

BOROUGH OF MOUNT ARLINGTON
LAND USE BOARD MEETING MINUTES
July 24, 2013 -7:00 PM
Regular Meeting

Meeting called to order at 7:10 p.m. "Pledge of Allegiance to the Flag" recited.

Fostle begins the meeting.

This meeting was advertised in the Daily Record and the Roxbury Register.

Roll Call. Present: Keuntje, Driscoll, Hallowich, Foley, Loughridge, Simard, Wilson, Cerasoli, Fostle, van den Hende, Windish, Ondish. Absent: Rinaldi.

Motion to Approve Minutes, June 26, 2013. Motion by: Simard, second by van den Hende. Yes: Keuntje, Driscoll, Hallowich, Loughridge, Simard, Cerasoli, Fostle, vandenHende, Windish, Ondish. No: None.

Fostle introduces Larry Cohen, Esq. from Courter, Korbert & Cohen, P.C. who is filling in for Mike Selvaggi, Board Attorney.

Correspondence distributed. Originals on file with secretary.

Motion to Approve Vouchers, July 24, 2013. Motion by: Simard, second by Cerasoli. Yes: Keuntje, Driscoll, Hallowich, Foley, Loughridge, Simard, Wilson, Cerasoli, Fostle, van den Hende, Windish, Ondish.

Memorialization of Resolution:

United Water New Jersey, Inc. - Mount Arlington - Third One Year Extension Request:

Preliminary & Final Major Site Plan with Variances - Block 72, Lot 1.01 & Block 61, Lot 42.03. Shadow Woods and Mount Arlington and Valley Road Development, LLC – Block 61, Lots 23.05, 23.07, 42.01, & 42.02

The approved water storage tank and associated improvements are intended to support the future development of the Shadow Woods residential project and the proposed Valley Road Redevelopment Project.

Motion to memorialize resolution by Cerasoli, second by van den Hende. Yes: Keuntje, Driscoll, Hallowich, Loughridge, Simard, Cerasoli, Fostle, van den Hende, Windish, Ondish. Motion approved.

Van den Hende, Ondish and Windish reclude themselves from the meeting.

Public Hearing:

Windemere Associates - Block 38, Lot 4 – Application for development of a primary single-family residence and the reconstruction of the boathouse.

Mr. Morris Greb, Esq. introduces himself as the attorney representing Mr. Joseph Spataro. Property located at 499 Windemere Ave. Property is located in the RA-30 zone and is lake front property.

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Cohen states that there are some threshold questions and issues that need to be addressed before testimony can take place. Mr. Greb your client had previously been approved for a boathouse and it was going to be a live-in boathouse. Now it's an application for a single family home to be constructed on the property. Is that in an addition to the approved boathouse?

Greb states that Mr. Spataro will address that in his testimony.

Cohen states it is a threshold issue and we would like to know if the idea is to maintain the boathouse and also seek a single family home on the property which would require a D variance. Since you would then be seeking two principal uses on the property. The boathouse would not be considered an accessory use as the reasons stated in the Planners report. We don't allow accessory uses to have human habitation. You have to advise the Board what your intentions are. If it is a D variance then we have to know what members of the Board can be present for the testimony.

There is a brief discussion with Cohen and Greb as to what the application was submitted for. Greb asks that his client Mr. Spataro be sworn in. Cohen swears in Spataro to answer questions only for those issues at hand.

Spataro the owner of the property, applicant, architect and planner. He answers Cohen's question that he did receive permission to reconstruct the boathouse which was connected to the sanitary sewer and then classified as a residence. It was always his intention to do that but now after owning the property for 10 years and seeing other properties that have been built upon and improved along the lake that perhaps a more sensible plan is since the boathouse is so far from the road because the property is 300' deep and that I would like to build a year-round residence on the property. If granted permission to build a year-round house I would rescind the residence classification for the boathouse and would request it be treated as a guest residence only for part time use, no rental, not looking for a second home. We would like to build a year-round house and the boathouse would be used as lake frontage and maybe for guests.

Cohen asks Spataro if he did read the planners report. Spataro did.

Cohen continues the report points out specific ordinances within the Borough which does not permit such a guesthouse in her opinion and in my opinion you would then have two principal uses on the property. If you are proposing that you do have a right to make an application for that, it would require a D variance. If the application is for a variance to permit two principal uses plus there are some bulk variances (C variance) that you are seeking. Is that correct? Spataro answered yes. I just wanted to make sure the application and the notice included a notice for a D variance for two principal uses.

Cohen reviews the application and notice.

Spataro questions the opinion that the boathouse is considered a principal. It will be a guest house not the primary residence.

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Cohen states that the Ordinance that is cited states 1) it does not permit an accessory use and in fact prohibits accessory uses for human habitation and 2) accessory uses have a restriction as to size and you greatly exceed that.

Caldwell states that is correct.

Cohen reads Spataro's application. He says he does not see a use variance checked on the application. He reads what the application states. This application seeks approval for an amended site plan, the construction of a 2 ½ story; 39 foot high; single-family residence and an approval for existing conditions. He reads the notice which is not for a D variance.

Cohen asks the members of the Board if they have any questions. This is a matter of procedure and not factual testimony. If it is your intention to proceed as you have indicated I think your application and notice is defective. You have to notice for a D variance and you have to apply for the D variance and complete the checklist of the D variance. When noticing for the D variance you have to be specific to the variance you are seeking which are two (2) principal uses on the property.

Spataro states that is how he is going to proceed.

Cohen suggests that this matter be adjourned and carried. You file an application for a D variance, look at the checklist and meet all requirements of the D variance check list and reserve a proper notice to two (2) principal uses. A single-family home and boathouse.

Spataro asks all the exhibits for the meeting today should be adjusted to the comments and planner decisions.

Caldwell, states she does not have any different opinion. She does mention that the height is different than the Board Engineer's calculation. Your height is actually a D-3 variance. The height needs to be clarified.

Greb noted he would like professional reports in a timely fashion.

Motion is made for this application to be carried over for at least a month to allow for an amended application and amended notes by Simard, second by Cerasoli. Yes: Keuntje, Driscoll, Hallowich, Foley, Loughridge, Simard, Wilson, Cerasoli, Fostle, Windish, Ondish. Motion approved.

van den Hende takes over the Chair position.

Ondish and Windish recluses themselves.

Cohen explains to the public why Mayor Ondish and Councilman Windish have to step down.

Times Square Church, Inc. - Block 9, Lot 2.01 – Application for change in use from Banquet Hall to place of worship and variance due to zoning ordinance front yard requirement and impervious lot coverage.

Paul Nusbaum with the firm Nusbaum, Stein, Goldstein, Bronstein & Kron. I represent the Times Square Church as indicated as Block 9, Lot 2.01 at the corner of Howard Boulevard and Littel Way. It formally has been used as a catering facility. It is zoned as an OSGU and is on approximately 5 acres of land of which only a small portion is actually being used. The previous use was for a banquet and catering facility and that facility was approved in 1997. The building that is on the property now and the site plan now are exactly as it was, when it was approved in 1997. We are not asking for any changes in the site plan. We are a conditional use. We don't have the amount that is required for the setback that the ordinance states and we are over in the impervious coverage. Those are the reasons for being before this Board for this variance. Both conditions have existed since 1997 and maybe have been before that. As a conditional use we do not have to prove that this is a beneficial use though as a Church is does seem to be that. These variances do not have any adverse effect on the overall plan for which the town is zoned. To me it is apparent however we feel that the Board may want to know more about the Times Square Church.

We have witnesses who will inform you of the nature of the church, they are essentially local people, about the membership and the work they do. As witnesses there will be two (2) members of the church,

Jerald Hampton, member of the Board of Trustees as well as other functions for the church and Brad Weiss who manages an existing facility in Roxbury Township. It is located at the Roxbury shopping center near the movie house. They want to move from a rented facility to a facility that they own.

Cohen states that he reviewed their notice and find it in compliance with their application and is in compliance with the law.

Cohen briefly discusses the variance that they are seeking and that the church does have to show that there is a reason for these variances and why they should be granted with reference to the use of the church. In addition, it would not have a negative impact on neighboring properties and zoning scheme or the master plan. You do have to meet the positive and negative criteria.

7:31:29

Gregory S. Riccardi, Porzio, Bromber & Newman P.C. introduce himself as representing the Board of Education for Mount Arlington who has the adjacent property. He asks if he will be able to cross examine these witnesses.

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van den Hende states as a member of the public you will have an opportunity to ask questions at the end of the public hearing.

Cohen mentions that sometime witnesses don't return and should have the opportunity to ask questions.

Jerald Hampton is sworn in. 245 Maxim Drive, Hopatcong and states that he is affiliated with the Times Square Church. It is a New York church that can also operate in New Jersey. A brief description of the church is given: It is in its 26 year and was founded by the late David Wilkerson who started the church in 1987. It is modeled after the denomination of the Assembly of God. We are close in our style and service to that denomination. We are a New York City based church. We have multiple services, an outreach to the community as well as growing online domestic and International which is a new development over the last several years.

When we looked at the Roxbury location it was because of the growing number of families living out in this community. At least 18 to 20 different neighboring communities that our church hears from. They had been coming into the city for some time to go to church so with the travel time, the commute, the expense and the gas prices going up and NYC is not an inexpensive place to take a family. Because it is a 40 mile or 50 mile commute they stay for the better part of the day attending multiple services. It was a hardship on families especially when the market turned in; '09 and '10. Why wouldn't we try to find a way to open up a satellite location for the families out here? That was the primary thrust for our reason to look out here. It turned out to be a good for the church with an increase in membership. We have a growing congregation, especially among young families. As an officer of the Board we looked at buying verses paying increased rent as for long term.

There is a brief discussion about an analysis that was done on the Church membership and where the members live. The approximate number of members including children it is close to 180 to 200 people that are involved in the Church which equates to about 50 to 60 core families. Additional families attend holidays, Easter, Christmas, increases the amount to about 85 different families.

Exhibit A-1 – Roxbury Campus Congregations by Town

Exhibit A-2 – Weekly Schedule

Hampton to discuss Exhibit A-2, Weekly Schedule. The primary service is Sunday at 10:00 am and it comprises the bulk of the population that comes into the church. The average is from 160-200 people including children; which includes Sunday school. It's a live stream service from the main church in NYC. 90 to 95% of the time the service is carried by the Senior Pastor when he is in town. It is important that the local congregation is getting the right message from the senior Pastor. At 6:00 p.m. the evening service is alternating between live stream one Sunday and then the alternate Sunday is the local congregation who conduct their own service with; music, worship and speaking. The discussion continues going through each day of the week as listed on the exhibit:

- Monday is basic Bible Study. 10 to 30 people are the average attendance.
- Wednesday is prayer meeting. This is a fairly small group from 20-40 people.

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- Thursday is Praise Team Rehearsal. This group conducts service on the alternate Sunday evening that is not a live stream service. This group is responsible for that local service. It's a small group of 10-15 people. There is music too.
- Friday is The Gate. This is a replication of the youth service which is conducted on Friday night in NYC. It is a local service conducted by the worship team and local congregation and is not a stream service. It is for the youth group. A youth ministry. The meeting is on the 1st and 3rd Friday of the month consisting of 40-60 people. The age group will be from 12 to 13 to mid-twenties.
- Saturday there is both the Women's and Men's Fellowship. 1st Saturday is for Women (20 to 30 attend) and Men's Fellowship is on the 3rd Saturday. These meeting have attendance from other congregations in the area.

Nusbaum asks if the church is involved in community work.

Hampton describes the activities of the church over the last three years. Times Square Church benevolence is from the founding Pastor and continues with the current Pastor. During 911 the NYC Church outreached out to the firemen and police which resulted in several accommodations which is not why the Church did it. Since then, the Church has expanded its feeding program to the hungry; we go to them and reach out to them. Currently in NJ the locally congregation helps out with the homeless shelter in Dover. We bring hot food to them and help serve in the soup kitchen. When hurricane Irene and Sandy hit, it was great to see how this congregation pulled together. They reached out and help as much as many as we could. It extended out to Denville and anywhere else we could help even though many of us were affected. We even helped the Red Cross with food when they ran out and because we are local we were able to respond quickly. We helped the mayors that reached out to us with demolition and clean outs.

Nusbaum asked if they received any accommodations for the work that the church has done.

Hampton says they have; but it was not the reason the work was done. We received appreciation awards from Mayor Sylvia Petillo, Hopatcong for our work during Sandy. Exhibit A-4, Appreciation Award presented to Time Square Church from Mayor Sylvia Petillo, dated December 7, 2010.

van den Hende asks at what rate is the church growing per year and will this be the primary area for congregation for this region?

Hampton states they were able to identify about 40 plus families that had commuted into NYC on a regular basis. We started with those and that was our basis. We told them we would be opening up a church. We looked at them as regular attendees. We think it was somewhere between 50-60 families. In the last two years we increased about 50%. We started out with about 40 families and it moved up to about 60 families. We don't target any particular area. We don't solicit anyone. It is word of mouth and our repetition.

Van den Hende asks what is the particular average duration of the service.

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Hampton states that on Sunday morning service is 2 hours; from 10:00 a.m. to noon. That is live streamed from NYC. We conclude right at noon. The Sunday evening service is about an hour and a half. The other services are about the same.

Van den Hende asks if there are seasonal variations. Do you have special summer Bible Studies? Are they held during the day? Do you have any special things relating to holidays?

Hampton explains that at Easter and Christmas we do see an upswing in the attendance. There is no regular scheduled Bible School. It's been kept to Sunday school.

Van den Hende asks during those holidays, do you know how many vehicles will be going onto and off the property during those events.

Hampton says on average about 70 cars on any given Sunday morning. Sunday evening is quite a bit less. A lot of the cars have multiple people in them. Brad Guice when he testifies he can better answer that. He is our local Campus Director.

Van den Hende asks if there are other events/activities that you hold on site during the week day or taking care of seniors during the day.

Hampton replies as we move forward we would like to replicate more of what we do in the City. In the City on Wednesdays between 1:00 pm and 3:00 pm we hold a senior's event where we hold a lunch and Bible Study. Hopefully with the possibility of a new facility we will be able to do more with seniors and the youth.

Keuntje asks if your average household total is 85, your average household is 3 people and you are looking at expanding. Are you looking at building the structure bigger as the years go by?

Cohen mentions that it indicates 270 or 280.

Hampton states that the limit right now based on parking spaces is 285.

Keuntje states you are almost maxed out already.

Hampton points out that the number 85, if you look at the top of my list; it is the number of households that have donated. We don't have a formal membership. Time Church has never had a formal membership. We track by people who come in and donate and give us information for tax receipt this is the only way we have to track. We have to look at our financial records which showed over the last two years there have been 85 donators. By being there on a regular basis our current families are about 50 or 60 families. If you use an average three people per car it would put us at about 180.

Keuntje asks how long they have been at Roxbury?

Hampton states about two years.

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Keuntje asks what is your average number of people attending.

Hampton 160 to 200 people.

van den Hende points out on their weekly schedule it shows approximately how many attend each service.

Hampton reiterates it is between 160 and 200 people including children. We are running into issues with space not with our main area called the sanctuary. We are not close to capacity with that area but with the space for our Sunday school.

van den Hende asks if there is indoor child care.

Hampton states yes.

van den Hende asks if there is any plan for having an outdoor playground or anything like that.

Hampton states yes, I would hope so. I would think we would want to put that in.

van den Hende in the future.

Hampton we do not have that currently in NYC.

Cerasoli asks if you are at 285 can that support the church?

Hampton states that it currently does at numbers less than that. Currently it's anywhere from 160 to 200 people that attend. Main families we have between 50 and 60 families with their donations. Times Square Church is a much larger church in NYC. This is our campus; the bills are paid out of the main church.

Cerasoli states she saw that they have 8,000 members in NYC.

Hampton explains we don't have a membership. On Sunday we average 2,500 and then we have a lot that come to the 3:00 service which we don't do locally. And the evening service is about 1,500. Our on-line streaming domestically, those that stream on a regular basis, as well as internationally that gives us about an 8,000 number.

Keuntje asks have you outgrown your facility in Roxbury or you just can't purchase it.

Hampton says we have run up against space constraints. We have had no intention of buying that space. This is the first time we ever thought about opening up a remote campus.

There is brief discussion about the parking at the Roxbury location and being a professional area with not a lot of need for parking on Sunday mornings.

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Nusbaum asks it turns out that your membership increases dramatically, do I understand that you would put in a second service.

Hampton states that is a discussion that we have had. As numbers increase we would add additional services, as well add a DVR playback that would be played during the day at specific times.

Cohen gives instruction to the Board about the variances and the right they have to impose reasonable conditions. As an example if you decide that the church can occupy this property you have the right to say you are restricted to so many people and it has to be monitored so that no more can attend that service. You can be thinking about imposing those conditions.

There is some discussion regarding the type of conditions that can be imposed. There seems to be a concern about the parking and the possible overflow and how to control that. Conditions that are imposed have to be monitored.

The occupancy of the building is controlled by the Fire Code.

There is discussion about the permitted use of the Church and its variances. There are a couple of conditions that have to be met for a church.

Nusbaum points out one last citation from the State of New Jersey Senate and General Assembly Citation to the Times Square Church dated December 8, 2012 for services during the hurricane. Hampton explains that the Church was recognized by Senator Bucco for multiple services that were performed. Exhibit A-4 The State of New Jersey Senate and General Assembly Citation, December 8, 2012.

Bradley A. Guice, Campus Director and is being lead to being an ordained Pastor. He is at the Roxbury location about 5 to 6 days of the week.

Cohen states that a question had previously come up: if there were any parking issues at your current place.

Guice stated no. The only thing that Roxbury asked is if we could limit functions on Tuesday nights because the Cinema has a busy night on Tuesday evenings.

Lane Paulson, General Council introduces herself.

Paulson asks Guice why they are leaving their current location.

Guice states that they have out grown the Roxbury location. They have run out of room for the kids; the rooms are small. We have one class that has 25 kids. The new space will provide the extra room.

Paulson asks how do you operate seating during the 10:00 am service.

Guice explains that there are ushers that bring in the congregation. The children are then release from the sanctuary to the class rooms. With the children leaving there is ample room in the sanctuary.

Guice continues. Even with the benevolence we are a hands-on congregation. During Irene there were 200 homes that were flooded in Denville. Our teams went into help out a couple of block area to shovel out mud, take down dry wall and work with the homeowners. We were honored during a banquet. During hurricane Sandy we were really hands on and have people here that can testify to that. We were a warming center, we provided coffee to people in line for gas, and we were the first to feed residence in Hopatcong because the Red Cross did not show up that day. We are still serving in Staten Island. We have been asked to be part of the Lake Land Association of Churches. They are basically all the churches around Lake Hopatcong.

Van den Hende for the various activities that you do off sight, is the equipment for taking care of the people that you help, is it equipment kept inside the facility or do you have a separate storage area off sight.

The audience answers “our homes”

van den Hende asks if there is any plan to have cars and trucks and equipment that will be on site.

Guice states that everyone brought their own equipment. The women cook in their own kitchens.

van den Hende explains it’s a need to know if there will be large quantity of gas powered equipment, or generators so we know if there is a large amount of gas being stored there.

Guice says no. However we are looking to use the kitchen there.

van den Hende asks how the garbage will be removed.

Paulson states that according to Danny the current owner, it is private and we will continue in that way.

Fostle asks what attracted to this location for your new place of worship. Was it the building or location driven? How did the Church make that decision? What new uses will the building provide?

Guice states it is all of those things. If fits all of our needs. Most locations did not have enough parking. Most places only had 40 parking spaces the most. You can find large spaces and large buildings but not parking. We walked in and it felt like a Church and it has large rooms.

Fostle states that there is concern about the growth of the church. That even at modest growth it seems to be experiencing that you are reaching capacity for this location. I am just trying to see

what it is that made you attracted to this location and that the facility with the way it is. You are looking to purchase this building is it adequate for your congregation?

Lane Paulson is sworn in. Serves as General Counsel for the organization of the Times Square Church and oversee the Roxbury campus and the development of new campuses.

Paulson answers the question. The emphasis was limited to the geographic area. We wanted to stay near our current location. The limited availability of locations that suited our needs and this township is so lovely; it was a no brainer. We have a number of families from this area. In terms of our growth we are growing relatively modestly. Over the course of two years we have added about 60 to 80 and our growth is with families with children. Once the children leave the sanctuary we have plenty of space. Our current location has just over 4,200 square feet. This new location almost doubles our space to just over 8,000. Our current location has no storage and the larger rooms will allow the children more room to play. If needed, we will add more services to accommodate our growth.

There is a brief discussion about the use or need to use Borough facilities for events.

There is a discussion about the use of the kitchen. The congregation would be able to cook on location instead of their own homes when providing meals for the soup kitchen or during storms like Sandy. There is no liquor license. We may have a member get married or an event. It will be only for our own members and not for anyone outside our group.

Cohen says you talked about the religious use of the facility but what about the potential use of the facility there has not been much discussion on that. You mentioned you might use it for wedding receptions or christenings or other functions. Or you may say we will never do that. The Board should know what your intentions are.

Paulson states that there is a Board resolution that the use of Church property is restricted to church purposes only.

There is discussion about the Board knowing what the use of the property will be. The existing use of the facility is a catering hall that caters to weddings, christening etc. This is a use that presently exists. If you have no intentions of using it for that use you may state that now. If you think you may use it for those types of functions the Board should be aware of that. It is a potential that it may be used for those types of functions.

Jeff Careaga is sworn in.

Careaga: Careaga Engineering, Budd Lake, NJ. Is a licensed Engineer in the State of New Jersey.

Nusbaum: You have testified before this Board before and your qualifications have been accepted, is that correct?

Careaga: yes

Van den Hende accepts his credentials.

Careaga prepared the plans that went along with this application as well as visited the site.

Exhibit A-5 – Existing Conditions (sheet #2). No changes.

Exhibit A-6 – Arial view of the site.

Careaga states that the property has a lot of frontage along Howard Boulevard but the main entrance is off Littel Way Road which is its main entrance and is a shared road that also services the school. There is an existing double entrance and exit that goes to the front of the building which faces on Howard Blvd. The circulation around the building is two-way in the parking lot and then there is a one-way out on the left side of the building. There is not enough pavement to have two-way traffic on that side. The main traffic entrance is to go around the building and go out the front or go around the building on the side.

Some of the comments from the Borough Engineer we will go over later. We have no problem changing the circulation pattern around the property area. In general we have no issues with changing things.

We do have issues with wetlands right next to the property. One of the comments was to make two-way traffic on both sides of the property. That would require us to increase the pavement width which would require wetlands permit. We would like to get into the building without having to modify any parking or layout of the parking. A typical DEP approval could take up to 6 to 9 months that is something that we want to take into consideration as we move forward. Changing this parking lot may be a big deal with the stream and the wetlands. The old wetland permit was granted in 1987 and is now expired. New permitting would be required in order for any kind of changing. The area that needs to be changed is right next to the wetlands. We may not be able to get approval to do that. It will change the impervious coverage. We are looking for an impervious coverage variance. In the zone it is 10%, we have 27.7%. Adding any additional driveway width will bump that up and we will have to ask for an additional variance. The site is in the OSGU zone. 89,000 sq ft is required, we have 226,468 sq ft.; the property is big enough. We meet the lot width. The front yard setback is 60 ft in the zone; we have a pre-existing condition of 27.2 ft to Howard Blvd right-a-way from the front corner of the building so we do need a variance for that; pre-existing. Nothing can be done about that. The actual driveway is in the Howard Blvd right-of-way. We have correspondence with the County, we have not heard from them. If they do have issues, we will have to address them.

van den Hende asks why isn't there anything filled in for the Rear Yard?

Phil states that by definition of our ordinance is if you have a front and side on the side of the corner then you illuminate the rear.

Phil steps in to go through his Technical Review report. We just went through the first couple of pages.

There is discussion about the Noise aspect of the Technical Review. The applicant should provide input on when the night activity would take place with the church.

Traffic: we heard testimony of the size of the assembly. There are 90 parking spaces on site. It's on operational facility. There is solid waste collection that works; no issue with that. There is an issue with the ADA parking and striping. It is dated and with the change in use it is required to be in compliance with the governing regulations of today.

Careaga states there is no problem with those requirements.

Oder: Phil states that we will need some testimony.

Air Pollution: is non-issue with regards to this use.

Accessibility: Most of us know how the site functions. It is a little confusing when you come in, you have the ability to go around to the back of the building. It is somewhat cumbersome. It can be enhanced. Maybe re-striping or some signage should be considered. Two-way circulation around the building totally makes sense. There is a lot of asphalt. In the northern corner there is a note that shows where the striping from 64 – 79, you can see where the existing pavement goes way out. You can't get to that asphalt. The opportunity of getting circulation around the building may increase the parking. Maybe remove that asphalt and increase it in the southeast corner where that one-way is in the back of the building. That may be an opportunity as a condition when dealing with the DEP and a zero net increase. Establishing green space and enhancing the circulation

There is discussion about the difficulty of getting the DEP permit and it being a condition. The suggestion is that the Board gets an amended plan if they get the approvals. If they don't then it will be kept the way it is.

Careaga agrees with this. I know we can make the layout of the parking lot better than it was originally approved. At this point it's approved, but if we can make it better we will.

Phil suggests restriping all the way at the north side, there is an isle with no parking on the outside, very inefficient. If you slide that island in and have parking down along the side you will gain about 6 or 7 spaces without adding any black top. Shorter isles. Same thing can happen along the building. Maybe a condition that the Board can look at.

It is agreed that Careaga and Phil will work together on this.

There is discussion on the sight distance when leaving Littel Way. There is a bump there. It would require the County to get involved to achieve this. It is within the County right-a-way. It would require huge changes to Howard Blvd to get better sight distance. We are stuck with that lay out right now. It doesn't appear to be highly dangerous. It is grandfathered as an existing condition.

Phil suggests that maybe some dialogue could be made with the County.

Careaga thinks it will be a very large number considering there are utilities under the road. The elevation will have to drop 2 or 3 or 4 feet and hundreds of feet of new guardrail. It will be in the mid-six figures or close to a million dollars.

Cohen states that this is a greater problem than any utilization of this property.

Phil recommends that police be brought in when there are large groups leaving. Howard Boulevard is getting improved and traffic has increased.

There is discussion about the sight distance problem with the grading of the road and a possible condition for the variance. The applicant could start a dialogue with the County but if work took place it would be on the County's dime not on the applicant.

Phil and Careaga have a discussion about the lower driveway being technically in the County's right-of-way. Careaga mentions they will be having a discussion with the County and feels as long as they have a 66' right-of-way then the County should be ok.

Phil and Careaga have brief comments on environmental constraints that may be a long process, the esthetic plan from years ago from Dykstra, possible requirements for Certificate of Occupancy and the occupancy load established by the Fire Code.

Danny Appello, property owner is sworn in. When I bought the building the occupancy was 325 and I had it reduced to 288. The last property owner was doing a lot of different events that I knew I would not be doing. There are currently 95 parking spaces and 5 handicapped parking spaces.

Phil mentions one other comment is that if the sight is over flowing, people they start to park on Littel Way and drifts off to private property at the school. How would that be eliminated or maybe an agreement with the Board of Education.

Paulson states that has not been any discussion formally with school however we would post a volunteer to help with traffic. She does not believe it will be an issue.

Cohen states that the Board of Education parking lot should not be available to the Church and the school should not use the Church's parking lot. Maybe signs can be posted.

Brief discussion about overflow parking and that the Board of Ed is being represented by Counsel and the school will have the opportunity to ask questions. This application will have to stand on its own and show that they have appropriate parking for their use.

Nusbaum states that there is no intention of the church to park in the school parking lot.

Phil stated there with multiple variances there needs to be testimony to support their approval.

Careaga states that Mr. Zimmerman, Planner will testify to those variances.

David Zimmerman is sworn in. I am a licensed professional planner and represent several municipalities as their planning consultant and from time to time appear before planning boards and zoning boards to provide expert testimony.

van den Hende accepts him as a professional planner.

Cohen states we are dealing with variances for conditional uses. They don't meet two conditions and possibly three conditions of the conditional use requirement. Conditional use is a permitted provided that you meet certain conditions. If the conditions are not met, it is a D variance. It is not the same type of D variance as you are used to dealing with. The focus is whether or not the sight will accommodate the proposed use and any problems that may arise or be associated with the proposed use even though it does not comply with all of the conditions. They will have to demonstrate positive as well as the negative criteria, that it is not detrimental to the zoning plan or the neighborhood scheme or surrounding properties. Those are the two things that they have to prove that is a little different than the normal D variance.

Caldwell is asked if she agrees. There are two that they did not meet the front yard setback, two conditions and also parking in the front yard. And then there is one left to the discretion of the Board in terms of the property being properly landscaped and buffered and screened and it is a pre-existing property that is landscaped however the Board may feel it may need additional screening due to the new use of the property. It does not mean it does not meet it. It would be left to the discretion of the Board. Parking must meet the parking and there has been a lot of discussion this evening with regard to them growing that might kick them out of compliance with that condition.

Cohen and Caldwell have discussion about the parking. We do understand that the church is growing. However, the catering hall said we have parking based on our capacity of 285. How do we know that the catering hall will not have functions that exceed functions over 285? It's difficult to limit but they are in compliance now.

Cohen agrees with Caldwell that landscaping is an odd requirement for a conditional use since it is subjective.

Cohen states that the requirements for conditional use are usually black and white and this is subjective. It's presumed that the applicant takes the position that the site is properly landscaped for the proposed use. The Engineer has not produced any testimony for any additional landscaping so you have to take it that the property is properly landscaped under the conditional of the proposed use. This is an issue that has been raised.

Cohen brings out one other threshold issue that has to be discussed. The Borough Planners' report stated that there are bulk area variances for the same two deficiencies in the front yard and parking in the front yard. Cohen disagrees because they are pre-existing uses. However, I think it is immaterial because they also are the requirements for the conditional use and that they must establish. It's a harder burden of proof than the bulk area variance.

Caldwell states it varies. Some Boards need to reaffirm the variances.

van den Hende comments that there has been no testimony that there would be any changes in the landscaping though someone mentioned that they may put in a child's playground.

Cohen states that if they want to put in a playground the applicant will have to come before the Board for an amended site plan.

Van den Hende says then the applicant must be made aware of that.

Cohen says he is sure Nusbaum and Zimmerman are aware that they have to come back for an amended site plan.

Cohen reaffirms that the application has been properly submitted with all the variances listed and the notice did list all the variances properly.

Zimmerman states that there are two unique aspects of this application before getting into the Technical D-3 variance dealing with the standards of a conditional use. First, it has been recognized that the property is there, the building is there, buffer is there, and we are not really changing anything on the exterior. Most of all the variances revolve around some pre-existing conditions. Second unique aspect about this application is that it is in the OSGU; open space government use zone. There are only four permitted uses in this zone: single family, agricultural, planned cluster residential, parks, play grounds, firehouses, etc. There are only four conditional uses in this zone: essential services, churches and other places that worship, community buildings, clubs, social clubs, lodges and other fraternity organizations, nursery schools and nursing homes. What's there is now; is a valid non-conforming use. This applicant is changing it from a valid non-conforming use and changing it to a conforming use consistent with what is permitted in the OSGU zone.

Cohen explains that this is a very important point. At the time that this use was approved was it a permitted use or was a variance granted.

There is some discussion regarding the current use of the property and what it is changing to, i.e., currently a commercial use of the property and changing it to a conforming use.

Zimmerman begins to discuss the variances that are before this Board which is a D-3 special reasons application where the applicant does not conform to several conditional use standards that are in your Ordinances. Your Planner has outlined the issues as well as your Attorney has outlined the proofs. For the record Zimmerman goes through Caldwell's report and discusses the conditional use stands outlined in her report on page 2 at the bottom. On page 3, Minimum front yard and rear yard setbacks required for principal structures shall be maintained and this is where we don't conform to that existing condition. On the Arial photograph, Exhibit A-6, the corner lot, this is Littel Road and this is Howard Boulevard the property is shaped like a triangle. We are showing a developed portion of the property but the property continues non-developed. The point

to the front yard is this corner of the building is 27.2 feet from the right-of-way of Howard Boulevard and Howard Boulevard has a substantial right-of-way but the actual distance between this corner and the cart way are about 65 feet and intervening is about 40 feet of natural tree and landscape area with evergreens, shrubs and trees. What is the intent behind having that 60 foot requirement for the front yard, you want to have some separation between the street and the building even if you have a shorter separation than required. You can substitute landscaping for distance. That's what is happening. In his opinion this point is stratified for this condition with the buffered screened area all along Howard Boulevard, landscaping in front of the property and landscaping along the brook. We feel the existing conditions are appropriate for this use. Any reasonable suggestions for changes in the landscaping we will entertain however I believe it is appropriate for the use. It makes for attractive presentation for the surrounding neighbors.

Van den Hende asks Caldwell her opinion.

Caldwell agrees that the landscaping is acceptable. It also drops down in grades so you don't see the parking. The main reason is to buffer the parking since they are using the front yard for parking. Unless the Board would require additional buffering, but I agree that it is adequate.

Cohen discusses with Caldwell the interpretation of the Ordinance requirement for parking in the front yard means it would have to be more than 60 feet from the boundary line. The technical variance would go from a 60 ft requirement (the closest parking to Howard Boulevard right-of-way) to 20 feet. Zimmerman agrees.

Zimmerman discusses the positive criteria in considering these types of variances before the Board. For the record the standard of proof will focus upon the applicants and the Boards intention to a specific deviation and to permit the Board to find special reasons to support the variance only if it is swayed that the non-compliance that the condition does not affect the suitability of the site for the conditional use thus a conditional use variance application must show that the site will accommodate the problems associated with the use even though the proposal does not comply with the conditions that the Ordinance establishes to address these problems. I think that is what I tried to do in talking about the parking and building. I think the spirit of the intent of the Ordinance is satisfied.

Cohen asks would you say it also adds no adverse affect of the suitably of the property of the purpose for the purpose.

Zimmerman states as testified by the applicant it well serves their purposes and well serves the use of this property as house of worship.

Zimmerman briefly discusses the negative criteria. The first focus looking at the surrounding properties the only residential use is at the very corner of the property and that is well over 300 feet from the property. Using the Arial photograph pointing to McGregor Ave. and other buildings actually they are all over 275 feet from building to building. There is also open space, Howard Blvd, buffer, depression of about 6 to 8 feet until you get to the building. Immediately across the street is all open space and the other side is the school and further in back is open space. I don't

see any impact upon on the granting these variances to any residential uses and the immediate neighborhood. The Board must evaluate impact of the proposed use variance upon adjacent properties and determine if it causes damage to the character of the neighborhood as it constitutes to the public good. Zimmerman's opinion is there would be no negative impact.

Second negative impact is on the zoned plan, Master Plan or zoning Ordinances. The use or the variances would not have any impact upon the goals on those documents. Granting those variances would not be set precedence. It will not affect the OSGU zone of the property.

There is discussion about the enhanced criteria. It is the deviations from the conditions which there are two: the violation of the front yard setback and the parking within the front yard. When the Master Plan was drawn up it had a 60 foot setback for the front yard and no parking in the front yard. Will this really affect the Master Plan if you allow a deviation and conditional use requirements in this situation? The use is permitted if you meet the conditions.

Zimmerman states that the very nature of taking a non-conforming use and putting in a conforming use implements the Master Plan.

Caldwell points out that Ordinance requirement does include the side yard and there is a small portion of parking that is in the side yard; to make sure this is addressed.

Cohen states that the side yard requirement doubles because it is a church which makes it a minimum of 60 feet on one side and a minimum of 150 feet on the other side combined total.

There is discussion about the re-striping of the parking lot.

Cohen makes clear to the Board that whether it is 5 ft or 15 ft, does it really matter.

Board agrees it does not make much of a difference.

Zimmerman sums up his testimony

No further questions from the Board members.

Cohen states that at the next meeting Odor and Noise will be discussed.

Gregory S. Riccardi, Counselor at Law from Porzio, Bromberg & Newman P.C. represents the Board of Education. Riccardi briefly discusses the information the School Board is looking for from the Church at the next meeting.

Cohen asks that Riccardi contact Nusbaum to discuss.

Opened to the Public – question for Mr. Zimmerman who is not available at the next meeting.

Meeting closed to the Public.

There is discussion as to how long the meeting will continue this evening. It was decided that there isn't enough time to complete this application and will carry to the August 28 meeting.

Van den Hende calls for a break.

Windish and Foley leave the meeting.

Request For Proposal (RFP's):

**Appointing Professional Services Contracts for the Remainder Of The Calendar Year 2013.
– Land Use Board Engineer.**

van den Hende explains that Selvaggi suggested that a sub-committee be established to review the RFP's that the Borough receives for the Land Use Board Engineer's position as well as set a date and time that sub-committee will meet to review prior to the Work Session meeting of August 14.

It is decided that the sub-committee would meet Monday, August 5 at 7:00 p.m. at Borough Hall.

After discussion and based on Selvaggi's guidance the sub-committee established was van den Hende, Rinaldi, Keuntje, Wilson.

Motion is made to create a sub-committee and to meet to discuss the Request for Proposals for Land Use Board Engineer on Monday, August 5 at 7:00 p.m...

Motion is made by Simard, second Wilson. Yes. Keuntje, Driscoll, Hallowich, Loughridge, Simard, Wilson, Cerasoli, Fostle, van den Hende, Ondish. Motion approved.

Work Session will be on August 14 to discuss the Request for Proposals.

New Business

Land Development Codification of Ordinances from year 1995 to August 1, 2013.

Ondish explains that the Land Use Ordinances have not been updated for some time. Coded Systems already handles the Borough Ordinances. Coded Systems would research, organize, codify and get online all Ordinances from 1995 to August 1, 2013. The cost is about \$16,000 not including maintenance charges.

Cohen states that a resolution is used for a non-competative bid. Have a resolution prepared for the August 14 meeting.

Driscoll asks what the maintanece fees would be for the upkeep.

Van den Hende agrees that this is an acceptable amount

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Motion is made to have a Resolution prepared for the August 14 to contract with Coded Systems for updating Land Use Ordinances.

Motion is made by Simard, second Wilson. Yes. Keuntje, Driscoll, Hallowich, Loughridge, Simard, Wilson, Cerasoli, Fostle, van den Hende, Ondish. Motion approved.

Motion to adjourn by Loughridge, second by Keuntje. All in favor. Motion approved.

Meeting adjourned at 10:40 p.m.

Debra-Ann Halik
Secretary to the Land Use Board

Approved: