

RESOLUTION OF THE TOWN OF HAVERSTRAW PLANNING BOARD

Application of K’hal Bnei Torah of Mount Ivy
62 Riverglen Drive, Thiells, New York (the “Property”)
Tax Lot No. 25.12-1-31
R-25 zoning district

WHEREAS, the Applicant, K’hal Bnei Torah of Mount Ivy, has submitted an application to the Town of Haverstraw Planning Board for site plan approval and approval to conduct certain functions in areas of the Property identified as a conservation easement, in order to convert and expand an existing single-family home to a house of worship, which use is permitted in the R-25 zoning district, and make other related improvements including a parking lot and retaining walls (the “Proposed Project”); and

WHEREAS, the Applicant submitted the following plans in connection with this application:

1. Site Plan Set, Prepared by Brooker Engineering, PLLC, last revised 01/21/2022

- Title Sheet
- Existing Conditions & Slope Analysis
- Site Plan
- Grading and Utility Plan
- Erosion and Sediment Control Plan
- Detail Sheet (1 of 2)
- Detail Sheet (2 of 2)

2. Architectural Plans, Prepared by Sketchy Plans, Signed and Sealed by Eric Knute Osborn, R.A., NYS Lic. No. 021585, dated 02/23/2022

- T-100.00
- A-100.00
- A-101.00
- A-102.00
- A-200.00
- A-201.00

WHEREAS, the Property is shown as Lot 11 on the Carlton Hills subdivision plat, which is a 62-lot subdivision encompassing approximately 43 acres and section 1 of the Carlton Hills subdivision plat, of which the Property is a part, was filed with the Rockland County Clerk on May 27, 1983 as Map No. 5493; and

WHEREAS, there is a 100-foot wide buffer around the perimeter of the subdivision that is identified on the plat as a “conservation easement”; and

WHEREAS, as the Property was a corner lot of the Carlton Hills subdivision, the Property is burdened with this 100-foot buffer on both the west and south sides of the Property; and

WHEREAS, this area identified as a “conservation easement” was never accepted by the Town or recorded as a separate document with the County Clerk or the New York State Department of Environmental Conservation, and the DEC has advised they have no record of, nor do they regulate, this area on the Applicant’s Property; and

WHEREAS, this area has been treated as a local zoning restriction, like other setback and bulk requirements, and the Town Code authorizes the Planning Board to approve functions in areas designated as a conservation easement; and

WHEREAS, the Planning Board held a preliminary presentation on this application at its August 11, 2021 meeting and opened a duly-noticed public hearing at its November 10, 2021 meeting, which public hearing was continued at its January 12, 2022 meeting, February 9, 2022 meeting, March 9, 2022 meeting, April 13, 2022 meeting, May 11, 2022 meeting, June 8, 2022 meeting and July 13, 2022 meeting, and members of the public having ample opportunity to attend and be heard, the public hearing was closed on July 13, 2022; and

WHEREAS, the Planning Board served as lead agency for a coordinated review pursuant to the State Environmental Quality Review Act (“SEQRA”), and at its June 8, 2022 meeting adopted a Negative Declaration thus ending the SEQRA process, which Negative Declaration is attached hereto and made a part hereof; and

WHEREAS, at its July 13, 2022 meeting, the Town of Haverstraw Zoning Board unanimously adopted a resolution granting certain area variances, including four area variances that were related to existing conditions on the Property (that would exist regardless of whether the Property continued to be used for residential purposes or the Property is converted to a house of worship) and three area variances related to the proposed use of the Property as a house of worship; and

WHEREAS, the Town retained a traffic engineering consultant, Stonefield Engineering & Design, to review the proposed plan and use and to suggest certain on-street traffic, parking and signage mitigation measures so that on-street parking occurs in a safe manner such that there is sufficient room for passenger and emergency vehicle circulation and access (“Stonefield Plan”), which plan is attached hereto and made a part hereof; and

WHEREAS, the federal Religious Land Use and Institutionalized Persons Act (“RLUIPA”) “is the latest in long-running congressional efforts to accord religious exercise heightened protection from government imposed burden, consistent with Supreme Court precedent;”¹ and

WHEREAS, RLUIPA “prohibits a governmental entity from applying a land use regulation ‘in a manner that imposes a substantial burden on the religious exercise of a person or institution,’”² and when the religious use “has no ready alternatives, or where the alternatives require substantial

¹ *Lighthouse Institute for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 261 (3d Cir. 2007), quoting, *Cutter v. Wilkinson*, 544 U.S. 709, 714 (2005).

² *Westchester Day School v. Village of Mamaroneck*, 386 F.3d 183, 186 (2d Cir. 2004), quoting, 42 U.S.C. § 2000cc(a)(1).

‘delay, uncertainty, and expense,’” a denial of the land use application could demonstrate a substantial burden on religious exercise;³ and

WHEREAS, federal “courts have held zoning ordinances, or zoning decisions, that significantly lessen the prospect of a religious institution being able to use the property to further its religious mission contravene RLUIPA;”⁴ and

WHEREAS, if this application was subject to RLUIPA litigation, RLUIPA’s “remedial purpose and effect” to alleviate any substantial burden on the Applicant’s religious exercise could result in significant monetary penalties to the Town (which would be the burden of the taxpayers) as well as a more impactful project, and in this circumstance a federal court has held that “[a]ny purported ‘burden’ on the [municipality] and its residents is an inevitable consequence of resolving RLUIPA litigation, which Congress anticipated when drafting the statute and requiring its remedial construction,”⁵ and in holding such the Court rejected the allegations of “reverse discrimination” under, or “weaponization” of, RLUIPA; and

WHEREAS, in addition, under longstanding State law, educational and religious uses “have enjoyed special treatment with respect to residential zoning ordinances and have been permitted to expand into neighborhoods where nonconforming uses would otherwise not have been allowed”⁶ and “greater flexibility is required in evaluating an application for a religious use than an application for another use and every effort to accommodate the religious use must be made;”⁷ and

WHEREAS, local zoning also cannot require a showing “that no ill effects will result from the proposed use” as this “is improper because it fails to recognize that educational and religious uses ordinarily have inherent beneficial effects;”⁸ and

WHEREAS, “[t]he presumptive value of religious facilities must be balanced against any actual detriment to the public health, safety or welfare, bearing in mind that typical hazards of traffic congestion, noise, diminution in property values, and the like, are generally insufficient to outweigh the public benefit of religious institutions and the constitutional protections to which such organizations are entitled,”⁹ and “where an irreconcilable conflict exists between the right to erect a religious structure and the potential hazards of traffic or diminution in value, the latter must yield to the former;”¹⁰ and

³ *Westchester Day School v. Village of Mamaroneck*, 504 F.3d 338, 349 (2d Cir. 2007) (*emphasis added*).

⁴ *Congregation Rabbinical College of Tartikov, Inc. v. Village of Pomona*, 138 F.Supp.3d 352, 432 (S.D.N.Y. 2015), *citing*, *Guru Nanak Sikh Soc’y of Yuba City v. County of Sutter*, 456 F.3d 978, 992 (9th Cir. 2006) and *Roman Catholic Diocese of Rockville Centre v. Village of Old Westbury*, No. 09-CV-5195, 2012 WL 1392365, at *8 (E.D.N.Y. Apr. 23, 2012).

⁵ *Woodcliff Lake Citizens Against Overdevelopment, Inc. v. Borough of Woodcliff Lake*, 2022 WL 874440, *9 (D.N.J. 2022).

⁶ *Pine Knolls Alliance Church v. Zoning Bd. of Appeals of Town of Moreau*, 5 N.Y.3d 407, 412 (2005) (*emphasis added*), *quoting*, *Cornell University v. Bagnardi*, 68 N.Y.2d 583, 593 (1986).

⁷ *Gospel Faith Mission Intern., Inc. v. Weiss*, 112 A.D.3d 824, 825 (2d Dep’t 2013) (*emphasis added*), *quoting*, *Genesis Assembly of God v. Davies*, 208 A.D.2d 627, 628 (2d Dep’t 1994).

⁸ *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986).

⁹ *High Street United Methodist Church v. City of Binghamton Planning Com’n*, 715 N.Y.S.2d 279, 283 (Broome Co. Sup. Ct. 2000), *citing*, *Westchester Reform Temple v. Brown*, 22 N.Y.2d 488, 496 (1968).

¹⁰ *Westchester Reform Temple v. Brown*, 22 N.Y.2d 488, 497 (1968).

NOW THEREFORE,

BE IT RESOLVED, in light of the foregoing, and based upon the following findings, the Planning Board authorizes the functions shown on the Site Plan in the areas designated as being in the “conservation easement”:

1. The western boundary of the Property (the rear of the lot) abuts public parkland. All of the parcels on the west side of Riverglen Drive in the Carlton Hills subdivision have the conservation easement area running along the rear of the property abutting the parkland. The Planning Board and its consultants worked with the Applicant to minimize the intrusion into the western conservation easement to the extent possible, such that the only activity in the western conservation easement will be the installation of retaining walls to support the construction of a parking lot needed to provide on-site parking for the use. The Applicant proposed reducing the size of the parking lot from 27 parking spaces to 15 parking spaces, which would have potentially eliminated the need to encroach upon the western conversation easement. However, the Board finds the impacts from reducing the amount of on-site parking would be greater than the minimal intrusion into the western conservation easement area.
2. This is the only parcel in the entire Carlton Hills subdivision that is burdened with the conservation easement area on two sides of its property. None of the other lots in the subdivision are burdened on the entire side of their property with the conservation easement area. While at the time of the subdivision the southern boundary (the side of the lot) also abutted undeveloped land, this land has since been developed with a single-family home. Therefore, the conservation easement area along the southern boundary of the Property no longer serves its intended function. The rest of the neighborhood has been developed and it is overly burdensome to the Property to have to abide by this conservation easement area when the other properties in the subdivision (and surrounding the subdivision) do not have this restriction. In addition, the activities in the southern conservation easement area is for the construction of an on-site parking lot that is required by the Town Code and is necessary to support the use of the Property without overburdening the on-street parking. The Applicant is also proposing to install ample landscaping around the parking lot, including in the conservation easement area.
3. The existing driveway on the Property already encroaches upon the southern conservation easement area.
4. To the extent other property owners claimed they were not allowed to do work in the conservation easement areas on their own property, the Code allows all property owners to seek permission from the Planning Board for functions in conversation easement areas.
5. To the extent other property owners claimed they received violations from the Town for work done in the conservation easement areas on their property, that is

because they did not follow the proper procedure in notifying the Town and seeking the proper authorization and/or approvals before engaging in the work. In this instance, the Applicant has made an application to the Planning Board and has gone through a lengthy and thorough land use review process during which the Planning Board and its staff/consultants reviewed various iterations of the plans and considered the costs and benefits of allowing these activities in the conservation easement area. Specifically, the Applicant will have to ensure there will be no stormwater impacts from the Proposed Project and will provide a zero-net increase in stormwater runoff from the site through the installation of a stormwater detention facility.

6. In this specific situation, the Board finds that given (a) the deference and accommodations that must be afforded to religious uses under State and Federal law, (b) the unique history and application of the conservation easement area as it relates to this Property, (c) the thorough and lengthy land use review process for this application, and (d) the fact that the functions in the conservation easement are related to the parking lot that is necessary for the religious use and to reduce potential impacts to the neighborhood, it is warranted to authorize the functions shown on the Site Plan in the conservation easement areas.

AND BE IT FURTHER RESOLVED, based upon the foregoing, the application for preliminary and final site plan approval to construct an addition to the existing structure and related improvements, including a parking lot and retaining walls, to convert the Property to a house of worship are granted with the following limitations and conditions:

1. Prior to the signing of the Approved Plans by the Planning Board Chairman, the following conditions must be met:
 - a. Applicant shall comply with all rules, regulations and requirements of any and all agencies, entities, departments, boards and municipalities with jurisdiction over the Proposed Project, and this approval is conditioned upon the Applicant receiving any and all approvals/permits required by such agencies without material deviation from the Approved Plans.
 - b. The Applicant shall revise the bulk table shown on the plans to be consistent with the variances granted by the Zoning Board.
 - c. The Applicant shall pay all outstanding monies owed to the Town in connection with the Planning Board and its consultants and staff processing, reviewing and preparing documentation on this application.
 - d. No portion of any approval by the Planning Board shall take effect until (1) all of the above-stated conditions are met, (2) the Approved Plans are signed by the Chairman of the Planning Board and (3) the Approved Plans signed by the Chairman of the Planning Board are filed with the Building Department.
2. Prior to issuance of a building permit, the Applicant shall complete the following:
 - a. In accordance with Town Code § 137-96(A) and § A173-10(D), the Applicant shall provide a performance bond in a form satisfactory to the Planning Board

- attorney and in an amount satisfactory to the Town Consulting Engineer based upon the cost estimate of the site improvements as shown on the Approved Plans to ensure adequate completion of these improvements.
- b. In accordance with Town Code § A173-16(B), the Applicant shall provide escrow established based upon a percentage of the Town Consulting Engineer's cost estimate to ensure the site improvements can be inspected for compliance with the Approved Plans.
 - c. The Applicant shall obtain approval from the Architectural Review Board for a design of the structure that is consistent with the residential character of the neighborhood, but that does not make any other changes to the size, layout, location or configuration of the structure or the Property. If any such changes are made to the plans, the Applicant shall make an application to the Planning Board for amended site plan approval.
3. Prior to obtaining a certificate of occupancy:
 - a. the Applicant shall use all feasible efforts to implement the on-street mitigation measures shown on the Stonefield Plan and
 - b. the Applicant shall ensure the structure is fully-sprinklered and shall incorporate any other fire protection measures deemed necessary by the Building Inspector and the Fire Department to ensure compliance with the Uniform Fire Prevention and Building Code ("Uniform Code").
 4. Any proposed signage on the Property or abutting the Property in the Town's right-of-way shall comply with the Town Code and the Applicant shall obtain any necessary approvals from the Town prior to installation.
 5. As represented and consented to by the Applicant: (a) the occupancy of the entire structure shall never exceed 107 people, (b) the sanctuary and meeting room shall never be occupied at the same time, and (c) no one shall reside on the Property and there shall not be any overnight occupancy of the Property.
 6. The Applicant shall advise the congregants to use the parking lot to the extent practicable, abide by all traffic and parking laws and regulations, and utilize safe pedestrian practices.
 7. The Planning Board attorney shall submit a memorandum to the Town Board on behalf of the Planning Board requesting that the Town Board consider whether it is feasible to install sidewalks in the area.
 8. The granting of this application shall not be deemed to relieve the Applicant of the need to obtain approvals or permits of any other board, agency or officer as prescribed by law or ordinance with regard to the Approved Plan or construction or any other phase of the project. Further, the granting of this application shall not be deemed to relieve the Applicant of the need to comply with any and all other local, state and federal requirements, including but not limited to compliance with the New York State

Uniform Code and any applicable regulations related to the proposed use, location or construction.

9. All work shall be in strict compliance with the Approved Plans and all rules, regulations, laws and ordinances governing the Site Plan and construction on the site. In the event the Town Consulting Engineer, Superintendent of Highways and Building Inspector agree that, as a result of conditions in the field, field changes are necessary to complete the work of the Site Plan and if in the opinion of the Town Consulting Engineer and Building Inspector such field changes are minor and do not have any material negative impact on the overall design of the Site Plan, traffic circulation and/or drainage of the site, including but not limited to roads, sewers and drainage, then the Town Consulting Engineer and Building Inspector may, upon the filing of amended plans which reflect such field changes, allow such changes. In all other circumstances any deviation from or change in the approved plans shall require application to this Board for amendment of this approval.
10. No work may be commenced on any portion of the site without first contacting the Building Inspector and Town Consulting Engineer to ensure that all permits and approvals have been obtained and all permit fees paid and to establish an inspection schedule. Failure to comply with this provision shall result in the immediate revocation of all permits issued by the Town along with the requirement to reapply (including the payment of application fees) for all such permits, the removal of all work performed and restoration to its original condition of any portion of the site disturbed and such other and additional civil and criminal penalties as the courts may impose.
11. The Property shall be inspected by the Building Inspector, the Town's Consultant Engineer, and any other consultants or professionals deemed necessary or appropriate by the Building Inspector to ensure that all construction, improvements and modifications were done in accordance with all applicable Federal, State and Local laws and regulations and all professional standards and guidelines prior to the field being operational.
12. This application is granted subject to the accuracy of the representations made by the Applicant and its representatives to the Planning Board in its written submissions and during the public hearing and if any material representation, whether or not it is included in this Resolution, is found to be inaccurate, at the discretion of the Planning Board the Applicant shall be required to make an application for an amended approval.
13. This Resolution shall be of no force or effect unless and until there is full compliance with all of its requirements and conditions.

Dated as of August 10, 2022

Chairman

In Favor:

Opposed:

Abstain:

Absent:

DRAFT