

**Planning Board  
Virtual Meeting  
June 14, 2023**

Meeting started at 7:03pm.

Statement of compliance read by Chairman Fagan.

**Roll Call**

Present:

Mayor Lawrence La Ronde  
Dave Hollod  
Aimee Corzo  
Chairman Tom Fagan  
David Branan  
Frank Kreder  
Andre Mitchell  
Michael Giordano  
Cheryl McKeever

Absent:

Liz Appezzato  
Mark Kruszczyński

Also present is Board Attorney Brian Schwartz, Borough Engineer Dave Testa, and Planning Consultant Paul Grygiel.

Pledge of allegiance.

**Approval of Minutes**

Mayor La Ronde made a motion to approve the May 31, 2023 minutes. Seconded by Michael Giordano.

All in favor.

None opposed.

No abstentions.

Minutes approved.

**Old Business**

Continuation of SPR-22-001 Yeshiva Tiferes Boruch.

Brian Schwartz explained that at the last meeting the public portion of the hearing was finished and the applicant's attorney made his summation. Mr. Schwartz stated he gave Mr. Wolfson the opportunity to add anything new this evening.

Mr. Wolfson just wanted to take the opportunity on behalf of the applicant and himself to thank the Board for its time and attention to the application throughout the process as well as the HPC.

Mr. Schwartz wanted to give a background as to how we got here and what the Board is voting on. The Board should be familiar with the history of the property and the application through the testimony and the public documents. The property has a historic history. The property used to be a nursing home or assisted living when it was the McCutchen home. The Yeshiva came in 2007 and wanted to put in a religious school for boys. In 2006 and 2007 there were lengthy hearings in front of the Board of Adjustment. The Board and the Borough were not familiar with the nature of the use, this was new for the Borough. The nature and intensity of the use were nailed down and that resulted in extensive conditions to the approval. This was mainly because the use was new to the Borough and the Board felt there was a need to be specific to the nature of the use and how it would be conducted on the property.

The applicant now, 16 years later, is seeking to keep the same use but construct a new building. This first went to the Board of Adjustment for an interpretation. The Board of Adjustment has the power to interpret the zoning ordinance and make determinations as to what it means. Mr. Wolfson and the applicant came to the Board of Adjustment seeking a determination that the addition of the new building but keeping the same use was a permitted use. It's unusual because this zone permits religious churches and religious assembly and it also allows schools that are certified with the State. This is neither a place of worship or a certified school because it's a completely private school. That's why it originally went to the Board of Adjustment for a use variance in 2007. The interpretation the Board of Adjustment gave, largely on Mr. Schwartz's own opinion, was that it should be considered a legal use because the representations made to the Board of Adjustment were that the use would remain the same and it was going to be a residential only school for boys and the number of boys was not going to be substantially different from what it was before. The new building would allow for a better educational experience because of the cramped nature of the buildings beforehand. The new building was not to be a new residential area or new dormitory and therefore there wouldn't be an expansion of the number of students living on the property. On that basis, as well as the expansive interpretation that the Courts are giving religious uses, the Board of Adjustment decided it was a legal use.

The application then went to the Planning Board for Site Plan approval. The only variance or waiver from the requirements of this zone is parking. The Board has heard testimony as to whether it is a waiver, which the ordinance allows to be given or it's a variance. Mr. Schwartz asked Mr. Grygiel to assist him in interpreting the difference. The ordinance is very specific in saying the Board can allow a waiver. He has always considered a waiver in one of two situations. One is typically there is a waiver of a design criteria as opposed to a zoning requirement in an ordinance or in this case it's specifically allowed in the ordinance. He considers a waiver to be a much lower burden of proof but at the same time, a waiver is usually given on something that is inconsequential. A variance requires specific criteria and the applicant had Mr. McDonough explain why he feels the variance can be granted for the deficiency in parking. Mr. Grygiel in his report has also explained the statutory criteria. The main justification for the variance for parking is that the students are not going to have cars and there are few faculty or administration and there cars can be accommodated. It is the nature of the Orthodox Jewish religion that on holidays Jewish people do not drive and therefore on the

occasion that family members would be coming to the property for holidays there would not be an influx of traffic. A new building, which is a substantial building in square footage, is proposed to be built and it leaves the applicant extremely deficient in the number of parking spaces. The applicant is relying on the use as purely a school in order to justify the variance.

Given that it's a permitted use, that is not the issue here. In his opinion it is looking at the use and the continuing use in relation to the parking issue and determining whether the variance can be granted considering the representations the applicant's made. He would suggest to the Board that it look very carefully at the previous Resolution of the Board from 2007. The conditions have been talked about at length about how they can be refined in order to ensure that the continuing use will continue or impose a lesser burden on the public and the neighborhood.

Mr. Schwartz prepared conditions that refine these and are based solely upon listening to the concerns of the public, listening to the testimony of the applicant's witnesses, particularly Rabbi Cohen, and the Resolution BA 07-02, and trying to refine them. Nobody other than Mr. Fagan has seen the conditions, other than Mr. Fagan earlier today. Neither the other members of the Board nor the applicant have seen the conditions. Mr. Schwartz wanted to share the conditions to give the Board an outline of what can be done to ensure the concerns of the public can be addressed.

Mr. Schwartz shared his screen to show the conditions he prepared. In Mr. Schwartz's opinion, the Board does not need consent of the applicant to impose conditions as long as they are reasonable. It is his recommendation that when the Board is done with deliberations and they get to the details of the Resolution that they allow Mr. Wolfson to tell them if there is anything in the conditions he feels are strongly antithetical to what has been said during the hearings and what his client has actually agreed to. Mr. Schwartz doesn't believe that anything he has put in the conditions is contrary to what has already been represented by way of a comment from the public and the Board and the consent of a representative of the applicant.

Mr. Wolfson noted there are at least 5 pages of conditions. He doubts he will be in a position to consult with his client, review the transcript, and think about this tonight. He respects the amount of work that has gone into this as well as the Board's right to place appropriate conditions but to the extent that Mr. Schwartz indicated that he would be looking for him to respond and/or object to any conditions tonight, he said it would be impossible.

Mr. Schwartz stated he can forward the document and asked if would be helpful. Mr. Wolfson stated it would not allow him to do what he needs to do to think about it tonight on the spot. Mr. Schwartz does not think it's appropriate for Mr. Wolfson to go through each condition and give his opinion. If Mr. Wolfson feels when the Board is done and he doesn't want the Board to vote on it, it will be dealt with then.

Mr. Schwartz stated condition 1 is that all conditions in the Resolution of Approval 07-02 were made in full force and effect as modified.

Condition 2 is that the construction will be in compliance with the Historic Preservation Commission's approval. This supersedes condition 1 from the previous Resolution because that

says it had to be in compliance with the review requirements of the Historic District resident zone. This supersedes that because they have already gone through the review.

Condition 3 is virtually identical to condition 2 in the previous Resolution.

Condition 4 repeats condition 3 from the previous Resolution.

Condition 5 is almost identical to condition 5 in the previous Resolution except in A, regarding religious services or gatherings which was prohibited under the previous Resolution. He has expanded that and modified it to take into account what he believes was the testimony of the applicant relating to the scope and services of programs. B and C are exactly the same. D is the same other than he added it would be pursuant to a separate application if they wanted to do this. E is exactly the same. For F, he added it was prohibited to have more than 100 students during any school cycle. The number permitted under the previous Resolution was 79. His understanding of the Rabbi's testimony is there might be somewhat more than that but it would not exceed 100 students. G is exactly the same.

Condition 6 is identical to condition 6 in the previous Resolution.

Condition 7 has a slight change in the language. Mr. Schwartz understood from at least one member of the public that there has not been the dialogue that they had hoped for in 2007. The Board felt it would increase and improve the relationship between the Borough and specifically the neighborhood and the Yeshiva because of the need for people to understand exactly what the Yeshiva does. Best efforts was changed to increased efforts.

Condition 8 is identical to condition 8 in the previous Resolution.

For condition 9, he added the applicant will also monitor dormitory rooms to eliminate the presence of electric cooking stoves or pots which are prohibited by fire code. They have been present during some fire inspections.

The previous condition 10 said the applicant shall have in place within 90 days of opening of the school and this is not appropriate so he said have in place prior to issuance of a CO for the new building. Other than that, condition 10 is identical to the previous Resolution.

Condition 11 is identical to the previous Resolution.

For condition 12, the previous Resolution stated not more than 10 students could participate. He does not think it's a fair condition to limit to 10 students. He focused more on the fact that the activity needs to cease by 9pm and that there will be adult supervision that will enforce this condition. Rabbi Cohen said there would be people present 24/7 to assure that this happens. If this condition were enforced by the Yeshiva, he thinks a lot of the problems from the public would be reduced if not eliminated.

Condition 13 is identical to the previous Resolution.

Condition 14 is almost identical to the previous Resolution except that he added a new garden will be installed to replace the one that is being removed because that is his understanding of the testimony.

Condition 15 is identical to the previous Resolution.

Condition 16 is identical to condition 18 in the previous Resolution.

Condition 17 repeats that the number of students will not exceed 100 students and the only residential occupants of the property will be administration, faculty, and their immediate families. That is a mistake, it should be the students, the administration, and faculty. That should be amended. That replaces condition 17 in the previous Resolution where they said there could be 110 people and he talked about 6 years of age or under. He thinks it would be better to say there will be a certain number of students. He sees why he said only residential occupants of the property, he meant people living there full time, it would be administration, faculty, and their immediate families.

Condition 18 is a boiler plate condition.

Condition 19 is identical to condition 19 in the previous Resolution.

For condition 20, it was important in the previous Resolution that someone be present to provide healthcare assistance. There was a comment that someone was given a phone number for a problem for someone in Brooklyn. There should be someone who's contact number is provided to the police department.

Conditions 21-26, are identical to conditions 21-26 in the previous Resolution.

Condition 27 addresses the new fencing to not exceed 6 ft in height above grade except for the gate which should not exceed 7 feet above grade. Mr. Testa confirmed that this is accurate.

Condition 28 is identical to the condition in the previous Resolution although he could not provide the condition number.

Condition 29 addresses the women's lavatories on the second floor. It explains that the purpose is not because women will be there on a regular basis as students but rather the applicant has represented that the school is only for males, no provisions have been made for separate quarters or classes for female students or presence of women on a regular basis.

Condition 30 addresses the concern about not having a lot of heavy construction vehicles parked on the streets. They are seeking coordination with the Borough's Construction Department to reduce when reasonably possible the parking off site.

Condition 31 is a standard condition that the applicant will comply with the recommendations of the Planner and the Engineer, which the applicant has said that they would do.

Condition 32 is standard, although he understands that there is not going to be a new stormwater drainage system so this will apply to the existing one.

Conditions 33 and 34 are standard.

Condition 35 is from the old Resolution. It is standard, except that they have added the Historic Preservation Commission to be present because of the historic nature of the property.

Conditions 36-41 are standard.

Condition 42 addresses the buses. There was comment that buses come late at night and they idle. Rabbi Cohen said there would be no dropping off of people after 9pm. The condition states there would not be buses permitted on or adjacent to the property between 9pm and 7am seven days a week.

Condition 43 is a standard condition used on all new construction.

Condition 44 is standard, other than they added at the request of Mr. Testa's report, all sections of existing bluestone or concrete sidewalk will be repaired or replaced consistent with his report.

Condition 45 is that construction will comply with the plans that have been submitted as amended by these conditions and any conditions of the Historic Preservation Commission approval.

Condition 46-49 are standard.

Mr. Schwartz stated 80-90% of this is exactly the same as the previous Resolution. If not exactly the same, it is extremely similar or has added terms to address issues that came up during the hearings and primarily already agreed to by the applicant, Engineer, attorney, or Rabbi Cohen.

Mr. Schwartz mentioned there has been a lot of discussion about the RLUIPA Law. He explained that is a Federal statute that replaced the previous one that had been found to be illegal by the Supreme Court. The statute says "no government shall impose or implement a land use regulation in a matter that imposes a substantial burden on the religious exercise of a person, including religious assembly or institution unless the government demonstrates that imposition of the burden on that person, assembly, or institution is the least restricting means of furthering that compelling interest". Mr. Schwartz isn't sure to what extent the statute would apply because he doesn't feel the Board is being called upon to curtail the use that the applicant wants to make of the property unless someone would to argue that any conditions would impose undue burden. To him, that is exactly the same as the Board always looks to do, which is to only impose conditions on an applicant that are reasonable and are reasonably necessary to protect the public.

Mr. Giordano asked if they are not driving to religious holidays, are buses considered transportation for them. They can't walk if they are coming from another town. Rabbi Cohen stated the students are on site and there are a few faculty members that don't live in North Plainfield. They would be coming and staying in either the apartments or nearby areas. The students are all on site and there is typically no busing. Mr. Schwartz asked if because of adherence to religious practices to not drive on religious holiday, can they take public transportation or a bus. Rabbi Cohen stated no. There is no driving or public transportation.

Mr. Giordano asked about family members of the students. Rabbi Cohen stated no one related to the Yeshiva body and affiliated with the Orthodox religion drives or takes public transportation on holidays or Saturday.

Chairman Fagan had a question regarding condition 20 which states, in addition to the supervisory personnel required by condition 5 and 12 herein, at least one adult will be present on

the property at all times who is designated as a responsible person for providing healthcare and who is authorized by the students or their guardians to make emergency healthcare decisions for the students. He asked what kind of health care facilities are at the Yeshiva. Rabbi Cohen stated they have a small nurse's room to deal with minor issues such as a cut. If medical care is needed, they would go to a local urgent care or a local hospital. Any student would go with a faculty member, they are never sent by themselves.

Chairman Fagan asked about the contact person that will be available 24/7 and if it would be a faculty member. Rabbi Cohen stated yes. Chairman Fagan asked if they would provide contact information to the local authorities in the event of an issue. Rabbi Cohen stated yes.

Ms. Corzo noted condition 5a, "religious services or gatherings" and asked what are gatherings. She asked if they are still religious happenings that the people will not drive to. Mr. Wolfson asked if that was the same condition from 2007 carried forward. Mr. Schwartz stated the word gatherings was used before. He used the words services, programs, and gatherings because schools have programs. He was trying to be as all encompassing as he could. Gatherings was from the previous Resolution. The word that was added was programs. All programs are religious based and there are certain religious holidays that involve parties or gatherings that are social as well as religious. These would be programs or gatherings. Ms. Corzo asked if they will be driving to gatherings. It has already been established that on certain holidays they will not be driving but asked if they will be driving to other gatherings.

Mr. Wolfson noted that none of the students have cars, many of the faculty members walk to the school, and the universe of people that come to the Yeshiva consistent with the 2007 conditions is unchanged. The words in 5a is the same and nothing is changing. Respectfully, he thinks they are covered. Ms. Corzo stated it's changing because there is a potential for more people gathering. Mr. Schwartz stated that is exactly why he added to the language. A lot of time was spent at the hearings talking about this with the Rabbi. To Mr. Schwartz, the important part was that it's going to be students, staff, and immediate families. There are not going to be programs open to the general public and he has clarified it. He believes it is consistent with the testimony of the Rabbi.

Mayor La Ronde asked if they should replace religious services and gatherings with religious services and school functions open to the general public. Mr. Schwartz asked if he understands a-g are things that are prohibited. Mayor La Ronde stated yes. Mr. Schwartz asked if he is saying is that it should say religious services or school functions open to the general public are prohibited. Mr. Schwartz stated that's fine.

Chairman Fagan asked Rabbi Cohen if there is anything above and beyond what was discussed that might fall under gatherings. Rabbi Cohen stated he didn't think so.

Mr. Schwartz stated the concern that the Board has expressed is about the use of the building and why the size was necessary. The testimony of the architects was confusing and inconsistent in his opinion. He looks to the Rabbi to clarify that. They are trying to deal with a really big building that could conceivably be used for a use other than what the applicant says it's going to be used as and they are just trying to come up with conditions that will make it clear what the

Board expects on the property and the new building so there will not be a pressure on parking because the number of parking spaces on site are so much less than the ordinance requires for any use in the zone.

Mr. Wolfson noted for the record that the testimony has been consistent and unequivocal that there are not new programs being added. There are not new bodies being added to the property and the building itself requires with each of the bulk requirements.

Mr. Schwartz thinks the Rabbi's testimony was very clear and unequivocal about that but the earlier plans that used words usually used in terms of religious services caused there to be a need for the Rabbi to clarify. Mr. Schwartz is satisfied that he has.

Mayor La Ronde has a problem with just seeing the conditions tonight and not having the opportunity to read them and go over them. In his opinion, he would ask both attorneys to move this to another night to make a final vote so the conditions can be reviewed and other suggestions can be made.

Mr. Schwartz apologized for not providing them sooner as he was working on them until late afternoon. He wanted them to be for purposes of discussion but the fact that there are 40 of them makes it difficult to do so. He is not looking to be unfair to the Board or the applicant.

Mayor La Ronde thinks it would also be fair to the applicant so he has a chance to read them also. He states one of them referencing back to number 5 as far as the nursing staff, he doesn't see anything under number 5 referencing the nursing and on duty staff. He wants to be able to look back and forth.

Mr. Schwartz thought distributing this before the hearing, it would suggest the Board has already made up it's mind. If he sent it to the applicant, it is more likely there would be even more of a dialogue that they are having tonight.

Chairman Fagan reminded the Board about 80% or more of the conditions are from the 2007 Resolution. There are only about a half dozen new sections to the existing conditions.

Mr. Wolfson asked if he could have 5 minutes to discuss this with his client to give meaningful feedback on the proposed conditions if the Board is going to consider going forward with them. If the Board is not, he would like to talk to his client about what he'd like him to do.

Mr. Schwartz stated he had the hope that as they went through the conditions they would see there weren't that many changes but he has to represent his client properly.

Mr. Wolfson stated when he saw the first condition that adopted all of the 2007 conditions he thought all the rest of the conditions would be new ones but in fact based on Mr. Schwartz explaining them, apparently there are not a lot of new ones. If he has an opportunity to talk to his client on things that are new and not what is repeated, he can provide some input if the Board is interested in that. He was not advocating to extend this one more meeting. He was just reacting to what he thought was 5 pages of new conditions. He is requesting 5 minutes with his client to hear his reaction to where they are and provide feedback.



Mr. Hollod suggested regarding the condition relating to a contact person or a contact number that would be provided to the police department. He suggests that the number be made public and possibly be posted around the fence on the property so a neighbor can use the number to resolve a minor issue such as playing basketball late at night instead of involving the police department.

Chairman Fagan thinks that may be a good idea.

Break at 7:59pm.

Returned from break at 8:10pm.

### **Roll Call**

Present:

Mayor Lawrence La Ronde  
Dave Hollod  
Aimee Corzo  
Chairman Tom Fagan  
David Branan  
Frank Kreder  
Andre Mitchell  
Michael Giordano  
Cheryl McKeever

Absent:

Liz Appezzato  
Mark Kruszczyński

Mr. Wolfson stated his client is fine with the conditions but is concerned about security if a phone number is posted on the fence. They will provide the phone number to the neighbors but will not post it on the fence. They can do an outreach to the neighbors and provide the phone number to anyone who wants it.

Mr. Mitchell asked if there was an area set aside for health emergencies. Rabbi Cohen stated there are 2 rooms available.

(Recording restarted at 8:17pm)

Mr. Mitchell also stated there is a concern amongst the neighbors that there is a disconnect with what is happening at the school. He hopes there will be more of a connection between what's documented in the Resolution and what actually takes place and is honored at the school itself.

Mr. Branan appreciates the summation Mr. Wolfson gave at the last meeting, particularly in respect to case law that could be applicable and Mr. Schwartz's statements earlier regarding legal questions that may be involved. His understanding is that the two issues they were asked to address in the application were the variances or waivers regarding fencing and parking. It is his understanding that it is implied through the Resolution that they are granting those and asked if that was correct. Mr. Schwartz stated yes, the applicant is asking for preliminary and final major Site Plan approval which pulls into focus the designs of the property and the physical layout. The only other relief requested is the variance for fence height and the parking, which is either a

waiver or variance, depending on how you look at it. Mr. Branan wanted to make sure his understanding was correct.

Mr. Giordano stated during the testimony of the Rabbi, he stated they want to work with the community, help out and do things. He was the mayor for 12 years and he never saw them there unless they came in for something other than what they were asking for. They came once to the Rec Department to talk to Mr. Passe to see if they could use the baseball field. Permission was granted. He does not see a working relationship with the Borough. There are only going to be at most 100 students plus staff in the new building. He doesn't see working with the community because they can build something because they can by law to make it as big as they want. That's not working with the community. If they are going to use the building as a school only with only 100 students, he thinks the building is too big and they are not working with the community. He feels down the road it will be used as a synagogue. If they want to work with the community, they should go back and look at the plans and not build something because they can do it and because by law they can build and because the ordinance says they can. It's like when the Charter School came into town. They can do it. They built a big building because they could. It's not working with the community. He stated Mr. Wolfson kept saying they can do it. Mr. Giordano stated they understand and they welcome them into the community but worth with them. They are not working with them. As Mr. Mitchell said, they are here as volunteers to protect the community in that area. He doesn't agree with the big building and saying there won't be parking issues down the road.

Mayor La Ronde understands that this is permitted by law. He thinks it will be unsightly in the Historic District. He knows they are basically voting on the waiver and the variance. He has an issue with the parking and he thinks it will be a concern. It already is a concern for the neighborhood. He doesn't understand why the whole property has to be fenced in with 6 ft fencing. They currently only have fencing on 2 or 3 sides. That is a big issue and it does not fit into the neighborhood. The architectural designs look great but the building does not fit into the décor of what they are looking for in the Historic District. He has major issues with the plan. He understands they keep being told it's within their ordinances but it doesn't mean that it's right. He is here to protect his residents and protect the town. He has major issues with both the waiver and the variance.

Chairman Fagan stated he wanted to welcome Rabbi Cohen to the family community. They are looking for cooperation on his part and they are looking for him to be flexible with the things they are going to do at the mansion. They understand the plans but wish they would amend the plans and be more lenient with the size of the property and the parking. The parking is the biggest concern the residents have there. With or without the Yeshiva there is an issue in that area with parking. They ask them to be open for the people that will be coming to the Yeshiva for events and be aware of the residents in the area.

Ms. Corzo stated she is glad to see that the Yeshiva wants to enhance the experience the students will have. Her biggest concern is parking. She sits on the town council and they hear it all the time. There were several experts testifying of the adequacy of the proposed parking but there were members of the public that didn't have a limited scope of just being there for an hour, 2 hours, or 3 hours. They are there 24/7. She is very concerned that the ordinance is there for a

reason and the size of the building will be used the way they said it would be used but it has the potential in the future to be used for more. Even now there is a problem that just going to be added to. She thinks it is going to be detrimental to the community. Here biggest problem is the parking.

Mr. Kreder asked who is responsible for enforcing these conditions. Mr. Schwartz stated, the Borough, the police department, the Borough Engineer. It falls on the Borough, the Board does not have enforcement powers. They can be enforced through summonses and actions in the law division but that is few and far between. Typically they are resolved at the municipal level.

Mr. Wolfson stated he is listening to the concerns about parking and there is not a shred of testimony or evidence either expert or members of the public saying there is a parking problem at the Yeshiva. Nothing about the Yeshiva's operation is going to be intensified at all by this. There are references to the municipality wide parking problem that exists. To equate that to an operation that is not expanding in any way from what exists now, from a hearing record that is clear that but for one event where the Rabbi died, there has not been a parking problem is inconsistent with what has been heard and testified to. They respectfully ask that the Board considers that during deliberations and consider the vote.

Mr. Hollod is looking at this in terms of this property and the house in particular what he would consider one of the crown jewels of the Historic District. It deserves all the protection it can get. Not anybody would choose to occupy this house and keep it up. They would probably be pouring millions of dollars into this property representing a long term commitment to this property. If this house were lost for whatever reason, it would be a detrimental impact to the neighborhood. To the extent that they have an applicant who is prepared to put a lot of money into increasing the viability of this property and taking some of the detrimental uses out of the historic mansion itself like the cooking or the preparation of food and moving it into a new facility, he thinks it is generally a good thing. He wishes we didn't live in a society now where you have to consider putting a fence around a school for security reasons but that is unfortunately the world we live in. He respects the desire of the school to provide the security to the students and staff. He would prefer not to see the fence but he would not want to deny the protection if they feel it's needed.

Mr. Branan appreciates what Mr. Hollod just said because they also need to look at alternatives. The public was asking why they couldn't pick an entirely different location to do this. If they had then they would have to look at what would then end up happening to the property. He thinks they have some precedent in town as to what can happen to these properties in those situations. He also appreciates Mr. Wolfson's comments regarding the parking. The root cause of the parking issues they have in town is not related to the existence of the Yeshiva. Other sources would need to be addressed through policy changes initiated by the town council.

Mr. Schwartz stated if the application is denied, the Yeshiva is not going to go away. They have an approval to continue the use of the property. The question is whether they are better off without the building but without the additional conditions to buttress the conditions 16 years ago or whether they are better off approving this application with carefully constructed conditions.

Mr. Mitchell asked if there was a maximum number of attendees at events or gatherings. Mr. Schwartz took out the maximum number and substituted that it will be faculty, administration, students, and immediate families. That is what was focused on in the hearings. If the Board wants it changed that is fine but to him that was the important factor that came through in the hearings, that it wasn't going to be open to the general public or that this wasn't going to be a synagogue open to all people who practice the faith but rather limited to family.

Mr. Mitchell was just thinking about the one event, the Rabbi's passing, and the number of people who attended and how it significantly affected parking that day and the potential concern if there is an event or religious gathering and there are many attendees and the same parking problem occurs. He was hoping to mitigate that in any possible way.

Mr. Schwartz stated this is a difficult Resolution to enforce. The existing Resolution from 2007 is difficult to enforce. There is a possibility that 200 people are going to show up and they say they are all close relatives. He doesn't know how to address that other than in carefully worded conditions and hope that as Mr. Giordano said, we get good faith on the side of the Yeshiva as well as on the side of the Borough. If the application is denied, the building won't be there but there will be the same problems and the question is are they better off without the Resolution as opposed to with it. He asked for any other comments from the Board regarding additions to the conditions. He has tried to address the issues he's heard from the public. He hopes Rabbi Cohen is willing to do what he says he will do.

Mr. Wolfson noted there is nothing in the record, other than the Rabbi's funeral, that brought out an outpouring of love and affection, there's nothing in the record about such a large gathering. That's one day out of 5,840 days. The pattern of conduct has consistently been respectful and consistent with the conditions. They understand that there are neighbors who from time to time are upset and they are committed to minimizing those to the greatest extent possible. There is not a pattern of anything but good behavior by the Yeshiva.

Mr. Hollod made a motion to approve the application with conditions presented by Mr. Schwartz and modified with further discussion and deliberation this evening.

Seconded by Mr. Branan.

Mr. Giordano asked Mr. Schwartz if they are just voting on the 2 variances or for the application altogether. Mr. Schwartz stated the application altogether with the 2 variances, preliminary and final Site Plan approval with the conditions as stated and as modified by the comments tonight.

### **Roll Call Vote**

Mayor Lawrence La Ronde - no

Dave Hollod - yes

Aimee Corzo - no

Chairman Tom Fagan - yes

David Branan - yes

Frank Kreder - yes

Andre Mitchell - no

Michael Giordano - no  
Cheryl McKeever – no

The vote is 5 No, 4 Yes.

The application is not approved.

Mr. Schwartz will prepare a Resolution.

Chairman Fagan thanked the applicant, the attorneys, and the Board.

Mr. Branan made a motion to adjourn.

Seconded by Mr. Kreder.

All in favor.

None opposed.

No abstentions.

Meeting adjourned at 8:46pm.