

Special meeting of the Haworth Zoning Board of Adjustment on June 19, 2018, at the Municipal Center.

PRESENT: Dennis Posen, Chairman
Jeffrey Lester, Vice Chairman
Richard Ehrenberg
Catharine Luby
Joseph Panzella
John Paquet, Secretary/Treasurer
David Roth
Laura Weingartner, Alternate 1

Alexander West, Board Attorney-
Andrew Rosenberg, Council Liaison
Joseph Vince, Board Engineer

ABSENT Paul Renaud, Building Official

Mr. Posen called the meeting to order and upon roll call, the above Members were present.

Due notice of this meeting was given in accordance with the New Jersey Open Public Meetings Act.

In essence, the following transpired.

ACCEPTANCE OF THE MINUTES

The minutes of the May 2018 meeting were reviewed.

Mr. Lester moved to accept the minutes as presented.

Seconded by Mr. Ehrenberg and unanimously carried.

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CORRESPONDENCE

- Correspondence from the offices of Council McDonald and Whittaker asking for a meeting to be carried to the August meeting. Discussion will take place at the end of this meeting.

This matter was carried to the August 2018 meeting.

- Letter dated June 7, 2018, from Boswell Engineering relating to the Suez water-treatment plant.
- Certified letter from the Bergen County Board of Chosen Freeholders relating to the two Freeholders Resolutions and Ordinances regarding Subdivision Standards and Site Plan Standards.

Mr. Posen stated that this document would be made available for review.

ST. GABRIEL'S CHURCH APPLICATION (continuation)

Mr. Posen noted that the affidavits of service for St. Gabriel's Church Application this evening have been approved.

Mr. Posen stated that there were no previous resolutions to review and this meeting was scheduled for professional testimony and final statements.

In essence the following testimony and statements were made.

Mr. Capizzi appeared on behalf of St. Gabriel's Church. He went over the background of the case. He said that tonight, the intention was to provide a brief testimony for what the proposed landscape would look like from Sunset Avenue.

It was noted that the landscaper still had not arrived. Mr. Posen announced that they would take care of other matters until he arrived.

In the meantime, Mr. Posen polled the Board to learn their availability for the July and August meetings. It was found that three members were not available in July and two were not available in August.

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Mr. Posen stated that if the Board gets through this evening's meeting and there are no new applications for July, they might postpone their deliberations. He said that they would hear testimony this evening and go back for summations and deliberations.

There was discussion.

Mr. Posen said it would make sense to put it on the calendar for August specifically for St. Gabriel's.

Mr. Lubin asked if there would be a need for him to bring back one of his witnesses and Mr. Capizzi responded that it would not be necessary. Then Mr. Lubin asked Mr. Capizzi if he would consider submitting a written summation to the Board.

Mr. Capizzi stated that he talks on his feet better than he writes.

It was decided to table discussion on when they are meeting again.

Mr. Posen said that they were going to cancel for July and they would revisit August. He asked if they needed a motion regarding the next meeting date and Mr. West advised him that it would not be necessary.

Mr. Capizzi stated that they needed Affidavits from Board Members attesting that they had listened to the tapes from those meetings, which they did not attend.

Mr. Posen noted that Mr. Panzella was in attendance on November 7, 2017; Mr. Paquet had not yet listened to the tape; and, they have an Affidavit from Mr. Lester, which has already been provided to Counsel for listening to the May 2018 meeting.

Mr. Capizzi then stated that as a result of Mr. Olivo's testimony, they felt it was no longer necessary to have a satellite lot for parking and they were amending their application.

Mr. Posen stated that Mrs. Fay needed to be notified to re-notice this case because of the change.

It was noted that the landscape expert had arrived.

Mr. Vince stated that he listened to the tape of the last meeting and felt that it would not have any substance to have ADA spaces near the valet even though it would be a loss of two spaces. He said it really should have no impact.

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Mr. Capizzi asked to have Mr. Vince sworn in and Mr. West advised him that Mr. Vince had already been sworn in on November 1, 2016.

Bradley Newman, the Landscaping Architect Expert, from Morris Plains, New Jersey, was presented. It was noted that he had already been sworn in. He was questioned about the view from Sunset Avenue and he presented the Concept View dated January 18, 2018, which was marked into evidence as Exhibit A-17.

Mr. Newman noted that he already provided prior testimony. He had a 3-D model of the Concept View which replaced the existing Landscaping Plan. They reviewed Exhibit A-8 and went over all the details again. Mr. Newman identified all the plantings and trees and explained how they would be serviced.

Mr. Capizzi stated that they needed a variance for a number of shade trees.

Mr. Newman referred to a print of a Landscaping Plan, which was marked up, and referred to a review letter dated 8/1/17, from Schwanewede/Hals. He said there was supposed to be one shade tree for every ten parking stalls and he realized they would need more shade trees along the perimeter of the parking lot. It stated that they would need enough for 170 parking spaces, which equaled 17 trees along the perimeter. Mr. Newman showed where he could plant the additional trees. He also referred to Section E of the letter relating to interior landscaping and he said that they would not be performing some of that landscaping.

Mr. Posen wanted to know how it was calculated. He said that two spots would not be covered and would not meet the minimum. Mr. Posen stated that the Plan could accommodate the additional trees. The total number of spaces was what this case was about and he felt it was doable

There was discussion.

There were no additional questions.

Mr. Lubin pointed out that Mr. Vince said he submitted a report on the Parking Plan.

Mr. Vince said it was dated 5/1/18 and he would send a copy to Mr. Lubin.

There was discussion.

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Mr. Vince noted that since the last 4 letters were sent, there had only been one report. He talked about the other reports, which had been sent to the Board. Mr. Vince stated that his latest in-depth review had been on August 1st.

There was discussion about what had been marked

Mr. West marked the following Exhibits into evidence:

Mr. Vincex Letters

- Bd -1 - EngineersqReports Collectively
 - a - Report dated 7/27/16
 - b - Report dated 10/03/16
 - c - Report dated 11/01/16
 - d - Report dated 8/01/17
 - e - Report dated 1/29/18
 - f - Report dated 5/01/18
- Bd-2 - Letter dated 8/01/17
- Bd-3 - Letter dated 1/22/18
- Bd-4 - Letter dated 5/01/18
- Bd-5 - Letter dated 10/13/16

There was discussion and Mr. Posen asked Mr. Vince to send everyone a packet with all of the correspondence.

Mr. Capizzi introduced Steve Lydon, expert witness and Planner, of Burgess Associates in Westwood, NJ. He went over his education, license, background and experience. He was accepted by the Board and was sworn in. In essence, upon testimony and questioning, he stated the following.

Mr. Lydon said that he was there to amend a Preliminary Site Plan Application and to have the amended Site Plan approved. He talked about what he did to prepare for this meeting including visiting the site, reviewing ordinances, the Plans, the Master Plan, Municipal Land Use Law, and the land use religious acts. He said that he did not think the Site Plan Application was as important since the building was not going to change. Mr. Lydon stated that they were going to take care of some minor modifications to the driveway and the parking set-up. He said he wanted to draw attention to the variances since no one had given testimony and which were fairly simple.

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Mr. Lydon said that there really was one question about how approval of these variances was a substantial detriment to public good, health, safety and general welfare. He said that was what this Board was charged with determining. Mr. Lydon talked about the variances and said they could be beneficial and they were simple deviations from the zoning law. Mr. Lydon referred to Section 45D-70c, which talks about substantial detriment to public good and substantial impairment to the zoning plan and Master Plan. He explained what this meant. He stated that the application before the Board was for a Use Variance and there were many types, but there was only one variance that was used for permitted zones and density. He elaborated. Mr. Lydon said that the variance they were seeking was a D-3 Use Variance. Mr. Lydon talked about other cases. He said that the applicant was there for variance approval, Site Plan approval, and approval of a conditional use.

Mr. Lydon said that churches were permitted in the C zone so it was a permitted use, but there were conditions attached to it. He said that dealing with a church was inherently beneficial. He gave the definition of ~~%~~ inherently Beneficial+ and talked about legislation relating to such matters located in the Municipal Land Use Law under 40:55d-4. Mr. Lydon said that it promotes the public good and such a use includes, but is not limited to, schools, group homes, day care centers, and others things. H said he felt a church was not defined because it was generally known to be inherently beneficial. He said that in other cases with something inherently beneficial, there was no reason to show positive criteria, so the Board was left with proving substantial negative impact. Mr. Lydon said that because the Mayor and Council found it was a permitted use in that zone, the Board did not have to worry about substantial impairment. He gave an explanation. He said that even with a D-3 variance you are looking at negative criteria but it was an inherent beneficial use. He felt the Board did not have to look at impairment to the public good and it was the responsibility of the Board to look at reasonable conditions to mitigate so that the applicant could get an approval. He also explained that the applicant had to come up with positive and negative criteria. Mr. Lydon said that the burden really shifts to the Board to come up with conditions to mitigate.

Mr. Lydon said that the Board had to look at two classifications - landscaping and impervious coverage variances in one form or another and the third step was to come up with reasonable conditions attached to an approval. He said that a D-1 variance was for non-permitted uses, which the applicant did not have to worry about and the negative criteria are lessened.

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Mr. Lydon stated that there were two different conditions to consider for a house of worship - enhanced lot area and set-back requirements. He said that the percentage of pavement and overall percentage of impervious coverage were the same standards which were applied to single-family houses and houses of worship. Mr. Lydon said it was not the same for maximum impervious coverage because a house was a house but this was a religious structure and they need to provide off-street parking, which was difficult to achieve. He said it was a small building but they were seeking approval for an impervious coverage variance.

Mr. Lydon said there were two types of variances - one deals with coverage and one with landscaping and it comes down to flooding and desirable visual aesthetic requirements. He said they were addressing that with enhanced storm water automatic control basins and they were putting in a lot of effort with water quality measures in place as well as having aesthetic designs. He said that this property only abuts one residential property line and the others were all buffered already. Mr. Lydon said the parking was over 33 ft. from the property line and a sufficient width to burm the area so the landscaping could be addressed. Mr. Lydon referred to the Religious Land Use Persons Act (hereinafter, RLUPA) which imposes complete protection. He explained what it covered. He said the Board could not impose a substantial burden on religious structures unless there was a compelling government interest and they must use the least intrusive means to mitigate. Mr. Lydon said that he found that the total lack of parking for a religious structure had been determined to not to be a compelling government interest and some extra pavement on a lot cannot be a compelling government interest; and the improved landscaping plan and storm water controls mitigate the situation. He said that their parking was in the back of church and could not be seen so they were talking about the public good. He said he did not know how it could be a public detriment since it could not be seen, and if there might be a small view, it would only be for 2 ½ hours. Mr. Lydon reiterated that it could not be considered a compelling interest. Mr. Lydon said that Fr. Aziz had testified to how drop drop-off would be handled when there was bad weather,. He said that if church members would choose not to come to church because of the number of stalls, it would be a burden but there would be no burden if they could have the rear parking lot paved. He talked about houses of worship and the number of parking spaces.

Mr. Lydon said they were talking about an impervious coverage of 35%, he said the building takes 5% and they were allowed to have 25% for the building. He said it was a violation of the religious law and was unconstitutional. He elaborated. Mr. Lydon went over the negative criteria analysis and how it compared to a residential application. He said they were seeking approval for impervious coverage when the building covered only 5%. He said there was something wrong with the Ordinance.

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Mr. Lydon said that the Board takes care of a lot of single-family applications and they might want to hold this applicant to a higher standard. He suggested that it would be all wrong and they should use a wider approach since it would be a violation of RLUPA. Mr. Lydon said that the church should be looked at differently - it was a house of worship and the negative criteria did not apply. He said it was a D-3 variance and it was inherently beneficial and if they cannot see the pavement, how could it be detrimental to the public good. Mr. Lydon felt the negative criteria has been more than satisfied by the applicant. He gave examples. He said he felt the right criteria standards have been met and it should be approved.

Mr. Lydon talked about the parking space striping, interior parking lot landscaping, and how parking spaces were being delineated. He said that at the suggestion of Mr. Hubschman, instead of painting the stripes on the pavers, they would have the delineation on them. He pointed out that it would be during daylight hours and it would be illuminated in the evening - and it was the way parking stalls should be delineated. He said it was a better solution to allow all stalls and to employ valet parking personnel for a few times that they would be needed. Mr. Lydon said he felt it was better to allow the 172 spaces, especially with the criteria for a D-3 variance.

Mr. Lydon said there would be truncated drive aisles with professional valets, who had insurance and were bonded, so he felt that variances weren't necessary. He said they would only be there for 2 ½ to 3 hours a day, so that wasn't much of a deviation. If the Board felt it required variances, they could be granted because it would be a more efficient use of the land. Mr. Lydon said that parking lots take on the character of the church because it is a required necessity.

There weren't any questions from the Board.

Mr. Lubin said he had some questions about the nature of the variances being sought. He said they were not concerned about whether it was good to be striped or painted in the parking area but whether there would be an over-intensive use of the site.

Mr. Lydon did not agree. He said the building meets all requirements and the parking meets all the set-back requirements. Mr. Lydon said he did not believe that it would be an over-intensive use and he did not believe that the Ordinance suggests that it is.

Mr. Lubin pointed out that Mr. Lydon questioned the standards of the Ordinance and said it was the same for a one-family house. The Board of Adjustment has to take the Ordinance as it is written. Mr. Lydon responded that they could admit that there were inconsistencies.

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Mr. Lubin asked Mr. Lydon if he was suggesting that they have the right to rewrite the Ordinance and Mr. Lydon responded that if it sounded like he was making that suggestion, he apologized.

He said they were not questioning the Ordinance but there were inconsistencies. The applicant was not challenging the reasonableness, but adhering to it made it difficult.

Mr. Lubin pointed out that it was adhered to back in 2008. He then reminded Mr. Lydon that this was a cross-examination and he advised him not to deviate and give his opinion - he asked him to just answer the questions.

Mr. Capizzi objected to the instructions to the witness.

Mr. Lubin stated that the Board was required to apply the Ordinance as it was written for every application that comes before them, and Mr. Lydon agreed.

Mr. Lubin asked if they prepared an analysis for the Board, and Mr. Lydon responded that it was not in the contract with the applicant. He said that this was a simple application.

Mr. Lubin and Mr. Lydon debated that issue.

Mr. Lubin said he wanted to go over the Variance Section 26-501, which shows a maximum impervious coverage of 40% and that was why the applicant was seeking a variance. He said the applicant proposed impacting a coverage of 48.10%, which was an increase of 20%. Mr. Lubin referred to Section 26-501, which shows a maximum pavement coverage of 15% and the applicant was seeking approval to have a pavement coverage of 36.10%, and that was a total of over a 100% increase.

Mr. Lydon referred to Mr. Hubschman's Plan dated July 19, 2017 and it showed the same percentages and he felt it was not a substantial deviation from the Ordinance.

Mr. Lubin referred to Section 26-503.2A-3, which requires that all parking be at 142 stalls, based on the number of persons that occupy the church. He explained that the Ordinance allows one parking space for every 3 seats. Mr. Lubin said that when the applicant originally made the application, they also talked about people in the multi-purpose room and other areas which translated into 142 spaces. Mr. Lubin pointed out that the applicant was now seeking approval for 172 parking spaces and also wanted to excise certain aspects of the prior approval. He asked Mr. Lydon if he was familiar with that.

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Mr. Lydon said he was familiar. He started to give his opinion, however, Mr. Lubin stated that he only wanted an answer to that question.

Mr. Capizzi stated that Mr. Lydon should be permitted to answer the question without interruption.

Mr. Lubin did not agree and he elaborated

Mr. Capizzi objected.

Mr. Lubin said the conditions they wished to excise were the number of seats in the Sanctuary, which were limited to 180 seats, and which they had accepted.

Mr. Lydon said that it was not a condition because they had no variances and were not trying to mitigate variances for approval. He said it was just a number that was provided.

Mr. Lubin asked Mr. Lydon if he was saying that even though the applicant agreed to this number, which was written into the Resolution, it was not a condition.

Mr. Capizzi objected because they were referring to the prior application and he felt it was not a proper cross-examination. .

Mr. Lubin stated for the record that Counsel has continually taken the position that this application had to stand on its own and there should be no reference to the prior application.

Mr. West advised them that the prior approval was part of this application and the Resolution had been marked into evidence. Further, the Resolution shows that this applicant agreed to all conditions. He said that the witness stated that he was familiar with these documents.

Mr. Capizzi said that he didn't volunteer or mark the document into evidence - it was Mr. Lubin.

Mr. West pointed out that everyone knew about this Resolution, but now the applicant wants to excise certain parts of it.

Mr. Capizzi responded that the record notes his objection to this line of questioning.

Mr. Lubin pointed out that another condition back in 2008, was to permit more than 1 service when attendance exceeded 180 people.

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Mr. Lydon responded that was what the church proposed but he didn't feel that was a condition for the same reason he had given..

Mr. Lubin stated that the prior Resolution showed a maximum of 60 parking spaces on the site.

Mr. Lydon stated that he saw that as a recitation on the Site Plan.

Mr. Lubin asked if it was true that, with regard to the impervious coverage variance, it had nothing to do with shallowness, narrowness, or shape of the property.

Mr. Lydon said he did not look at it in that perspective and it probably didn't have anything to do with the topographic conditions. He said it was a long and shallow lot and since some of the parking was now in the rear, it would probably result in greater impervious coverage.

Mr. Lubin stated that he wished to discuss the testimony Mr. Lydon had given relating to Coventry Square v. Westwood as well as his reference to a D Variance with a conditional use by Ordinance. He said that it was a permitted use in a particular zone but it was permitted only in certain conditions which were set forth in the Ordinance. He said they were the conditions which must be met by the applicant and must be met in order for an approval to be granted. Mr. Lubin said that they were conditions which have been determined by the Governing Body in its legislative wisdom to be applied to a particular use to ameliorate the possible impact of the use in a zone, which is not the typical use of the zone.

Mr. Lydon responded that he could not speculate what a Governing Body was thinking.

There was discussion.

Mr. Lydon said that if it was an internal conflict he didn't know what the Governing Body's thinking would be, or if it could be a mistake or a rush job.

There was additional discussion about the Governing Body and the Haworth Ordinance with regard to conditional uses relating to houses of worship..

Mr. Lubin said that in the Coventry Square case, there was a difference which had been set forth.

Mr. Lydon said it made a substantial difference and was a landmark case.

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Mr. Lubin stated that the focus of the Board was not whether the proposed use was compatible with other uses in the zone because they already made that determination. And, the focus of the Board was on the conditional use and on the deviations of the standards.

Mr. Lydon disagreed.

Mr. Lubin asked that when talking about criteria, wasn't it true that with a conditional use variance the applicant was required to show that the site could accommodate the use.

Mr. Lydon disagreed. He said he believed that was part of the negative criteria. He elaborated.

Mr. Lubin stated that this was a conditional use in a prime residential zone and this zone involved houses on fairly large tracts of land. He asked if that didn't make it a prime residential zone.

Mr. Lydon said he thought they were all prime areas in Haworth.

Mr. Lubin asked if he would agree that this area was prime.

Mr. Lydon agreed.

Mr. Lubin asked if that was the purpose of the limitations and the applicant was seeking relief for greenery in a open zone.

Mr. Lydon responded that he did not think so.

Mr. Lubin asked if he agreed that the limited parking in a prime residential zone was a conditional use and it was to preserve greenery and open space. Mr. Lydon responded that the Ordinance could not have it both ways. He said that it says they need parking and it also says that they need lots of pervious area.

Mr. Lubin asked Mr. Lydon if he was challenging the Ordinance again and also saying that the approval should be given because the Ordinance didn't make sense.

Mr. Lydon said he was talking about the impact and what would be the result. He said that the applicant had gone way beyond the call of duty.

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Mr. Lubin ask Mr. Lydon how he, an expert Planner, could testify that a facility with 60 paved parking spaces was the same with 172 parking spaces in a paved parking area and was not going to have any impact on the greenery or open space of this prime residential area. He asked him if that was his testimony. Mr. Lubin also asked if it would have any impact on the prime residential area.

Mr. Capizzi objected to the form of the questioning. He said that Mr. Lubin paraphrased and it was a lot of opinion.

Mr. Lubin replied that he was not offering his opinion - he was asking direct questions. He said that he asked the witness his opinion.

Mr. Lubin asked Mr. Lydon again if he felt there would be no differences between a parking lot with 60 spaces as opposed to 172 spaces insofar as open space and greenery in this prime residential area.

Mr. Lydon stated that this proposal was an enhancement over the existing conditions. He elaborated. Mr. Lydon said that the site would end up with an enhanced storm water program.

Mr. Lubin responded that his question was not whether there would be improvements - it related to greenery and open space. He pointed out that they would have 172 and up to 200 parking spaces and he asked if it would not have any impact in comparison to the prior approved proposal of 60 spaces.

Mr. Capizzi said that the characterization of the application was incorrect.

Mr. Lydon said that what Mr. Lubin was getting to was the impact of 172 parking spaces. He said that because they would be behind the church, the public could not see those parking spaces. He elaborated. Mr. Lydon said there would be no negative impact to greenery or to the Borough because they would not see it.

Mr. Lubin asked about the people in the next house.

Mr. Lydon responded that the landscaper testified to that issue.

Mr. Lubin asked about the increased number of cars which would be coming onto the site and asked how it would impact the other residents on that road.

Mr. Lydon said that when Mr. Olivo was there, he found that there was virtually no impact.

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Mr. Lubin asked Mr. Lydon if he was saying that 202 cars going onto the site with valet parking was not going to have any impact on the surrounding residential area.

Mr. Lydon responded that he felt it wouldn't have an impact because the church would be using them 1 day a week - 4 times a month. He said it wouldn't have much of an impact on Sunset Avenue, which was a County road.

Mr. Lubin asked if he knew that it was a 2-lane road - one lane each way with a yellow line in the center.

Mr. Lydon reiterated that he didn't feel it would have an impact because it would only be happening one day per week.

Mr. Lubin asked Mr. Lydon if he heard him say that if a use serves the general welfare, that somehow the negative criteria becomes less. He asked Mr. Lydon if he was familiar with the language that no variance should be granted, including one which would be inherently beneficial, without showing that the variance or other relief could be granted without proof that there would not be substantial detriment to the public good and it would not impair the purpose of the Zoning Plan or Ordinance.

Mr. Lydon said that when the boards work on cases such as this one, they had to come up with reasonable conditions to mitigate.

There was discussion about the amendments to the Municipal Land Use Law.

Mr. Lubin asked Mr. Lydon if he knew that the applicant still had to satisfy the negative criteria, and Mr. Lydon said he did. He elaborated.

There was discussion about the negative criteria and reasonable conditions.

Mr. Lydon said that Mr. Lubin was talking about impact on the neighbors.

Mr. Lubin said there was a question about whether the conditions for the negative criteria had been met, whether the conditions for the use were appropriate for the zone, and, if the proposed deviations from those conditions were appropriate for uses in the zone.

Mr. Lydon responded that he did not think that was what it said at all.

There was discussion about whether this was increasing the impervious and paved areas, if it was reconcilable that the conditions for the use were appropriate for such uses in the zone, and that it needed to be determined by the Board.

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Mr. Lubin talked about the substantial increase in the paved area, the amount of parking and parking spaces, and the impact it would have on the surrounding area.

Mr. Lydon said it wouldn't have an impact and, in fact, they should look at the landscaping and the storm water management area, which would substantially improve the visual environment.

Mr. Lubin asked if it was Mr. Lydon's opinion that adding landscaping was enough to satisfy the negative criteria and make the development better.

Mr. Capizzi stated that two questions were being asked at the same time.

Mr. Lubin repeated his questions.

Mr. Lydon said that he was testifying for this particular application and the only variances were for coverage and landscaping. He said he has testified ad nauseum as to why this would be a better application. He said another application on another site might be different. Mr. Lydon said it had more than enough of an inherent benefit for this Board to grant the application.

Mr. Lubin asked if he considered the Statute as it applies and Mr. Lydon said that he did.

Mr. Lubin referred to and quoted from Sec. 42 United States 2000CC . He asked if he felt it was true that according to the religious land use regulations, the Borough imposed a substantial burden on the free exercise of religion. Mr. Lydon said, "Yes."

There were questions and a discussion on regulations, and on what constitutes a substantial burden under RLUPA.

Mr. Lubin ask Mr. Lydon about his understanding.

Mr. Lydon said that in his opinion, if it interfered and made it more difficult for people to the exercise their religious belief and not have enough parking for making them comfortable to come to church, then it was a burden.

Mr. Lubin said that Mr. Lydon was not correct. He asked him if it was an inconvenience or a substantial burden,

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Mr. Lydon said that Fr. Aziz testified that people were not coming to church because of the weather conditions and that was a prohibition for people to practice their religion. He commented that they were not asking the town to pay for the parking.

Mr. Lubin asked if it was a substantial burden when the parishioners had to modify their religious beliefs.

Mr. Lydon said that if they couldn't come to Church it would be a substantial burden.

Mr. Lubin replied that the expense was not for the parishioners. He then asked if it was true that there was more parking off-site at a remote parking area.

Mr. Lydon said that there was no parking on Sunset Avenue and nothing nearby on any street. He said that generally speaking, religious places have to make it convenient for people and not put obstacles in people's way. He said the Borough requires paving. Mr. Lydon said it was certainly more than a mere inconvenience the way it was now when it was muddy from rain and snow.

Mr. Lubin asked on what basis could Mr. Lydon say that parking over 159 cars on the lot wasn't substantially more than the 60 spaces granted and was an accommodation by the Borough.

Mr. Lydon responded that it had been going on for over 3 years. He said the Mayor was aware of it as well as the Zoning Official. Mr. Lydon said the Borough had made the choice for not revoking the Church's CO.

Mr. Lubin asked Mr. Lydon if he heard that the applicant was withdrawing a proposal for off-site parking. Mr. Lydon said he did.

Mr. Lubin asked Mr. Lydon if he knew about the proposed agreement which the applicant presented to the Board for off-site parking arrangements at a large office building in Oradell.

Mr. Lydon responded that he did not know and was fuzzy on the details because he was focused on this application and not off-site parking.

Mr. Lubin stated that the applicant's counsel offered the Board a parking agreement with the owner of the subject property allowing for the 30 of the spaces to be used by the Deacons and having a shuttle take the Deacons to the Church.

Mr. Capizzi stated that the application was amended to remove that parking agreement and that it was not relevant and no longer part of the record.

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Mr. Lubin stated that it was relevant because it provided a reasonable alternative to what was being proposed now. He stated that the applicant provided proof when the off-site proposal was presented to the Board.

Mr. Lydon said he did not know the details since he was not made privy to them. He said he did not think those things worked and it had to be approved by the Church community. He said that conditions might change and they may not have 30 those spaces available in the future. Mr. Lydon said that when the off-site parking areas were allowed, it was usually closer to the primary site.

Mr. Lubin asked Mr. Lydon if there was something he was aware of in the Haworth Ordinance that would prohibit the church or anyone from having off-site parking.

Mr. Lydon said he did not think there was anything in the Haworth Ordinance which prohibits using another location, but he knew of some in other localities. He said that whether they were allowed or not was not a specific endorsement.

Mr. Lubin asked if it was Mr. Lydon's opinion that the right to exercise a person's religion also gives them a right to park on the site of the facility.

Mr. Lydon said that some churches do not have parking lots so it was not a requirement, but he felt that asking people to park in another community and take a shuttle to the site was a burden.

Mr. Lubin stated that he had no further questions.

Mr. Posen called a brief break.

Mr. Posen reopened the meeting.

Mr. Gregory Polyaniak, of Lyndhurst, New Jersey, was introduced as an expert witness in engineering and planning. He went over his education, licenses, background, and experience. He said that he did not expect to give testimony in engineering.

Mr. Capizzi asked Mr. Polyaniak about his credentials.

The Board accepted Mr. Polyaniak and he was sworn in.

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Mr. Polyaniak talked about everything he did to prepare for this case, his visits to the sites, all the testimony, the Resolutions and other documents he reviewed, which included the 2005 - 2008 Application. Further, he attended all but one of the hearings.

Mr. Lubin stated that Mr. Polyaniak was familiar with this application, therefore, he was going to skip over the existing conditions on site. He said he wanted to discuss the proposed conditions of this application and go over the proposed development.

Mr. Polyaniak stated that the applicants were proposing 426 seats in the Sanctuary and multi-purpose rooms from 180 to 305 seats, which was an increase of 69%. He said this would increase the parking from 60 to 172 spaces. The parking area next to Sunset Avenue would remain and would be expanding to the east, north and south. The parking lot would be expanded to the east, west, and south - with the majority to the south. Mr. Polyaniak said this would affect the green space and landscaping on the property. He said that if someone visited the property today, they could see that the green space in the rear and side was being encroached upon.

Mr. Lubin noted for the record that the applicant applied for 426 seats in the Church. He said that they would need 142 parking spaces but they were requesting 172 spaces instead. Mr. Lubin stated that the applicant had a permitted conditional use in the zone and they were seeking variances and deviations from the conditions proposed by Ordinance.

Mr. Polyaniak said that Mr. Lubin was correct and he did not know the reason why they were applying for 30 more spaces than needed, and he didn't know if these spaces would have different types of uses in the future.

Mr. Lubin wanted to address the variances being sought and which did not satisfy the conditions for the use. He said a D-3 variance would be required. Mr. Lubin said there was also testimony about paving parking areas, which they were going to skip over right now.

Mr. Polyaniak said that they would be violating 2 conditions - impervious coverage and paving coverage. He said that it was 27.55% now and they needed 48.14%, which was an increase of 20%. Mr. Polyaniak said that the area as a whole was 12,046 sq. ft., which was in excess of the Ordinance. The existing pavement coverage was 14.16% and the proposed was 36.1%, an increase of and 31,233 sq. ft., which was 140% in excess of the Ordinance. He said that impervious coverage included sidewalks and the building coverage.

Mr. Lubin asked Mr. Polyaniak if he was familiar with the positive and negative criteria of Sub-section 40:55D-70d3 - Positive Criteria Standards, and Mr. Polyaniak said he was familiar.

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Mr. Lubin asked Mr. Polyaniak if he was familiar with the Coventry Square v Westwood case, and he said that he was familiar. They had a discussion about the criteria and standards and compared them to this application.

Mr. Polyaniak agreed that the standard of use should be relative to the deviation that the applicant was requesting, to prove in context of the Site Plan that it would continue to be an appropriate use, notwithstanding the conditional use. He agreed that for the positive criteria for a conditional use, the applicant must show that they will accommodate the problem related to the use. Mr. Polyaniak did not agree that this site with required variances would continue to be an appropriate site because of the paving and over-parking in a residential area. He said he felt the required logical reasons for the municipality to allow a church with a conditional use to add paving and impervious coverage limitation requirements would be so that they could limit a substantial detriment to the public good. Mr. Polyaniak said that this would be different for a permitted use as well as a non-permitted use.

Mr. Lubin read the Negative Criteria Statute and Mr. Polyaniak said that was his understanding and it was true for all variances.

Mr. Lubin said that the applicant has taken the position that the use was an inherently beneficial use for the public good. Since Mr. Polyaniak was familiar with the original case and documents, he asked Mr. Polyaniak if it was his opinion that the applicants understood that this was a conditional use with limitations. Mr. Polyaniak said he felt they understood. Mr. Lubin asked if the site was suitable for the Church with these new conditions and other deviations which were in the testimony.

Mr. Polyaniak stated that it was not suitable. He said that the purpose of the Board's conditions was to create a more modest development, so a plan was proposed to limit the detriment. He stated that no one there was restricting the Church as it exists, and no one was saying that the Church had to be removed or relocated .. Mr. Polyaniak noted that they needed impervious coverage and pavement coverage variances as well as a D-3 variance. He further noted that it was an over-development of the site and the Church members were now parking on the landscaped areas. He said he visited the site and found vehicles parked within the fire lanes as well as the southerly side even after agreeing to the conditions. Mr. Polyaniak said that conditions had changed a little bit. For example, gravel had been placed in the back area of the property, which had weeds growing in it, and the drive through lane to the back and the fire lane were being used as a drive thru bypass lane but he did not know if this was approved by the Board. He said he was not aware of any documents or approvals for them to be parking in these areas.

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Mr. Polyaniak pointed out that Mr. Olivo testified and described the valet parking as he understood it - for additional parking. They would have an abstract driving aisle and they would not be able to back out. He pointed out that the drive thru was required to be 24 ft. and it would only be 16. ft. Mr. Lubin stated that the applicant felt they did not need a variance - maybe only a temporary variance for the parking in the back and for the valet parking issue. Mr. Polyaniak said he never heard of a temporary variance or temporary parking variance to park in the back.

Mr. Polyaniak also had concerns with the letters from the Borough agencies and the Borough Official from February 2018. He didn't know if anyone reviewed their comments and it appeared that they had not been addressed. Mr. Polyaniak said that the Fire Official had comments about the angles which the cars would be parked and he also requested that an additional exit be provided. There were also emergency services issues. Mr. Polyaniak stated that the Police Chief had similar comments and also comments relating to the drive aisle and all vehicles being parking in a striped stall. He said that with valet parking, there was a safety and quality-of-life issues. The scale and scope and how it related to developing safety and quality of such issues had to be addressed. Mr. Polyaniak pointed out that there would be a loss of landscape and there would be impervious coverage and pavement issues which were not being satisfied. He explained that an inherently beneficial use did not mitigate safety and should not be an issue. He said that the applicant had submitted a revised Parking Plan, but it did not say that the conditions had been waived. He felt it would be a substantial detriment to the general welfare, safety, and quality of life. Mr. Polyaniak explained that was what the negative criteria addressed.

Mr. Polyaniak stated that remote parking would be a better alternative. He said he knew it was something that had been considered and he knew the other houses of worship used it and it was not something out of the ordinary. Mr. Polyaniak explained that it was not in the Ordinance but the Board could impose it. Mr. Polyaniak stated that he knew about the RLUPA and Religious Land Use and Institutionalized Persons Act of 2000. He said it was his understanding of the language that it prevented a substantial burden which would cause people to act contrary to their religious beliefs.

Mr. Polyaniak said he did not think it was anyone's Constitutional right to have onsite parking and going off-site was not contrary to their religious beliefs. He said there would be a burden on the Church but not on the people and they would not have to act contrary to their religious beliefs if they parked off-site at a satellite area, Mr. Polyaniak said there would be no burden with using a satellite site. He stated that the environmental impact and site safety had to be considered. Further, if they used the satellite site, they would no longer have the problem with the muddy ground from rain and snow. He said that the requirements of the Borough's Ordinance would not constitute a substantial burden. The people could still use the Church to pray and they would not have a substantial burden.

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Mr. Capizzi asked if any testimony was predicated upon parking in the rear of the property. He asked about what they could do in various scenarios with and without the additional 80 parking stalls and with and without the 30 off-site stalls.

There was discussion about using off-site parking.

Mr. Capizzi asked Mr. Polyaniak if he consulted with the Benvents or others to sell land to the church and Mr. Polyaniak responded that he did not.

Mr. Capizzi stated that the applicant had a need for more parking.

Mr. Polyaniak responded that the applicant was not following the conditions in the 2008 Resolution.

Mr. Capizzi asked if based on this application, was there a need for more parking and Mr. Polyaniak responded that there was not a need.

Mr. Capizzi then asked about the need when Mass was on, and Mr. Polyaniak said there was none.

Mr. Capizzi asked if he had ever testified on behalf of the White Beeches Country Club for applications in opposition to any St. Gabriel's applications, and Mr. Polyaniak responded that he did not.

Mr. Capizzi asked if he agreed that Mr. Olivo was a well-respected traffic engineer and Mr. Polyaniak said he agreed. He asked if he took issue with his parking counts and Mr. Polyaniak said he did not.

Mr. Lubin stated that he did not have any re-directs.

Mr. Vince said that he wanted to address the satellite parking and he read Section 26-903.1H of the Ordinance. He said that if the applicant wanted to have off-site parking, they would need a variance for it

The Board did not have any questions.

Mr. Posen opened the meeting to the public.

Since no one came forward, Mr. Posen closed the meeting to the public.

Mr. Posen stated that since no one had any more questions, they would adjourn the application for this evening. He thanked everyone.

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Mr. Posen stated that based on their discussion, there would not be a July meeting for the Zoning Board. Therefore, summations would take place in August and the date would be determined.

Mr. Capizzi asked for another date in July.

Mr. Posen explained that he could take comments directly right now. He suggested that they start the dialogue.

There was discussion and Mr. Posen said he would communicate electronically about dates and availability.

Mr. Lubin asked if they would continue on the next meeting date and Mr. Posen told him that they would not be able to meet due to the lack of a forum. He said the question was why they didn't we move to another date in July.

There was discussion about the summations and citations, what would take place, and what could be done.

Mr. Lubin felt there might be a difference of opinion on RLUPA and they needed more information.

Mr. West suggested that the attorneys could present bullet points with the facts and citations, etc., and not a full presentation so the Board and Counsel could do their research.

Mr. Capizzi did not agree.

Mr. Lubin did not agree with Mr. Capizzi.

Mr. Capizzi talked about distributing transcripts.

There was discussion.

Mr. Lubin suggested that they confer.

Mr. Lester suggested that the attorneys should submit their documents to Mr. West if they were going to rely on citations.

There was additional discussion.

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Mr. Capizzi said that if there were any questions, he wanted to be asked that evening.

There was discussion.

Mr. Lubin said that there were issues of law and a fundamental opinion on whether parking or a lack of parking constituted a burden. Mr. Lubin said that the Board needed to have a full array of facts in this case.

Mr. Capizzi stated that there was no need for written briefs and it could be based on testimony. He said that transcripts of the last two meetings would be provided to the Board.

Mr. Lubin said that he did not agree with not submitting briefs. He explained.

There was discussion on whether or not to provide briefs and rely on them as a crutch.

Mr. Lester said he did not agree and he felt a disservice was being done.

Mr. Lubin stated that he should have the opportunity to submit a brief with the applicable law. He said he felt Mr. Lydon was off-base with RLUPA and the Board and Counsel had to know why.

There was additional discussion.

Mr. West stated that since the witnesses had testified about case law, every though it was on record. He said he felt that briefs should be submitted.

ADMINISTRATIVE

Mr. Posen stated that there was no new business to discuss at this time.

