan Road
Wanamassa
Zone R-4

This is an application for a "d" variance for an advanced Talmudic academy.

Attorney for the applicant: Jennifer S. Krimko, Esquire

The Board's information packet containing letters from the applicant's attorneys, objector's attorney and a resident was marked B-8. The attorney for the applicant, Jennifer S. Krimko, Esquire presented Donna Jennings, Esquire from the Wilentz law firm who has been brought on as co-counsel for the case. Ms. Jennings asked if the Board will be able to conclude the case by the end of the year. Board Attorney Mark Steinberg said that Planning Administrator Marianne Wilensky explored the possibility of additional special meetings but there are no available dates through December 31st. Ms. Jennings asked about dates beyond December 31st. Mr. Steinberg said that it is unknown as of today. He suggested that the case be carried to the next regular meeting of December 10, 2015 to see if a date could be set before then. He also suggested carrying the case to the regular meeting of January 21, 2016 in which the applicant could re-notice if a date is set before then. Ms. Jennings said that the applicant will take it under consideration. She asked if the Board could limit the objectors' questions to five minutes each. Mr. Steinberg said that they will attempt to limit cross-examination to the facts presented and not repetitive, but five minutes is not fair.

Mr. Krimko presented Andrew Janiw, PP to continue his planning testimony. Mr. Janiew gave a brief overview of his previous testimony. He said that this type of use does not meet the definition of a boarding school and needs a use variance. He described the facility as an institution of religious learning, a facility that promotes religion, and an institution of higher learning which all lend it to being an inherently beneficial use, providing an overall benefit to the community. Mr. Janiw said that the students would receive a post-secondary degree in Talmudic studies which is recognized by the U.S. Department of Education. The school will be accredited by

AARTS but land use approvals must be secured first because the accreditation is based on the facility. Mr. Janiw described the standards considered for the D1 variance, noting that when weighing the negative and positive criteria, an inherently beneficial use satisfies the positive criteria by definition.

Mr. Janiw addressed the concern of students 18 years of age and older occupying the building. The students will have adult supervision by a staff faculty member. The students are bound by a strict schedule and a high vetting process for admission. With regard to the students having vehicles and smoking, Mr. Janiw said that they are prohibited and the students sign contracts that they are aware of all that is prohibited. The students are not permitted to drive themselves to and from the Yeshiva. There is sufficient parking for the faculty and staff and visitors are limited to guest lecturers. He said that the parking requirement is not realistic for the actual needs of this use since the students do not have cars. He referred to the code requirements from the architect who said that the building will be suitable for the number of proposed students. He said that there will be no negative impacts to the surrounding properties. The gym is being converted to a study room and there will be no recreation on site. There will be a favorable impact on traffic with significantly less than what presently exists and what is permitted.

Mr. Janiw said that the applicant is proposing improvements to the property including removing the northern driveway, relocating the trash enclosure and eliminating the parking in the front of the building. He said that the noise expert testified that there will be no noise impact and no audible sound at the property line. Mr. Janiw said that he does not see a negative impact on the community, rather the use will have a beneficial impact compared to what currently exists and what is permitted. He said that the benefits outweigh the detriments and his professional opinion is that there will be no substantial impairment to the public good.

Mr. Janiw said that the positive criteria in the Medici standard is satisfied, noting that it is an appropriate and efficient use of land and is consistent with the objectives of the Master Plan. Mr. Janiw said that approved uses in the zone include recreation centers and churches which hold evening services, outdoor events and weddings. This use will not be as intense as those permitted uses.

Chairman Goode asked about the bifurcation. Ms. Krimko said that they are only seeking the use variance approval at this time, though the applicant has continued to provide testimony and accept reasonable conditions of approval with regard to the site plan.

Mr. Steinberg asked if there was specific testimony by an expert regarding higher education and accreditation. Ms. Krimko said that there was no testimony but an e-mail and letter submitted into evidence. Mr. Steinberg said that he will review it. Mr. Van Wagner asked if it was fair to summarize that this is an expansion of a previously approved use. Mr. Janiw said no, that it previously operated as a parochial and boarding school and now they are proposing 96 students age 18-22 years. He said that they have gone to great extents to mitigate any concerns of the new operation. Mr. Van Wagner asked how the students will be restricted if they are 18 years and older. Ms. Krimko said that the applicant has offered testimony as to the type of facility and that if the rules are not followed, the student will be expelled. Mr. Van Wagner asked how the rules can be legally enforced. Mr. Janiw said that it is not any different from other institutions where students that do not follow the rules are not allowed to stay. Ms. Krimko said that the operator will be bound by the conditions of approval. Mr. Van Wagner asked how conditions on human behavior can be enforced. Ms. Krimko said that the Zoning Officer or Police Department have the ability to enforce conditions in any approval. Mr. Van Wagner said that age needs to be considered because K-12 students are considered differently under the law than students over 18 years of age.

Mr. Steinberg said that testimony is needed for the increase in the number of students from 50 to 96. Mr. Janiw said that the architect gave testimony that the facility can accommodate that many students. The site can also accommodate the

increase in the number of students as they do not need parking since cars are not permitted.

Ms. Bonney asked questions about inherently beneficial uses and the criteria considered when the zoning was changed. Ms. Krimko said that she can't compare the zone change in 1997 with the granting of this use variance. She said that she can't contemplate what the governing body was thinking when they granted the zone change. Ms. Bonney asked about the number of students that would be living in one room. Ms. Krimko said that there would never be more than four students in one room. Ms. Bonney said that her son is of college age and that there is a need for recreation and exercise in colleges. Mr. Janiw said that this is not a college and that there has been extensive testimony from Rabbi Lessin as to the curriculum and the level of the students who are committed to Talmudic study similar to that of a convent or monastery. Ms. Bonney asked about the definition of community. Mr. Janiw said that it can mean the immediate area, secular community or religious community. He said that this use would be a benefit to all those communities as the students have strong moral ethics. Ms. Bonney said that the students are isolated with no contact to the outside and asked how that is a benefit to the Ocean Township community. Mr. Janiw said that it does not have to benefit the immediate community.

With no further questions from the board members, the objector's attorney began questioning Mr. Janiw. Mr. LoPiccolo referenced Mr. Higgins' concerns regarding students over the age of 18 having cars that would be disruptive to the neighborhood. Mr. Janiw said that the concerns raised by Mr. Higgins are being mitigated, such as that the students will be living there. There will be no mass arrivals and departures every day. Mr. LoPiccolo asked if he is basing his assumptions on the Rabbi's testimony. Mr. Janiw said that it is based on the professionals and the Rabbi. Mr. LoPiccolo asked if he knows any of the 96 men or performed interviews. Mr. Janiw said that he did not perform interviews and that he had no reason to doubt their character. Mr. LoPiccolo referenced the Lakewood facility and the testimony of the Rabbi on February 24, 2015 in which he said that he has no control over the students or visitors. Mr. Janiw said that not all the students live at the Lakewood facility. Ms. Krimko clarified that the Rabbi meant he can't control students coming and going, noting that the Lakewood facility is not operating under a use variance. Mr. LoPiccolo asked how they can enforce students being outside or parking cars on the street. Mr. Janiw said that it is an issue with the conditions of approval. Violations could be issued and the Rabbi will discipline. He said that cars are not permitted and that it can be enforced.

Mr. LoPiccolo asked about the increase in the number of students. Mr. Janiw said that they have testified as to the ability to accommodate the number of students. They discussed the ordinance pertaining to boarding schools, which currently permits no more than 50 people including staff. Mr. Janiw said that the governing body did not have this type of use in mind when considering boarding schools and the limitations. He said that this is an appropriate site for the use and the issues such as noise and parking can be mitigated. Mr. LoPiccolo asked about concerns for future uses of the site should this use be granted. Mr. Janiw said that the site is restricted by the conditions that run with the land. Future uses would also be bound by the conditions of this approval.

Mr. LoPiccolo asked if this was considered a house of worship. Mr. Janiw said that there is the practice of religion occurring with the combination of religious learning and religious study. He said that this is not a stand-alone house of worship and it is not open to the public.

Mr. LoPiccolo asked for examples of an inherently beneficial use. Mr. Janiw said that the definition is fluid, giving a head trauma center as an example. He said that it benefits the overall good of the public, promoting citizenship, morals and ethics. He said that this Talmudic school meets that criteria.

Mr. LoPiccolo had no further questions at this time.

Mr. Fitzgerald asked how many people will be supervising the students at night.

Mr. Janiw said that there has been testimony that one resident supervisor will be there overnight. They will have a one room dormitory for the supervisor. Mr. Fitzgerald asked if there was testimony that the resident will be awake overnight. Ms. Krimko said that there was no testimony about that.

The Board took a break at 9:15 PM and resumed at 9:25 PM.

Chairman Goode opened the hearing to questions from the public regarding Mr. Janiw's testimony.

Brian Mullins, 107 Bimblar Blvd., asked how it would be more beneficial to have the proposed use over the existing inherently beneficial elementary school. Mr. Janiw said that regardless of what exists there today, they are determining if this proposed use is inherently beneficial. Mr. Mullins asked how a school providing education to an exclusive group of men that have already received a K-12 education is beneficial. Mr. Janiw said that the Jewish faith education extends beyond grade 12 and education continues as a religious practice.

Paul Mayerowitz, Cedar Village Blvd., asked if as a member of the Jewish Community could he attend the house of worship. Mr. Steinberg said that he would not be able to attend as it is not open to the public. Mr. Mayerowitz asked about the definition of a boarding school, to which Mr. Janiw said that this use is not the same as a boarding school. Ms. Krimko noted that this use does not fit the definitions of private, parochial and public schools which are defined in the land development ordinances. Mr. Mayerowitz cited different legal cases that Mr. Janiw had not testified to. Mr. Janiw asked that he submit a list of the cases for his review. Mr. Mayerowitz asked if he had suggested that the applicant consider a non-boarding use. Mr. Janiw said that he did not because it was made clear that boarding is a critical component to this type of study. Mr. Mayerowitz asked about the article that Ms. Krimko had previously submitted into evidence regarding a Yeshiva in Philadelphia and asked how this Yeshiva would bring stature to Ocean Township if that Yeshiva did not do the same in Philadelphia. Mr. Janiw said that he does not think the intention is to bring stature to Ocean Township, but it will be known through the Orthodox community. Mr. Mayerowitz mentioned other schools in the area that are AARTS accredited Mr. Janiw said that there are none of this level and there will not be a detriment to other facilities as it is his understanding that there is a significant demand for more AARTS accredited facilities.

Mr. Mayerowitz asked why this would not be considered spot zoning. Mr. Janiw said that this use is not foreign to the permitted uses in the zone, including schools and churches. This property has been determined to be appropriate for education.

With the end of the time limit nearing, Mr. Steinberg said that there are no available dates this month and asked the applicant if they are willing to grant an extension of time. Ms. Jennings said that they are not willing to grant any further extensions of time. Mr. Steinberg explained that since the applicant will not grant any more extensions, if the Board does not take action tonight it could likely be considered an automatic approval. Mr. Steinberg advised the Board to move to deny the application without prejudice.

A motion to deny the application without prejudice was made by Warren Goode and seconded by Richard Van Wagner.

In Favor: Bonney, Grabelle, Menell, Napolitani, Van Wagner, Worrell, Goode
Opposed: None
Ineligible: Siano
Absent: Fuller, Malta, Schepiga

Meeting adjourned at 9:51 P.M.

Rachel Montemarano
Board Secretary
Recording Secretary