

**Village of Airmont
Zoning Board of Appeals
Village Hall
Thursday, December 10, 2015**

MEMBERS PRESENT: MICHAEL BERNSTEIN, CHAIRMAN
MARTIN KIVELL
LAURIE DIFRANCESCO
CHARLES PICARELLI
ARTHUR KATZ
PETER BLUNNIE, AD HOC

MEMBERS ABSENT: RICHARD SCHONBERG, AD HOC

OTHERS PRESENT: DAN KRAUSHAAR, DEPUTY VILLAGE ATTORNEY
SUZANNE CARLEY, CLERK

The meeting was called to order Chairman Michael Bernstein at 8:00pm which was followed by the pledge of allegiance and roll call. Arthur Katz made a motion to approve the November 12, 2015 meeting minutes with two minor changes, which was seconded by Laurie DiFrancesco. All in favor and the motion carried.

**Congregation Tifereth Israel
4 Monsey Heights Road**

The applicant Rabbi Jacob Goldstein of 4 Monsey Heights Road was present along with his associate Mr. Morgenstern and a friend George Ganz of 18 Echo Ridge Road. Dan Kraushaar asked if the applicant had an attorney and the applicant indicated that he did not.

The applicant noted that the project started 12 years ago, working 4 years on a permit and it took 2-3 years to build. The black line on the site plan is the piece of land that belongs to Thruway and they are willing to lease then sell to the Congregation for parking. The Rabbi was advised that he could only get the lot after he has a permit. Rabbi Goldstein indicated he had a letter from the Thruway authorizing this transaction. Marty Kivell asked him to confirm if the option is to lease or buy, as there is a difference. The ZBA was not provided the letter from the applicant. The clerk went into the PB file to get a copy of the letter for the ZBA.

Marty Kivell asked the Building Inspector to give a history. Ian Smith noted that between the times the original variances were granted there were changes to the approved plan for the construction of the plan. The variances need to be adjusted by the Engineer, Celentano per the

Building Inspector. Ian also gave a copy of the ZBA Resolution dated 12/8/2005 for the lot area, floor ratio, and parking spaces in front that they received back then. He also indicated that what the applicant is submitting for, he as a Building Inspector cannot give any listing of variances based on leased property, as there is nothing in the code to do that. There is no mechanism for allowing parking on the land that does not belong to land in question (the Thruway).

Dan Kraushaar read into the record the letter from the Building Inspector to the ZBA. There are a total of 4 variances. Dan Kraushaar noted that for the record the applicants engineer had none listed. It appears that they received 5 of the 9 variances already listed.

Dan Kraushaar also noted that there are no additional variances required by virtue of the proposed parking in the leased area. The Board is looking at what was already constructed on the site. As far as the ZBA the leased area has no implications to this application. If the leased area were owned in fee it would require additional variances based on the proposed parking. Ian Smith noted that if they owned the leased area the parking was already granted. Then it would increase the variance.

Ian Smith noted that on developmental coverage - it was granted for 22 feet but they built a structure 6 inches larger. There are implications of the leased area. Trying to avoid applicant going to ZBA again. If they go to PB for site plan approval if they don't own parking area they will need to come back to ZBA for an increase in developmental coverage once they own the land. If so they must use a pervious surface.

Chairman Bernstein questioning the fact that if he doesn't own the property how can we as a ZBA give a variance.

Laurie DiFrancesco asked Dan Kraushaar to confirm that the application requests 9 variances.

Dan Kraushaar indicated to Rabbi Goldstein that you have a letter authorizing you to have their property considered by the village as part of this approval process. In other words that they are a co-applicant to the approval. We would need consent to the application as proposed to submitting themselves to the jurisdiction of the various Boards. They would need to be part of the application. Even if the Board grants every variance it is not going to get you where you want to be. The PB cannot approve parking, as you will need additional variances based on the fact that you do not own or have the consent of the property owner to make the application. It would be a catch 22 situation. You may get variances for existing property to ameliorate the existing conditions on your lot. However in going back to PB for additional parking they would be able to approve it and if they can't approve it the ZBA can not grant a variance to the someone that is not a party to the application.

Rabbi Goldstein asked if it could be a condition to the variance.

Dan Kraushaar also advised that they need a GML and without it the Board can't approve anything anyway. He asked since they have an additional month do you believe you could get written authorization consenting to the application from the Thruway Authority. Chairman Bernstein advised they need to consent and join the application.

Rabbi Goldstein responded that the Thruway is only willing to give the land to them to help them out. He indicated that they are going out of their way for the Rabbi. He would try.

Dan also noted that if they want to do something else with the land they would have to be bound to the use of the variance.

Laurie DiFrancesco asked they have discussed a length of lease time. Rabbi Goldstein noted that they must lease for 3 years and then they will be able purchase. He will have a contract with the Thruway and the authority. Laurie Di Francesco asked the Rabbi if he had a contract with leasing and an option to buy as evidence.

Dan Kraushaar noted the applicant won't own the property, but the owner gives the consent to applicant. The applicant may not go with the purchase then the approval is still valid.

Laurie DiFrancesco indicated they need to see a contract to buy or evidence of such.

Dan Kraushaar stated that if they have something saying they consent to the application then they are subjecting themselves to the jurisdiction of the Board.

Dan Kraushaar – they are in a catch 22 situation. The Thruway Authority will not and cannot lease or sell unless they get required approvals from the Board. We are telling him to give us the lease or purchase the property and then we will give them to you. Dan suggested that the Thruway Authority consent to the application and consent to the jurisdiction of the Board in the event that they do they have the authority.

Dan Kraushaar -The worst-case scenario they don't go through with it and we grant the variances once we have GML the PB grants site plan approval the State turns around and doesn't comply. The applicant would then need to take out parking and the variance becomes irrelevant and couldn't be used for anything else for this site. They would go back to square one on that portion of the property to be legalized with regards to with the additions already made. The items that are not intact on property in addition to the parking from the piece of land from the thruway. This is the only property owner that could use this piece of land. It is not a permitted use in the zone and if approved it would be an accessory parking to the structure.

Dan Kraushaar noted he is discussing the procedure. He directed the clerk to take the owners consent form in the application and give it to Rabbi to get to Thruway Authority. Ian suggested reflecting the correct bulk tables on the plans and re-submitting them. Back on 12/8/2005 a

variance was granted for four spaces where six were required and none have been built. The site plan is not completed. They need to get the parking off the street.

Rabbi Goldstein noted that he did not expect that the use would grow the way it did. It's a narrow street difficult for emergency vehicles, police, cars, etc. Laurie DiFrancesco asked if it is a home. Ian Smith noted that it is categorized as a residential place of worship.

Chairman Bernstein noted since there is no GML back yet and they still have time, he asked Rabbi Goldstein to get what was necessary to get the consent.

The clerk was directed to send Building Inspector's letter to Celentano, the engineer for the bulk table to be updated on the site plan.

Chairman Bernstein made a motion to continue the Public Hearing on Congregation Tifereth Israel to January 14, 2016 at 8:00pm at the Village of Airmont. Marty Kivell seconded it. All in favor, motion carried.

**Abraham Backenroth
11 Plymouth Place**

Chairman Bernstein Motion made to adjourn the matter of Abraham Backenroth to the January 14, 2016 ZBA Meeting at 8:00pm at Airmont Village Hall. Arthur Katz seconded, all in favor. Motion carried.

New Business

Dan Kraushaar has an item to discuss with Board for Executive Session Requirement.

Motion to enter into Executive Session to discuss a pending Litigation:

Martin Kivell moved the motion to enter Executive Session at 9:01 pm and Laurie DiFrancesco seconded it, all in favor and the motion carried.

Motion to Exit Executive Session:

Marty Kivell made a motion to end the executive session at 9:20pm and re-open the public session, seconded by Laurie DiFrancesco, all in favor, motion carried.

All in favor of settlement in the matter of Tallman Trust vs. ZBA, and Village Board to sign the stipulation on behalf of the ZBA subject to the Village Board to set a Public Hearing to amend the Village Code for the definition of Fast Food Restaurants. Motion carried.

Laurie DiFrancesco made a motion to adjourn at 9:22pm. Marty Kivell seconded it. All in favor and the motion carried unanimously. Meeting concludes.