

Bethlehem Zoning Board of Adjustments

Meeting Minutes

Bethlehem Town Building Meeting Room

March 16, 2016

Present: Chairman Lon Weston, Amy Delventhal, Alan Jackson, Pat Doughty, and Mike Culver.

Chairman Lon Weston opened the meeting at 6:16 pm. The Public Hearing for a Special Exception for the Synagogue will begin momentarily. First Chairman Weston went over the process on how the hearing will proceed than opened the Public Hearing at 6:18 pm.

Board member, Alan Jackson read the public notice:

“On Wednesday, March 16, 2016 @6:15 the Bethlehem Zoning Board of Adjustments will conduct a Public Hearing for consideration of an application for a Special Exception, pursuant to Zoning Ordinance, Article IV, Non-conforming Uses, Structures, and Lots:

C. Any lawful non-conforming building may be increased in square footage up to 25% of its finished living area on the effective date of this Regulation when such increase is granted as a special exception by the Zoning Board of Adjustment. (1971)

Subject property: Congregation Machzikei Hadas of Bethlehem, NH Corp. Map 204 Lot 49, 31 Lewis Hill Road.

Plans are available for review during regular business hours in the Planning Office on the main floor of the Town Building.

The Public Hearing will be held in the Town Meeting Hall, located on the third floor of the Bethlehem Town Building. Elevator access on the ground level.”

Chairman Weston introduced the Zoning Board members to the public. Board member Mike Culver began to go over the checklist. Board member Pat Doughty checks the abutters listing and matches it to the map. Board member Amy Delventhal points out that Robin Grubby is not on the map but there is a Robin Webster.

Mr. Culver continues with the checklist. There is a discrepancy on the District should be District I, not District I – Main St. This will need to be corrected.

The Board continues to review the checklist to ensure that all applicable requirements are met. Gardener Kellogg answers any questions they might have and points out required information on the plan. Plan for snow removal is not required as they will only be operating seasonally. Mr.

Culver asks if there should be a snow removal plan in case of fire. Board does not feel that is required.

Mr. Doughty points out that drainage and flow arrows are not present on the plan. Mr. Kellogg says they can be added. The property is not in a flood plan the requirement to mark the 100 flood elevation line is not applicable. The property location is on Town water and sewer requirement pertaining to water and sewer supply are not applicable. All utilities are the same as the previous structure. The new building will have a fire alarm where as the old building did not. There is also a fire hydrant on the corner.

There will be some trees for screening and existing woods. No proposed signs or roads. Number of parking spaces not listed on the map. Chairman Weston informed the Board that the parking lot is grandfathered by a determination from the Building Inspector, Dave Wiley.

Ingress and egress is marked on the map and is pre-existing. Chairman Weston waves the scale, as he feels what has been provided is adequate. No state permits are required for this project. Review of the check list is complete.

Mr. Doughty makes a motion that the Board accepts the application as complete. Mr. Jackson seconds the motion. All in favor, Motion passes.

The proposed project is to replace the Synagogue. The new Synagogue will be shifted slightly to the north. The bath house will stay the same and the occupancy will remain the same at 102 people. The new Synagogue will be 17.3% larger than the previous. The new building will be the same use and be in pretty much the same location, slightly shifted to the north.

Chris Hodge, project manager, explains the poor condition of the old building and briefly goes over the concern brought to the applicant from Fire Chief, Jack Anderson. In putting together the plans for the proposed Synagogue the applicant and Mr. Hodge have worked closely with Mr. Anderson to make sure these concerns were addressed.

The applicant, Mr. Gutfreund, states that he would like to work with the neighbors and the community to address their concerns. He understands that he may be hard to reach as he does not live in Bethlehem but is willing to give out his contact information in an effort to make himself more accessible. He points out that the Synagogue has a long history here, almost 60 years, and also points out that this special exception they are requesting will only increase the building by approximately 740 square feet.

The grandfather status of the property is discussed. It is pointed out that the use of the property is not being discussed. The Zoning Board is only hearing the special exception for the increased size of the structure. Ms. Delventhal clarifies that if the applicant rebuilds the structure without increasing the size a ZBA approval would not be required. With no other comments or discussion from the Board, Chairman Weston opens public comment.

Jill Davidson, 37 Lewis Hill Road, who is a direct abutter feels that parking is inadequate and a concern. She states that cars are frequently park on her property and on the street and often times fire hydrants are blocked.

Katelyn White shares her concern and has also experienced issues with cars parked on sidewalks, blocking drive ways, and using her drive frequently as a turn around. Mrs. White has also had problems with the lighting that is on 24/7 and noise that carries on late into the night and early hours of the morning, resulting in multiple calls to the police.

David White asks if increased in the deck size is being considered in this application. He is also concerned by the storage containers which he does not see indicated on the plan and would like to know if the application is for a variance or a special exception. Chairman Weston says this application is for a special exception.

Mr. White says the building is routinely filled beyond capacity. He feels this creates both a safety and noise concern. Feels the noise is a breach of the peace as is outlined by criminal code. He frequently calls the police because of the noise. Feels the grandfathered status of the parking lot needs to be further investigated. He also has concerns about lighting, pedestrian and vehicular traffic.

Robert Schwartz, 120 Jefferson St., asks how noise, lighting and other concerns that have been voiced are relevant to the increase in square footage. Ms. Delventhal says they are relevant because it is the Boards job to consider the effects of the proposed project on the abutters.

Mr. Hodge points out that the only increase is in square footage, not occupancy.

Mrs. White states that she has a letter from Donna Devlin-Young, who could not make it to the meeting but wanted to voice her concerns related to the proposed project. Ms. Delventhal read the letter that Mrs. Devlin-Young submitted. The letter mostly points out traffic and parking concerns.

Mr. Doughty asks if Site Plan Review will be required for this project to proceed. Chairman Weston says he thinks it will.

Neil Brody wants all parking to be on Route 302 and says that he agrees with what it says in Mrs. Devlin-Young's letter. Chairman Weston asks Mr. Brody if he is talking about the Arlington Project or the Synagogue. Mr. Brody says both. Chairman Weston tells Mr. Brody that the Arlington cannot be discussed at this meeting.

Mr. Hodge states that he disagrees and feels the project will not require Site Plan Review. Chairman Weston says this is not his area of expertise and that Mr. Hodge would need to speak to the Planning Board.

Rod Haywood requests that the Board deny this application due to the concerns which have already been discussed and because they have already started work on the foundation before the special exception was granted.

Cheryl Jensen asks for clarification on the grandfathering of the parking lot and asks if the applicant would be willing to increase the parking if possible. She suggests that instead of expanded the 700 square feet they add extra parking spaces. Also points out that the Town has a dark sky ordinance and asks if the Synagogue will have to adhere to it. The applicant says the proposed lighting would be in accordance with the ordinance and it is pointed out that lighting is typically reviewed by the Planning Board.

Mr. Hodge explained that last year flood lighting was put up at the request of the Fire Chief and Building Official to address a safety concern. This light will not be needed going forward and the new building will have downward lighting. Mr. Schwartz reiterates what Mr. Hodge said about downward lighting being in compliance.

Mr. Brody wants to know why we are here when it feels like public comment has no effect, and every concern brought up is a problem for another board. Chairman Weston explained that different boards have different purviews. He then asked Mr. Culver, former Selectmen, and Mr. Doughty, former Planning Board member, to go into more detail about the roles and responsibilities of the other Boards. Mr. Doughty provides the public with an overview of the Planning Boards role and the Site Plan Review process.

Mr. Culver states that the Selectboard, working in conjunction with the building official, is the enforcement authority of the town. Mr. Culver points out that when a property is not complying with local and state ordinances a cease and desist order can be issued. Chairman Weston also adds that the Selectboard has fining authority as written in our ordinance.

Chairman Weston goes on to explain that the Zoning Board is the judicial authority and has limited scope. All zoning ordinances are voted on by warrant article and only passed if they get a majority of votes. All applications for special exception are required to have public comment. The Zoning Board can make recommendations and conditions. Chairman Weston briefly explains the difference between variance and special exception.

Mr. Haywood says that he is in favor of the synagogue being rebuilt, but he is against any expansion.

Dick Robie says the problems and concerns that have been brought up should be addressed by the Town or by the police department not the applicant or the Zoning Board. He thinks that some of the issues that abutters experienced in the past will be resolved when the new building is built.

Chris Jensen wonders if the Planning Board needs to approve the project at Site Plan Review before a special exception is considered. Chairman Weston states that if an approval is granted it will refer the applicant to Site Plan Review.

Mr. White says the Board needs to protect the abutters from detrimental uses and parking is still a concern. Chairman Weston says we will go over the criteria one by one and will have additional public comments at that time.

Rick Robie said that the Synagogue is only open seasonally and that parking problems on Lewis Hill occur all year round. He wants to ensure that the public realizes not all of the traffic and parking concerns can be attributed to the Synagogue.

A member of the Synagogue says that Bethlehem has always been good to their congregation and the increase in square footage will not change any of the concerns that have been brought forth. What it will do is fix what was previously an eye sour. The applicant is open to listening to concerns of abutters and working with the community to find solutions for these issues.

Mr. Hodge says the applicant can replace the structure in-kind or increase it with ZBA approval up to 25% and that either way a Planning Board Hearing is not required.

Don Lavoie, Alternate Planning Board member, is present at the meeting and says that any non-residential property that is making a change requires Site Plan Review. States that Mr. Hodge was notified of this requirement at a previous Planning Board meeting.

There was discussion about if this special exception is for increase building size or lot coverage. Determine that it was building size, as stated on the public hearing notice.

Mr. Hodge explained that the additional square footage will make it possible to increase the size of the warming kitchen and the laundry area. The Deck is also proposed to be 4 feet deeper. The building will also be shift further from the abutters and closer to the Arlington Hotel.

There is more discussion regarding the project going before the Planning Board for Site Plan Review. Chairman Weston states that whenever an applicant requires both Planning Board and Zoning Board approval, Zoning Board hears the applicant first. There is more discussion on the roles of the two Boards and the relationship between them.

Mr. Haywood asks for clarification. Mr. Lavoie tries to explain what will happen if the Special Exception is granted and if it is denied. He feels that Site Plan Review will be required either way and as a part of the Site Plan Review process abutters will be notified. If the ZBA approves the application Planning Board will have to look at all aspects of the Site Plan Review but the Planning Board will have to work within the conditions of the ZBA approval.

Mr. White states that the plans show 24 parking spaces. According to the ordinance there should be 1 space for everything 3occupancy.  $24 \times 3 = 72$ , occupancy is 102, therefore the parking is inadequate.

Rita Farrell asks if all zoning ordinances are reviewed for legality. Chairman Weston and Mr. Culver explain the review process that occurs. Mrs. Farrell feels there needs to be more clarity.

There is discussion about the two apartments that are shown on the plans. Isaac Augenstien explains that there are two apartments on the plans one for the Rabbi and one for the Sexton and that this was the same as in the previous building.

There is continued discussion about parking spaces. Mrs. Farrell asks the Board to require applicants to put plans on an easel for the public can more easily view plans during the meetings. She asks for more information on the status of the foundation work that has begun on the project. She is told that the footings are in place but the concrete has not been poured.

There is discussion on who is responsible for addressing concerns or problems that occur between the applicant and neighbors. The Board says that problems and concerns are address by setting conditions at these meetings and through enforcement through the Selectboard and building official. Mr. Doughty also says that problems can be solved neighbor to neighbor.

Applicant wants to know if they get the approval can they start on the project right way. Mr. Lavoie feels they can but that it would involve some risk on the applicants part to proceed before Site Plan Review occurs.

Mr. Jackson says they are short 10 parking spaces. Mr. Hodge says they may be able to add a few additional spaces. Mrs. White wants to know where the buses and large van will park, as she feels they create a safety concern.

Mr. White says the Building Official, Dave Wiley, has issued a permit for the foundation only and that he feels this is concerning.

Mr. Schwartz says that there was only one bus, not multiple buses, and only on the weekends when the students would come up to study with the Rabbi. He agrees that this concern should be addressed but not by the Zoning Board.

There is more discussion about the foundation; the permit was issued because the building is grandfathered so even if the application is denied the building can still be built using the foundation that has been started.

Mrs. Davidson asks the Board to deny the application until the applicant can increase the parking. Chairman Weston does not feel the application should be denied for that reason, he would possibly consider a continuance or making increased parking a condition.

There is more discussion on the foundation work that has begun. The applicant explained that the increase space will allow for a hallway that was not part of the old building. Dick Robie requests that the application be approved and sent along to the Planning Board for Site Plan Review.

There is discussion about Dave Wiley and if he was acting as a member of the Planning Board or as the Building Official. It was determined that he was acting within his capacity as the building official.

Mrs. Farrell requests continuance of the meeting for the public's peace of mind. There is discussion on if the meeting should be continued. There is further discussion about traffic and traffic concerns. Mr. Gutfreund says he believes the Arlington Hotel will decrease traffic because guest will be able to walk from the hotel to the services. Mr. Hodges says additional parking will also be available at the hotel. Mr. Hodges thinks that last year's traffic and parking were particular bad because the hotel was not open and parking was not available due to construction. Abutters say that parking has been a problem for years not just last year. Mr. Schwartz points out that traffic and parking is only a problem during weekends, holidays and specific prayer times.

Chairman Weston feels that the Board now has a good indication of the abutters concerns about parking. Mr. Culver asks if the application is denied how many additional parking spaces would that he equate to. Mr. Hodge says it will result in no additional parking.

Mr. Doughty and Mr. Lavoie discussed if Zoning Board denies application will Site Plan Review be required. They disagree on the answer. Mr. Gutfreund says that a continuance will be a hardship on the applicant. Chairman Weston says we will only continue the meeting if it gets too late. He says parking is beyond the Zoning Boards purview and the Board is only here to consider the 350 square feet (per floor) increase, which enlarges the kitchen and the laundry areas. He feels this will not require additional parking.

The Board begins going over the criteria. Mr. Jackson reads criteria 1 and the applicant's response. There is discussion. Mr. Doughty wants a condition that the project be required to go to Site Plan Review. Chairman Weston says that is always part of the written decision if approval is granted. Mr. Jackson makes a motion to vote to move on criteria 1, Ms. Delventhal seconds, all in favor, motion passes.

Criteria 2 with applicant's response is read. Mr. Jackson makes a motion to move criteria 2, Ms. Delventhal seconds the motion, all in favor, motion passes.

Criteria 3 is read. There is discussion. Ms. Delventhal states there has been a lot of concern brought up about noise and traffic. Mr. Culver wants to know does this criteria open up the whole building to these conditions or only the increased square footage. Mr. Lavoie explains more about what the responsibility of the Zoning Board and what will go to the Planning Board. He also states that it is not the Zoning Boards job to the make the applicant's life easier. Mr.

Lavoie also asks why the applicant knowing these problem existed didn't instead move the synagogue to a more suitable property.

Chairman Weston addressed Mr. Lavoie's concerns and stated that the synagogue cannot just up and move to another property as that would create a hardship for the applicant. Mr. Doughty feels that Site Plan Review will not be required if the application is denied.

Mr. White is concerned that the occupancy will increase. Mr. Gutfreund said that the capacity is remaining the same. The extra space allows for a hallway that bypass where the service takes place. Ms. Delventhal shows Mr. White on the plans.

Mrs. White is concerned that noise will continue to be a problem. She has had to call the police multiple times. Mr. Lavoie says that an increase in square footage is a possible increase in people what is a hallway today might not always be a hallway. Chairman Weston does not feel this is a valid concern.

Carol Haywood is concerned that the new hotel and the new synagogue will attract more people to the area and possible increasing the problems that are already occurring.

Discussion continues on the parking, the conversation becomes heated with multiple people speaking at once. Chairman Weston calls everyone to order. Rick Robie says that the meeting is stuck on repeat and we need to move forward. Chairman Weston insists that we remain civil and that people when speaking address the Board. He feels it would be wrong to assume that the applicant is being dishonest.

Mr. Schwartz would like to point out that he reviewed the Arlington Hotel Plans and they will have their own synagogue in the Hotel. Mr. Haywood reiterates that the two new projects will increase the problems that are already occurring because they will attract more people.

The two major concerns the abutters have are parking and noise issues. Chairman Weston asks the applicant if they would consider some type of sound proofing. They applicant responds that the new building will have central air conditioning and he feels this will help keep people inside and windows closed which will cut down on noise. The applicant would consider acoustic material but would like to do more research before committing.

Mr. White states that the Board might want to consider hours of operation. The Board discussed possible conditions to address sound/noise complaints. Mr. Gutfreund explains that the noise the abutters hear late at night and into the morning is prayers not partying and that a time limit is not a possibility. Ms. Delventhal says she does not feel the Board can approve criteria 3 even with conditions. Chairman Weston states that these were pre-existing problems and the Board only needs to make sure the problems are not increased to meet the criteria. Chairman Weston feels the applicant should look into additional parking and acoustic sound barriers. Mr. Culver seeks clarification on if this project will be required to go before Site Plan Review. He feels that this is

still not clear and we should have an answer before we continue. There was more discussion about the parking lot and the grandfathered status. Chairman Weston states that he had the previous planning and zoning clerk get advice from NHMA on the grandfather status of the parking lot.

Mr. Culver makes a motion that the hearing be continued. Ms. Delventhal seconded the motion. Mr. Doughty and Mr. Weston vote no. There is discussion about continuing the hearing. Mr. Doughty feels the problems should be addressed at Site Plan Review and not the Zoning Board.

Mr. Culver agrees that an increase in square footage will not increase these problems, but is looking for clarification if it opens the requirements to the whole structure or only to the increase.

Abutters question the point of the hearing if Zoning Board can not address their concerns. Chairman Weston explains the process to the public. Mr. Kellogg says that the criteria are more general and the Site Plan Review process is more specific. Ms. Delventhal says that even without ZBA approval the applicant will be able to proceed with rebuilding the Synagogue. With an approval the Board will have the ability to add conditions.

Dick Robie feels that the applicant has tried to comply with requirements set by the Town and to better themselves by building a new building rather than repair the old one. He feels they have been placed in an unfair position.

Mr. Lavoie is concerned that the ZBA approval will limit what the Planning Board can do at Site Plan Review. He feels it is not the Zoning Board's job to accommodate the applicant. Chairman Weston states that he is trying to accommodate the public not the applicant. Mr. Lavoie feels that by approving this application the Board is knowingly increasing impact of the neighborhood. He feels that he Board should deny application. He feels the Planning Board will not be able to fix these issues.

Mr. Culver wants to know if the application is denied will the applicant be able to build without the increase in square footage with no additional hearings. If that is the case than he feels the application should be approved as small increase in size will not increase the issues that are already occurring.

There is discussion that the increased square footage will not increase bus traffic, people, or noise as the occupancy is staying the same and the additional space will be used to add a hallway and a bathroom. Chairman Weston says this project came about because the applicant is trying to accommodate the Town and bring the Synagogue up to safety and fire code. He reiterates that the Board can place conditions on the project if the special exception is approved.

Mr. White says that he is happy that the applicant is cleaning up the sight and replacing the building but he is concerned any increase in size will result in additional people. States that the

deck in particular is often packed with people over the weekends beyond the stated capacity of 102 people. The Board reiterates that this is an enforcement issue not a Zoning Board issue. Mr. White feels approval of this application is an invitation to violate the law.

Mr. Doughty says we have to go by the plan that the applicant has submitted. If the occupancy exceeds what is on the plan than if becomes an enforcement issue. He suggests a calling the Fire Marshall or the Police.

Mr. White continues to voice concern for increase in occupancy. Chairman Weston reiterates that we have to assume that the applicant is in good faith and the occupancy will remain the same as stated in the application. Rick Robie points out that there is available parking on Long Hill. It is recommended that the Board restrict large vehicles on Lewis Hill Road. Applicant agrees to initiate policy that Buses for the Synagogue park in the available Main Street parking.

To address the noise concerns, Nicole McGrath asks if it would be possible to have a condition requiring all prayers take place within the building after a certain hour. The Board is reminded that there is a motion on the table. Ms. Delventhal withdraws her second and Mr. Culver withdraws the motion.

Mr. Culver asks if the Board is in agreement that if the application is denied the applicant can carry on with a new building with the same size footprint with no additional hearings. There is continued discussion and the Board is unsure. Mr. Haywood asks if the applicant will need to return for Site Plan Review. Chairman Weston says that the condition will help address the publics' concerns.

For criteria 3 the Board recommends the following conditions. Bus parking will be designated to Main Street. Acoustical ceiling tiles will be required in the service area, and prayer will be contained within the building after 10:00pm. Mr. Doughty makes a motion to accept criteria 3 with these conditions. Mr. Jackson seconds.

Mr. Culver feels the Zoning Board might be over stepping their authority. Mr. Lavoie says specific conditions set by the Zoning Board will help the Planning Board address the issues when the project comes before Site Plan Review. There is discussion of rewording the second condition regarding the sound proofing of the structure. Mr. Lavoie wants the condition to require consultation and implementation of a sound and noise reduction plan presented by an engineer.

Mr. Gutfreund says that would be very costly to the project and if the Board makes that a requirement they might as well just withdraw their application. After continued discussion it is determine that consultation by an engineer will not be required. Instead the applicant can consult with their current architect. Mr. Culver voices concern with the legality of some of the conditions. Chairman Weston say that he is not concerned as all the condition so far have been mutually agreed upon by the applicant. There is further discussion on the time for the third

condition it goes back and forth between 10:00 pm and 11:00pm and ultimately they decide on 10:30 pm.

Motion withdrawn. Conditions are reworded to state. Bus parking will be designated to Main Street. Prayers will be contained within the building after 10:30pm. Sound reduction acoustics will be implemented after consultation with an architect. Increased parking spaces will be considered by the applicant.

Mrs. Davidson wants the Board to address the frequent blocking of the fire hydrant. Ms. Delventhal suggests the neighbors work together to make sure violations and safety concerns are addressed to the Police department for enforcement.

Mr. Doughty makes a motion to accept the conditions set for criteria 3. Mr. Jackson seconds, all in favor, motion passes.

The Board reads criteria 4 and the applicant's response. Mrs. White suggests to the board that they reinstate all the conditions that were set in criteria 3. Mr. White wants to know what type of equipment will be in the warming kitchen and if it poses any safety hazards. He is informed that it will contain an oven and overall the room will be similar to the one in original building only slightly larger.

The Board discusses reinstating conditions set in criteria 3 for criteria 4. Mr. Culver says to take out the condition restricting buses to Main Street and he will vote for it. Dick Robie says it is common practice for business to tell their bus drivers where they can park. Mr. Doughty motions that the conditions for criteria 4 are the same as those set in criteria 3. Ms. Delventhal seconds, all in favor, motion passes.

Mr. Jackson reads criteria 5 and the applicant's response. Mr. Doughty makes a motion that the conditions be the same as stated in criteria 3. There is no second, motion dies. There is discussion over the applicant's response. Abutters are concerned by increase in pedestrian traffic and suggest fencing to help keep people out of the road. Mr. Culver says you can't control where people walk. Mr. Doughty suggests that the Board put a condition that the Planning Board looks at landscaping. Dick Robie talks about sidewalks. Mr. Hodge points out that more landscaping will result in less parking. There is continued discussion regarding screening and landscaping. The condition for criteria 5 will be that the Planning Board looks into landscaping. Mr. Jackson makes a motion to accept the condition for criteria 5. Mr. Doughty seconds the motion. Motion carried, four to one, (Mr. Culver opposed).

Mr. Gutfreund points out some of these conditions are only necessary if the project is required to appear before the Planning Board for Site Plan Review.

Mr. Jackson makes a motion to approve the application with conditions. Mr. Doughty seconds. There is no discussion. All in favor, motion passes.

Mrs. White asks how the abutters will know when the Planning Board hearing will be. She is told that the hearing would be noticed in the paper and all direct abutters would receive a letter from the Town with a copy of the hearing notice.

Mr. Doughty makes a motion to close the public hearing. Ms. Delventhal seconds the motion. All in favor, motion carried.

Mr. Culver makes a motion to adjourn the meeting. Mr. Doughty seconds, all in favor. Meeting adjourned 10:16 pm.

Respectfully submitted,

Nicole McGrath

Clerical Assistant