

Special meeting of the Haworth Zoning Board of Adjustment on October 16, 2018, at the Municipal Center.

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

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

**ABSENT** Laura Weingartner, Alternate 1

Mr. Posen called the meeting to order and upon roll call, the above Members were present. Mrs. Weingartner gave notice that she would not be able to attend this meeting.

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**

#### **Minutes of the June 19, 2018 Meeting**

The minutes of the June 19, 2018 meeting were reviewed.

Mr. Ehrenberg moved to accept the minutes as presented, subject to the rights of absent members to correct statements directly attributed to them.

Seconded by Mr. Paquet and unanimously carried.

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#### Minutes of the October 2, 2018 Meeting

The minutes of the October 2, 2018 meeting were reviewed.

Mr. Ehrenberg moved to accept the minutes as presented, subject to the rights of absent members to correct statements directly attributed to them.

Mr. Lester abstained because he did not attend that meeting.

Seconded by Mr. Paquet and unanimously carried.

#### **CHANG MEMORIAL RESOLUTION**

The Chang Memorial Resolution was reviewed.

Mr. Posen noted that Mr. Lester was not eligible to vote since he was absent.

It was noted that Mr. Ehrenberg had been listed twice and Mr. Panzella's name had been omitted on the Resolution. Mr. West made the corrections.

Mr. Roth moved to approve the Resolution.

Seconded to Mr. Paquet and upon roll call, the vote went as follows: Yes - Mr. Roth, Mr. Paquet, Mr. Ehrenberg, Mrs. Luby, Mr. Panzella, and Mr. Posen; No - none. Motion carried..

#### **ST. GABRIEL'S CHURCH APPLICATION (continuation)**

Mr. Capizzi appeared on behalf of St. Gabriel's Church.

Mr. Lubin appeared on behalf of the objector, White Beeches Country Club.

In essence, the following transpired.

Mr. Capizzi noted for the record that he did not have any further witnesses or professionals testifying.

Mr. Lubin stated that he had none.

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Mr. Capizzi stated that he had submitted a written summary of what this case was about and he was not going to read it.

Mr. Lubin had also submitted a written summary to the Board. He gave his summation.

He said he addressed the points; that this application is not about the history of the church, it's not about the area of the Middle East they come from, it is not about the number of seats in the Sanctuary, there were no objections to the number of seats over the 180 previously approved; there were no objections to using the request to use Sanctuary and school simultaneously, and it is not about the tenants' religion except with the restriction to being able to have only one Sunday Mass.

Mr. Lubin pointed out that the number of seats was from the testimony originally given by a leader of the church. He said it would be 180 and there would be two masses in order to get the original approval. However, now that conditions have changed, there has been a representation by the Pastor during this application and he said that they were only permitted to have only one Sunday Mass. Mr. Lubin said that he researched and found that this information was correct. He said it could not be overlooked that it was testified to previously by that gentleman and it was a lack of candor, which was taken in good faith. He said he felt that this was also the case with the parking.

Mr. Lubin said that this case was about the Conditional Use Variance and he knew that this was a rare case before the Board. He said that it was a permitted use in that zone but if the applicant seeks to deviate, a Conditional Use Variance is required and they are seeking two Conditional Use Variances. One is impervious coverage - one is 27.55% and the proposed is 48.14%, which is in excess of 20%. He said that a very significant variance which was being sought was the pavement coverage at which the maximum should be 15% and the proposed would be in excess of 31,200 sq. ft. and in excess of the Ordinance requirement by of 140%. He said that it was not an adjustment or a tweak, it was disregarding the conditions of the Ordinance. The issue before the Board was whether a Conditional Use Variance should be granted to the church to pave over a substantial portion of their lot in violation of the Ordinance. Mr. Lubin said he did not refute that a house of worship was an inherent beneficial use. The question comes to the relation of the impervious coverage and pavement coverage in the parking lot and the number of spaces and not the structure of the building.

Mr. Lubin stated that there were two categories for criteria - positive and negative criteria. He referred to Coventry Square v. Westwood, the case which governs this situation. Mr. Lubin talked about Mr. Olivos' testimony and pointed out that there was no reference to Mr. Lydon's testimony. Mr. Lydon's testimony talked about parking over pavement and the absence of a problem because they would be putting in drainage.

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Mr. Lubin explained that it was not just related to draining - the conditions were designed to prevent over-building and over-utilization in a residential zone. Mr. Lubin pointed out that this property was being used for a non-residential use in a residential zone. Mr. Lubin also talked about Haworth being a very upscale town in Bergen County and the houses on Sunset Avenue were fine and expensive. He explained that the Coventry Square case said that they must evaluate the impact of a Conditional Use Variance upon adjacent properties and determine if it would cause such damage to the character of the neighborhood as to cause such a detriment to the public good.

Mr. Lubin said the applicant had taken a narrow view of the Conditional Use Ordinance for houses of worship in a residential zone. The Ordinance was designed that if a conditional use was within the zone, the development would be compatible with the character and nature of the zone. The existing church with existing parking is compatible with the character and nature of the existing zone. The current application would be a sea of cars and in his opinion, was not compatible with the character and nature of the zone. Further, in his opinion, this is where the application fails to meet its burden. That disingenuously argues that the site in question was surrounded by commercial parties and a one-family house, which was previously owned by the Benvents. The commercial property to which they were referring was the White Beeches Golf and Country Club, which will not be developed for stores and other businesses. This property has not been developed for one-family houses and is essentially, open green space - but Mr. Lydon ignored this.

Mr. Lubin said that his expert, Mr. Polyaniak offered his opinion that the original proposal for the site as granted was suitable for a church provided that it did not cause a substantial detriment to the public good or impairment to the Zoning Ordinance. The applicant agreed and now is rescinding the agreement. Nothing changed and no testimony provided with regard to the character of the neighborhood. There was no testimony about changes to the area but there was testimony about the increase of membership in the church. He said that now that proposal has changed. He gave examples. Mr. Lubin submitted that the development would substantially impair the intent and purpose of the Zoning Ordinance. They want a parking lot for 172 cars even though they had stated that they only need 154 - and they would additionally have more cars, which would operate with a valet plan, and which would substantially detract from the character of the area. He commented that this was difficult to understand how, on regular Sundays they would need 154 spaces and on high holy days they would need only 172. - 18 more spaces. He elaborated. Mr. Lubin said he felt the number of cars would be much more, and according to the track record of the church, it was more than reasonable to project that they would need space for more than 172 cars. He referred to the prior approval and for 150 cars on site illegally parking and without permission. Mr. Lubin said he agreed that they had an attractive Landscaping Plan and it might slightly mitigate the situation but it would not mitigate the negative criteria. He said they needed to preserve an A-1 residential zone's characteristics of the area. Mr. Lubin submitted that it would have a detrimental impact on the residential area. He said that

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the number of people inside was a non-issue for the Board and it was up to the Fire Department officials. The issue was as to whether Sunset Avenue would be able to accommodate the number of trips to and from the church. He said that Mr. Olivo gave testimony, and Mr. Lubin felt he was a very qualified expert, but where this fell apart was on the Valet Parking Plan. and if that was not enough, it was necessary to address potential parking on major holidays. He said that what was additional to the detriment of the character of this area was the potential queuing of vehicles onto Sunset Avenue. He explained. He said that the situation of the valet parking would create a queue onto Sunset Avenue, it would create a dangerous condition, and it would further detract from the residential area.

Mr. Lubin pointed out something else which would detract from the residential area was that the applicant's plan was to change the size of the car stalls from the customary 9 x 18 ft to 8 x 18 ft., which was substantial and problematic. This would make it difficult to move cars. He said they also proposed to reduce the drive aisle from 24 ft. to 16 ft. Mr. Lubin said that it also fails because of the temporary variance for the holidays, which falls on the Valet Parking Plan. He said that in all his years of practice, never has he heard of that concept or case decided or granted by a New Jersey Court which had dealt with a temporary variance and the applicant had not cited any legal authority for such a variance.

Mr. Lubin said that he had already made his remarks about notice and would not repeat them since they were in the record. He noted that the applicant had the burden of proof to establish grounds for the relief they were requesting. The burden never shifts to the Board to establish why a variance should be not be granted or why it would cause impairment to the public good and the Zoning Ordinance. Mr. Lubin stated that the applicant incorrectly said that there was no objection to the valet parking and felt that It was a mischaracterization of the record. Mr. Lubin pointed out that the Fire Department was concerned about double-parked cars and also wants an additional exit, especially for emergency vehicles. The Chief of Police felt that double-parked vehicles and the smaller stalls would create a safety concern. He said a reasonable alternative existed and it was reasonable to have an off-site parking area and shuttle buses for the congregants. The applicant said they attempted to procure off-site parking but said it was unsuccessful. However, to the contrary, they provided testimony to the Board that they talked to the owner of an office building with a parking lot, on Kinderkamack Road in Oradell, which was closed on Sundays. They made a temporary arrangement for parking 30 cars for the Deacons - but they did not look into having anything for a more significant number of cars.

Mr. Lubin said that brought him to RULIPA. He said that because this was a religious institution they were cognitive of the Federal Statute. Mr. Lubin said they were not imposing a Land Use regulation which would create a substantial burden.+ He defined it.

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Mr. Lubin talked about Mr. Lydon's testimony saying that if a parishioner did not get a parking space at church, it would be a substantial burden and they would be unhappy parking on a grassy area if it was wet. He said that person was making a choice. Mr. Lubin asked about how strong this person's religion was if they would choose not to go to church unless they got a parking space. There was no law ever declared that a parishioner had to park their car on the same site as the house of worship. He pointed out that the inability to park was a mere inconvenience and even though they had to be cognizant of RULIPA, this doesn't apply to it. He said that until the applicant met the burden of proving that the Zoning Board had a Land Use Regulation which created a substantial burden on the free exercise of religion, the burden did not exist.

Mr. Lubin thanked the Board. He apologized for the times he was strident. This was a hotly contested case and said he meant to disrespect to anyone, especially his adversary, the clients, or anyone on the Board.

Mr. Capizzi then gave his summation.

Mr. Capizzi stated that at some point in time, the Board would set up a resolution to approve or deny the case for the following reason. He said that they had to base their decision upon the testimony from sworn witnesses. He went over the list of experts who testified on both sides. He said that the opponent's case was that there would be over-intensification and over-utilization. Mr. Capizzi stated that they were increasing the impervious coverage and pavement and doubling it but there were no issues with traffic, landscaping, drainage, or the capacity on Sunset Avenue so he did not understand the opposition. Mr. Capizzi said that the opposition was fighting them since they first opened their doors and now the applicant is being told they were there for benefit of neighborhood. He said he felt that this was not Haworth's issue and pointed out that only the Benvent's attended the meetings. He pointed out that the parishioners had been parking like this with over 154 cars for two years and there has been no objection from the Police Department even though they were supposed to only be parking in a paved area. He said they found a temporary plan - a band-aid - for parking on a Sunday until it was improved. He said that the Ordinance required that they park in a paved area that is properly drained and landscaped. The case is about paving and impervious coverage. Mr. Capizzi said that because they are an inherently beneficial use, they only have to deal with one problem. He said it is known that houses of worship were always hotly contested so they have Federal Regulations, the Constitution, New Jersey Constitution and Statutes and other laws. He said this was an operation of necessity. He elaborated. As a result of the government knowing they were always under attack, they wanted to make sure that people could go to worship on Sunday. They still have to go before a Board but they are not going to give the church the same burden as they would for putting a Burger King on Sunset Avenue. The government feels that the church is trying to do a good thing and they want to encourage it.

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Mr. Capizzi said that the positive criteria is, therefore, already satisfied and they do not have to show why they need a variance or the impact on granting that variance. Is it going to rise to a substantial level. They do not mean moderate - it has to be a substantial negative impact. He said they have to take a four- part test. They have to weigh the potential negative and weigh the positive against the negative and then formulate some kind of condition before it is denied. He elaborated. Mr. Capizzi said that the law was making it more difficult for Boards to deny applications such as this. He said that nothing was said about this. Mr. Capizzi said that Lee Kline, the traffic expert, did not feel there was anything negative on Sunset Avenue or the internal circulation of the site; He said that the landscaping and drainage plans were discussed *ad nauseam* and there were no objections and took no positions.

Mr. Capizzi stated that they had to look at circulation and there were there are 48 masses a year. Mr. Lubin, the Police Department, the Fire Department, and the Board Engineer had no issues with it. At four times a year there might be a slight chance of having more parishioners. They have an already big population on Sundays with 154 cars, so there might not be a lot more on holidays. It is about providing a reasonable parking area. He said that with Catholic Churches, they have the option of having more Masses. He talked about how their parishioners are drawn to that church and pointed out that there is not a church like this on every corner so they need to provide the ability to park for their parishioners. The Ordinance requires parking to take place on the property so if they lose this area, he didn't know what would happen. He said that the church never received permission to park 154 cars on their property so that should not come into the Board's decision making. He referred to Fr. Aziz's statement that when there were days of bad weather, the attendance dropped. The current parking arrangement gives 100 stalls and the municipality is looking the other way temporarily. They were in Hackensack, that closed and now they are coming to Haworth but cannot worship according to their First Amendment rights. The Board engineer finds the drainage acceptable, it is a conventional parking lot, and Fire Department trucks do not need to go on the property when there's a fire. The temporary variance was Mr. Lubin's catch phrase. The valet parking service can certainly function. Valet service is common, it works and there would not be any concerns.

Mr. Capizzi said that the Benvents and White Beeches Country Club were already looking at vehicles and what they were proposing was an expansion of the existing parking area. He stated that RLUIPA does not look at property - it looks at people; it provides for private services and worship together. He said that the effect of not having the parking area they were seeking would cause people not to attend. Mr. Capizzi stated that parking had to take place on site and there was no where else to go in the Borough of Haworth.

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Mr. Capizzi said that regulations for impervious coverage were not compelling so the Board was required to approve this application. He reiterated that they now have cars parking on dirt, there is limited landscaping, and there is no traffic back up. Mr. Capizzi referred to the rendering of the Landscaping Plan and Parking Lot and said that they could not see any cars, so he did not see the negative impact. Mr. Capizzi asked what they looking to achieve. He said they were showing a good faith effort to drain the site. The Board should keep in mind that the best case scenario would be ideally to come before the Board about parking in the back and put the parking where the parishioners go. He talked about what would happen if the White Beeches Country Club continued to fight the church. He said that all they were proposing to do was an improvement of what existed today.

Mr. Capizzi said that under the Municipal Land Use Law, he asked the Board to grant the application.

Mr. Posen asked for questions and opinions from the Board.

Mr. West stated that in 2005, when the Planning Board denied part of the application, the applicant went before Judge Harris and the Judge dismissed the RLUIPA claim with prejudice and yet it was brought up before the Board in June. He asked if they had an opinion on Judge Harris's position.

Mr. Lubin talked about the Law in these cases where the court asked if anything changed. He pointed out that under the rule of *res judicata*, there has to be a substantial change for the case to be heard again. He said the RLUIPA did not apply.

Mr. Capizzi stated that Judge Harris's opinion was not binding.

Mr. West responded that it was brought by the church and the town, and it was dismissed. He explained.

Mr. Capizzi said he found that the case was moot. He talked about who had jurisdiction.

Mr. West stated that it was the Court's decision and was related to RLUIPA./

Mr. Capizzi responded that whatever the Board decided has to be made over the facts of this case and during this case.

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Mr. Lester referred to the first drawing. He asked if the applicant believed that under RLUIPA, a municipality could not impose restrictions upon a building. He said that if in five years or tomorrow what would they do if the church decides, that because of an increase in the congregation, they needed to increase everything. He asked if the Board had the power to say ~~No~~+ under RLUIPA. He pointed out that the Board had power to make bulk, height, and side-yard restrictions.

Mr. Capizzi said they were only talking about how a Land Use Ordinance has jurisdiction on one's ability to worship. He elaborated.

Mr. Lester asked if the municipality had to make accommodations if one person was burdened. He said that they should forget churches for a moment and asked if the municipality could impose restrictions on construction in the commercial zone and regulate pavement and impervious coverage. Mr. Lester stated that it was a common restriction within a municipality.

Mr. Capizzi stated that they had the ability to enact zoning issues - it was the manner in which it was applied.

Mr. Lester asked that if there were 300 attendees on a typical Sunday, and parking was not enforced, and there was not enough parking for one more car, would the Board have any alternative.

Mr. Capizzi responded that Boards were not commonly concerned about future applications. If the applicant wanted to do something additional, they would have to go back to the Board and that could be until saturation.

Mr. Lester questioned the point of saturation. He asked at what point would there be saturation. He asked if that was not an issue.

Mr. Capizzi said that it goes to the Municipal Land Use Law and in RLUIPA.

Mr. Lester stated that the town's standard had been defined.

Mr. Capizzi said that they had to consider the nature of its use. He talked about handling drainage and landscaping, and he said that at some point it might be, ~~No~~,+but that was not in their application this evening. He said that because they were doubling and tripling the amount, the Board was saying that they had to deny.

Mr. Lester stated that the concern was not doubling and tripling coverage, it was concerning what the town has designed.

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Mr. Capizzi said that the town's concerns were complied with. The standard was set by the town for single-family houses and houses of worship. He said that, yes, they were deviating but whether it was a single-family house or a church, the same amount of pavement and impervious coverage was allowed.

Mr. Lester responded that if the town wanted to keep coverage at a certain limit for residential or commercial, the applicant must comply.

Mr. Capizzi said that they did not take issue - he said they have a case which warrants a variance and the applicant has met its burden.

Mr. Paquet pointed out that in Mr. Capizzi's closing statement, he said that the authorities have been looking the other way. He asked what let him to that conclusion.

Mr. Capizzi replied that there were no violation notices.

Mr. Paquet then asked why they bothered coming to the Board if they were going to do what they wanted anyway. Mr. Paquet noted that what had been set before, was not being applied today. He pointed out that the applicant originally said they were going to leave Hackensack and the congregation would be split but they all ended up in Haworth. Mr. Paquet asked them about having a garage and about whether they could purchase more property. He also asked about the policies with the Valet Plan and who would be in control of the valet parking if the authorities were looking the other way

Mr. Capizzi replied that the municipality had inadequate coverage.

Mr. Paquet said he felt they should purchase more property.

Mr. Capizzi reiterated that it has been 2 ½ years that they have been parking the extra cars on the property and if the Board had other options, it did not play into the analysis. The Board's job was to review the testimony and Plans in accordance with the law. They are not able to help the applicant find another way.

Mr. Paquet responded that Mr. Capizzi's opinion of Fire trucks not entering the site during an emergency was ridiculous and he did not agree.

Mr. Capizzi said that he relied on the opinion of experts.

Mr. West talked about the temporary variance as well as impervious coverage and pavement coverage.

Mr. Capizzi said he would imagine that the Board would require the applicant to implement the Valet Plan on high holy days.

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Mr. West responded that he did not think the Zoning Board had the authority to enact that. He said this was something that was personal to the applicant's operation.

Mr. Capizzi stated that it was not before the Board.

Mr. Lubin pointed out that the applicant was requesting that they reduce the size of the stalls. He said it was with one or the other.

Mr. Lubin asked what they would do if the church congregation grew and they needed additional parking. He elaborated. Mr. Lubin stated that the applicant had a self-created hardship. If they first needed to have more parking they should have purchased more land. He said it was a question of where the Board draws the line and where the applicant's proposal impairs the Zoning Ordinance. He reiterated that the applicant should have purchased a bigger piece of property.

Mr. Capizzi stated that it did not come up to play in this application. He said that another criteria, which was listed for them, was that the application was for a permitted and beneficial use in the zone.

Mr. West reminded Mr. Capizzi that he had said it was no longer an issue and they still had to prove that there would be no negative impact.

Mr. Capizzi said it was beneficial on the effect on the neighborhood and the Master Plan and the analysis did not apply there. Every Church and Synagogue is going to have some impact in neighborhoods. That is why there are certain protections for their use. Mr. Capizzi said that no one looked forward to these hearings and he felt they were doing the best they could do to address those concerns.

Mr. Panzella said that they should plan to stand on their own without a valet service on high holidays.

Mr. Capizzi said they would have no problem and, yes, their plan would still fly.

Mr. Panzella said he did not see it.

Mr. Capizzi stated that they had submitted that on days they were going to use the valet service, there would be 172 cars and the Valet Plan would come in to play.

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Mr. Lubin stated that they would need 189 spaces for high holy days. He said that if the Plan had 172 spaces, there was going to be 17 cars with no parking spaces, they would be parking on the grass - the same thing they were doing now. He reiterated that the problem was the over-intensive use of the property. He said that in RALUIPA, you do not throw parking standards out the window. If the application is uniform, than that is OK. He said that the government had to be neutral and to say that someone was not going to Mass because they might put their heel into the grass, was ridiculous.

Mr. Panzella asked that when they had a Plan set for a certain number and twenty-five additional cars arrive, where were they are going to go. He asked if they knew where these cars would be going.

Mr. Capizzi stated that there would be no place to go. He said that if there was no parking on site and the Church was going to have to plan for those events. Mr. Capizzi said they were looking to alleviate problems and it went back to a concern of growth and whether it would get out-grown. Mr. Capizzi talked about it being uniform through the churches and the Board could not challenge it.

Mr. Ehrenberg stated that this was a plan which they could not have gotten approved by the Planning Board from the get-go. He said that he was reasonably convinced that if it were the Haworth Planning Board was overseeing the conditions, it would have been denied. Mr. Ehrenberg said that in his opinion, a compelling reason does not validate an unacceptable idea. He said that the question was whether the land was going to look better or worse.

Mr. West pointed out that back in 2008, when the Church went to the Planning Board for a Site Plan approval, it met the conditions for a house of worship but during the proceedings there were conditions which were added by that Board, and now the church was asking the Zoning Board to exscind those conditions. He asked if this Board had the power to do this.

Mr. Lubin stated that an applicant could come before a Board after approval is granted and ask to have exscinded only if there is a substantial change in the area and not a substantial change for the number of people in the building.

Mr. West said that it was going back to the conditions but not the original Board. They would have to look into that issue.

Mr. Lubin asked if this Board had the power to exscind conditions of the Planning Board. He said it was an ancillary jurisdiction.

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Mr. Capizzi said that this Board clearly has the authority because he believed that it did. He said that this Board had similar power to that of the Planning Board. Mr. Capizzi said his position was that conditions changed. Mr. Capizzi said that no variances were granted and the testimony during the proceedings should be reviewed in that matter. He said that parking stalls were not conditions. He stated that there would be parking on Sundays for four hours and valet service on three or four holy days. Mr. Capizzi said that the Board had the authority to determine whether certain conditions were necessary for granting the conditions of a variance. He said he was not seeking to operate within the 2008 approval.

Mr. Lubin commented that Mr. Capizzi had an attachment on the Resolution. They had certain enumerated conditions and they were in the Resolution relating to seats, parking spaces, and no Sunday School during Mass and no one challenged the conditions of approval. If the applicant was dissatisfied, they had the right to file an action for the right of prerogative writ, but it did not happen. The applicant operated the church completely contrary to the conditions set forth with more seats and more parking spaces. Mr. Lubin pointed out that the problem with the Police Department enforcing a house of worship was that they do not want to do that so the church felt they were allowed to get away with it. Now they do not have any proof for listing those conditions but to excise those conditions. He stated that Mr. Capizzi said the Board could not look at what happened before. He elaborated. Mr. Lubin then pointed out that it was the same church and parking lot, and the same situation and to say that it was a totally new application, was not the case. He said that the applicant was attempting to expand the existing use and expand it beyond that which the Zoning Ordinance permits.

Mr. Capizzi stated that this application was before the Board of Adjustment and in his opinion, it was a new application. He elaborated.

Mr. Paquet asked how it would not be a problem on Sunset Avenue and where would the extra cars go. He asked how this Plan not get blown up on a horrible day.

Mr. Capizzi said that they did two or three parking studies before this Plan and they talked about all them. He went over what has happened. Mr. Capizzi said that all he could offer to the Board was that there is a benefit to be derived and that it has been pending for so long. He talked about the traffic experts and the legitimate counts. Mr. Capizzi said that 154 cars having been coming to the property and parking on dirt and now the applicant would be improving the situation. He said that nothing bad had happened after three years.

Mr. Paquet asked if there would be a liability on the town with fire trucks and in a catastrophic event.

Mr. Panzella said there would be a problem with emergencies and he wanted to know what would happen. He asked if valet parking was part of the application.

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Mr. Capizzi said it was and they would be using it on holy days.

Mr. Paquet said that if the congregation stayed the same size as it was today, it might be workable - but what if conditions were to expand.

Mr. Capizzi said that they had to remember the nature of the congregation and growth would be from within. He pointed out that it was a relatively small piece of property for a church.

Mr. Paquet said he did not have an opinion right now.

Mr. Capizzi stated that everyone has been open and honest.

Mr. West stated that for a long time, he thought the valet service would be used to accommodate parking on high holy days and he did not think it was part of the application. He said that if the valets did not show up and if the were cars were damaged, would they want that as a condition. He said it had been requested.

Mr. Capizzi said, %es.+

Mr. Vince stated that the Board should want as a condition that if parking became a problem in the future, they had the right to go back and there and have a Valet Plan implemented on other conditions.

Mr. West responded that now they had something that needed to be changed.

Mr. Panzella commented that there was no enforcement.

Mr. Paquet stated that for the last two years, there has been nothing on Sunset Avenue. He asked how they were going to address the Valet Plan - was it going to be an addendum or would they be going out the room and then wondering how it was passed

Mr. Vince said that at some point in time, the building was going to reach its capacity.

Mr. West pointed out that now they were asking for 305 seats in the Sanctuary. He also said he did not think the Valet Plan was in the application.

There was discussion.

Mr. Posen called for a short break.

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Mr. Posen reopened the meeting. He announced that since the meeting started at 7:30 p.m., it would continue until 10:30.

Mr. Posen talked about valet parking and jurisdictional approval.

Mr. Paquet noted that there were other conditions imposed with the Planning Board. He said he wanted to know what was being done with the stalls and to what the Board would be agreeing.

Mr. Posen said he did not think that all use in the building on the inside was on the table. He asked if the Board felt as though any conditions in a different application with a different Board had any relevance.

Mr. Paquet asked how that would be determined.

Mr. Roth said he did not think they were seeing anything about conditions from a previous application.

Mr. Paquet pointed out that there had been other conditions which had not yet been addressed. He said that they were using a building for a church and school and he asked if the Board was saying that it was OK. Mr. Paquet said he wanted it brought up. He asked if it meant that the Board was agreeing to it. .

Mr. Capizzi said that was what they were seeking and it was in the application.

Mr. Posen noted that it was discussed but it was not in this application. The application only related to pavement coverage, impervious coverage, parking, and a D-3 variance.

There was discussion.

Mr. Posen pointed out that this new application has been before the Board for 1 year, 11 months and 3 weeks. The first application was heard on November 1, 2016. He stated that Mr. Capizzi had been antagonistic to him as the Chairman. Whatever happened in the past and in the future, a unanimous Resolution passed for this client. He told Mr. Capizzi that he knows that his Board was even-handed and open-minded and made judgment on the validity of the case. Mr. Posen noted that Mr. Capizzi had stated that this was an application for an extension of an existing condition - and that was the problem. He said that this has been a condition since his very first application and was thrown out by Judge Harris because the building was built too big and it was always known. Mr. Posen asked why they would build a building for 305 seats if they could only park 60 cars. It was built when the applicant had two locations and it was not the Board's problem - it's sad - but it is not the Board's problem that the Hackensack Church was sold or dropped. He asked what would happen when the population of the

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church goes down and they no long need the variances. He reminded them that variances ran with the land forever. Mr. Posen said that the fundamental thing as Chairman of the Zoning Board for 15 years was that he respects the Ordinances of the Borough and the longevity that is not about the applicant but about what they want to do with the land. He gave examples. Mr. Posen stated that the closing of that church and the decision to buy a new building or relocate had nothing to do with the Land Ordinance. He said when they talked about the congregation growing, they were stymied and no one came up with an offer or made comments about a plan.

Mr. Posen stated that he goes to a congregation and he never parks in the parking lot - he is always on the bus that transports them or he walks a mile. He parks in another part of Closter that has been designated. Mr. Posen said that his congregation has been so successful with this plan. He explained. Mr. Posen said that the clergy made congregation successful and the people listening to that clergy was why the place was packed and the rumor was that it had a population of two to three times of what it was it should hold. He said it does not have parking because it was built on wetlands and there was only a fixed amount of land on which could be built. Mr. Posen said he read Judge Harris's decision carefully but he is not a lawyer. He read every one of the Resolutions that were passed as well as the conditions with a capital C and conditions with a small C. He said he understands that they submitted an application with no variances whatsoever and now they are revisiting the exact same thing. Mr. Posen found that they had growth and that was wonderful but he did not agree with the example given for what would have to be done for the one person stepping in mud or one person needing a valet. He said there would have to be enforcement because he believes that when they have 172 cars, one more cannot park there and then the applicant would be back before the Board with an RULIPA request. He said that they would have to have a counter at the driveway to determine the number of cars. Mr. Posen said he did not think they had seen alternatives such as off-site parking. He said that in fact, the clergy should be the ones parking on site since they get to church early and the people who do not get to church on time, do not get a chair and that is how it usually works. Mr. Posen said he thought a garage had to be looked at - he does the same job as Mr. Paquet but at the other end and he has been baffled since day one that no one has come up with a garage as an alternative.

Mr. Posen said he did not care about the White Beeches Country Club - he was looking at the land. He said right now, he could not see the cars in the back. He asked what they were doing with the land in the back and could it be considered for a parking garage with a two-level deck - and the good reason would be there would be no variances. He elaborated Mr. Posen stated that there were so many options which were not presented and never put to the test. He said he has been looking at that and he has come back to the same conclusion.

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Mr. Posen said he thought the other Board heard twelve years ago what this was what the Zoning Board was hearing now and they decided that a conditional was absolutely permitted by the Ordinance. Nevertheless, for anyone to think that a religious institution should have a different criteria for pavement and coverage does not make sense. He said that this was their town and they wrote the regulations to let the town stay the way it is and they allow churches wherever they choose to fit. The applicant bought the land and was challenged with how a big building and parking could be and this was known ten years ago. They allow the church to decide but they should think that it could shrink and it could grow. He said there has been no definitive statement or attempt as to what happens when you have a wedding with this large congregation - they are all first generation. He said that they cannot tell them how many to put in a building - they are not in the business of regulating and it is not the Board's responsibility. He said that they should have come up with some options from the beginning.

Mr. Posen said he was not pointing his finger at this point. He said he has been making notes for almost two years and does not see the compelling argument from the applicant other than them saying that this was an existing condition that should be approved. He said that it should never have happened.

Mr. Ehrenberg stated that the applicant was asking the Board to remove certain conditions for the use of the interior, which was on the initial application for a variance.

Mr. Posen said he didn't see it in the summation but later found it.

He said he agreed with Mr. Lubin and Mr. Capizzi that restrictions on the interior use were capricious, arbitrary and probably illegal. He elaborated. Mr. Ehrenberg said he would remove restrictions on the interior use.

There was discussion about the interior use of the building.

Mr. Capizzi stated that it was his job to advocate for his clients and provide testimony for which he believes would sustain the application. He said that one way or the other, they were going to Court and his objective was to build a record. He said that as part of that advocacy, people have found him to be antagonistic but said he could not apologize for being that way. He elaborated. Mr. Capizzi stated that when the Board makes a decision, it has an understanding of the fact. He said the Board thought it was unfair to have a different criteria for a church and a single-family house. Mr. Capizzi said it was not his policy and he did not create the rules - he gets paid to argue what the rules are. He said they had a difference of opinion of the rules and sometimes it rises to the level of him being antagonistic and for that he apologized. Mr. Capizzi talked about knowledge - he said there was a different standard for a church and a single-family house. He said he has provided testimony to address concerns

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about future growth and there was testimony about weddings and there were no issues. Mr. Capizzi said they maxed out on this Plan - he has no idea of what the future holds. He said they would need a variance for the garage and a parking area would be better than a parking structure.

Mr. Capizzi stated that Mr. Posen said his obligation is respecting the Ordinance and it was not the Board's authority to uphold the Ordinance. He explained. He said he thought local knowledge was important. You have seen what has happened with what has been going on at the property and whether it would have an impact on the public good. Mr. Capizzi said that the burden applied to this case was less than that for a single-family house. He said that to have the applicant plan for the future was not the function of the Board and if there was a means for the applicant to satisfy the parking requirement, they would have done it. He talked about all the time that was spent with the Plans before they filed the application and they tried to bus parishioners but it did not work. Mr. Capizzi said that they have a congregation looking for a place to park so that they could go to Church on Sunday.

Mr. Paquet stated that he felt the Board needed to clarify their jurisdiction over what the Planning Board did and spell out what the Board would be approving. He said there seemed to be some discrepancy on what they would they would be approving or not approving. Mr. Paquet said Mr. Capizzi had been talking about what would happen if one person gets mud on their shoes and for some reason their people would not want to go back to that church. He pointed out that Mr. Capizzi said that what the Board has to allow to change from the original application - valet parking, small parking stalls, etc.

Mr. Panzella asked Mr. Lubin to what was the White Beeches Country Club objecting.

Mr. Lubin stated that they objected to the parking lot since it was a sea of cars and that matter that an A-1 area was going to have its character impacted. He said that drainage was not an issue - it was the number of cars parking on the site. It is twice that which is permitted. It changes the character of the use. it makes it a much more intensive use. Mr. Lubin said he did not accept everything that Mr. Olivo said about cars going out onto Sunset Avenue. He said that when you talk about zoning and planning, you have to look at what surrounds the site. He said that the applicant over-built a building on a small piece of land and they never looked at the number of parishioners.

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Mr. Lubin talked about all that had been rejected. They originally came in with a fully conformed application with 60 parking spaces and 180 seats and certain conditions were imposed. Now, many years later they are asking for a change. He said he did not know why the congregation grew and that was not the issue for this Board. The issue they are asking for was relief from the Zoning Ordinance. They do not have to prove the positive criteria because it is a conditional use; however, for Mr. Capizzi to say that they do not have to prove the negative criteria, is not true. The applicant has to comply with the Zoning Ordinance or show reasons why they are entitled to relief. They are saying no one was looking at what was going on. That is why we are saying it is a self-created hardship. They did whatever they wanted and violated the provisions the 180 seats and the Police Department does not want to enforce things against a religious organization. The applicant is asking for approval of their Valet Plan. Mr. Lubin asked what would happen when there are more than 189 cars on this site. He said they were objecting to pavement and removing green space.

Mr. Lubin said that when Haworth adopted an Ordinance for religious buildings as a conditional use, it could be done just as long as the house of worship did not disrupt the character of the neighborhood and Zoning Plan. Mr. Lubin stated that the Board had to first decide whether they would say, ~~%Approve+~~ or ~~%Deny+~~.

Mr. Lubin said that if they take it to court, they will order them to see what the evidence shows - that is, they took land and created a massive parking area.

Mrs. Luby said she did not object to the use of the Sanctuary and Sunday School just as long as it was permissible under the Codes.

Mr. Lubin said that they could bring more pews in there if they did not go against the Fire Code. He stated that the applicant could not say that they have to allow every congregant to come to church - that would not constitute a substantial burden.

Mr. Lubin said that valet parking was absurd and they still had to approve the Valet Parking Plan. He said that if it was denied, they would have to make other arrangements. Mr. Lubin asked that the Board decide if they would approve or disapprove the plan, and if it is approved, what would the conditions be, and what about the valet services. Mr. Lubin told the Board that they have looked at what came before this application; they have to look at the prior Resolutions, they have to see if there has been any changes since the original application was granted, and if the general area stayed the same or was now different. Mr. Lubin stated that this was still a very prestigious area and they could not detract from its character.

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Mr. Capizzi wished to clarify the analysis to removing conditions. He said that the request to have 180 seats for the congregants with 60 parking stalls was not his application - they were different conditions and now they had a new application. Mr. Capizzi said this was an amended application with a different Board and different jurisdiction. He said they were requesting 172 parking stalls, coverage, a Parking Plan, and Sunday School and that was his application. No other conditions were germane.

Mr. Paquet stated that the parking plan had to be implemented correctly because if it wasn't, it would be detrimental.

Mr. Capizzi said he did not believe there was a need to have additional discussion on the conditions. The conditions in the 2008 Resolution were not relevant here. He talked about the purpose of the conditions.

Mr. Posen said he wanted to hear from everyone. He announced that the next meeting was on Election Day. He said that the St. Gabriel's application would be first on the agenda except for the administrative items. Mr. Posen said he would put the motion on whether to approve and then they would have to go item by item including all the conditions. He stated that if someone wanted to move on the application this evening, that would be fine. However, someone may need more time to review everything before they decide.

Mr. Ehrenberg said he felt they should adjourn for the evening and come back.

Mr. Paquet agreed. He said he wanted to be very specific when they return.

Mr. Posen noted that the time was past 10:30 but they would stay to finish up.

Mr. Posen said he felt it was incumbent for every member to come to that meeting as though they would be making the motion. He told them they had to reach inside and come to that place.

Mr. Paquet said he was not sure that they had all the conditions spelled out for what the church wanted.

Mr. Posen said he thought that would come second.

Mr. Paquet said he would like a discussion on all of the add-ons.

Mr. Posen talked about all the phases which have to be gone through.

Mr. Paquet asked to review the conditions/

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Mr. West stated that one condition was to limit 180 people in the sanctuary.

Mr. Panzella asked if they should go over all conditions and discuss whether they were adhering to them

Mr. Lubin submitted that the most appropriate thing to do was to digest what was said this evening. He told them that they could review the testimony, etc., and when they came back, they would be much better equipped.

Mr. Posen said that he wanted to make sure that when they went home, they would be comfortable in what they were thinking.

Mr. Capizzi said he had no issues.

Mr. Posen referred to Mr. Ehrenberg's suggestion that they close for the evening but he wanted to make sure that all of their questions were answered. He explained how he felt it should be done with conditions and the negative and positive criteria. He asked if anything had to be clarified right then.

Mr. West had a question about the alternate on the Board. He stated that she had been there for all of the meetings with the exception of this evening. He asked if she could participate in deliberations.

There was discussion on who could vote.

Mr. Paquet referred to Mr. Ehrenberg's suggestion and said it was a good one.

Mr. Capizzi asked for the hearing to be carried to the November 6, 2018 meeting.

There being no further business, Mr. Ehrenberg moved to adjourn.

Seconded by Mr. Roth and unanimously carried.

Respectfully submitted,

/s/  
Dolores Fazio O'Dowd