

**HILLSBOROUGH TOWNSHIP BOARD OF ADJUSTMENT**  
**PUBLIC MEETING MINUTES**  
**April 03, 2013**

Chairman Fenwick called the Board of Adjustment meeting of April 03, 2013 to order at 7:30 p.m. All stood for the Pledge of Allegiance. The meeting took place in the courtroom of the Municipal Complex.

Chairman Fenwick announced that the meeting had been duly advertised according to Section 5 of the Open Public Meetings Act, Chapter 231, Public Law 1975 ("Sunshine Law").

**ROLL CALL**

Michael Volpe – Present	Frank Valcheck – Present
John Stamler – Present	Shawn Lipani (#7) – Present
Helen Haines, Vice Chairman – Present	Frank Herbert (Alt. #1) – Present
Marian Fenwick, Chairman – Present	Curtis Suraci (Alt. #2) – Present
Walter Dietz, III – Present	Kenneth Hesthag (Alt. #3) – Present
	Michele Horst (Alt. #4) – Absent

Also in attendance: Mark Anderson, Esq., Board Attorney, Woolson Sutphen Anderson, P.C.; William H. R. White, III, PE, Engineer, Maser Consulting; David Kois, Zoning Officer/Assistant Planner/Board of Adjustment Administrative Officer/Secretary; and Lucille Grozinski, CCR.

**ACCEPTANCE OF MINUTES**

None

**ACCEPTANCE OF RESOLUTIONS**

None

**BOARD OF ADJUSTMENT BUSINESS**

None

**BUSINESS FROM THE FLOOR**

None

Francis P. Linnus, Esq. expressed his objection to the scheduling of the executive session.

**EXECUTIVE SESSION**

RE: ***Chabad Jewish Center of Greater Hillsborough, Inc.*** - File #BA-12-07. The Board will convene to discuss attorney-client privilege matters.

A motion to go into executive session was made by Vice Chairman Haines, seconded by Mr. Valcheck.

**Roll Call:** Mr. Valcheck – yes; Mr. Lipani – yes; Mr. Volpe – yes; Mr. Dietz – yes; Mr. Stamler – yes; Vice Chairman Haines – yes; Chairman Fenwick – yes. Motion carries.

The Board went into executive session at 7:36 p.m. A motion to close executive session was made at 7:43 by Mr. Stamler, seconded by Mr. Lipani.

**Roll Call:** Mr. Valcheck – yes; Mr. Lipani – yes; Mr. Volpe – yes; Mr. Dietz – yes; Mr. Stamler – yes; Vice Chairman Haines – yes; Chairman Fenwick – yes. Motion carries.

**PUBLIC HEARING - APPLICATIONS**

***HERCULES ENTERPRISES, LLC (Copart)*** – File #BA-13-01 – Block 143, Lot 7 – 321 Valley Road. Appeal/Interpretation. ***APPLICATION WITHDRAWN.***

Chairman Fenwick announced that the Hercules application has been withdrawn.

***Patrick DeNapoli, Jr.*** – File BA-12-10 – Block 58, Lot 29 - 154 Johanson Avenue. Amended application – Applicant seeking 'c' Bulk Variances for relief from Maximum Impervious Coverage (24.76% proposed where 15% is permitted; Minimum Lot Size (21,800 sf. existing where 43,560 sf. is required); Minimum Side Yard Setback (left) (14 ft. proposed where 30 ft. is required); and such other variances, waivers, and approvals as are necessary to permit the applicant to retain existing patio and driveway and construct 330 sf. addition to existing residence on property in the R District. Applicant previously granted 'c' Bulk Variance for Impervious Coverage maximum of 18.97% for driveway, Resolution date 12-05-12. ***ADJOURNED TO MAY 01, 2013 WITH RE-NOTICE.***

Chairman Fenwick announced that the DeNapoli application has been adjourned to May 01, 2013 with re-notice.

***Chabad Jewish Center of Greater Hillsborough, Inc.*** – File #BA-12-07 – Block 162, Lot 20.01 (26 New Amwell Road – Rear Lot), and Block 162, Lot 20.02 (22 New Amwell Road – Front Lot). Amended application – Applicant seeking Minor Subdivision; Minor Site Plan Approval; 'd' Use Variances; and 'c' Bulk Variances to

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merge 2 lots into 1 with 2 existing single family dwellings to remain, convert #26 to a house of worship with Sunday school and religious pre-school; #22 as a parsonage/rectory/residence; wit emergency turnaround, improved parking, new fence, widened driveway and improved drainage (easterly side) on property in the CR District. **Adjourned from February 06, 2013 with re-notice.**

Secretary Kois introduced the application to the Board.

Francis P. Linnus, Esq., stated he is the new attorney for the applicant and has reviewed everything that has taken place thus far. This application is continued from September 19, 2012 at which time the Board requested that the Fire Marshal revisit the property. The application has been amended the plans in accordance with the request of the Fire Marshal for a 20 ft. wide driveway and an emergency turnaround. We are abandoning the "no net" concept and using the change to satisfy the on-site parking requirement. We are proposing to merge the two lots into one to create a conforming lot area in the CR Zone for this conditional use. The parking will now all be on one lot. We have also complied with the number of parking spaces required by the ordinance; 28 spaces are now proposed. We are further clarifying that approvals are being sought for a 49-seat house of worship; a Sunday school use; a religious pre-school at 26 New Amwell Road; continuation of the parsonage/rectory residence at 22 New Amwell Road; 2 pre-existing buildings now on one 2.6 acre lot.

The proposed religious pre-school is not only subject to the Board's approval but the approval by way of a license from the Board of Education. The CR Zone permits houses of worship as a conditional use. We comply with all of the conditions of a conditional use except for lot width and side yard setback. The structures are pre-existing.

We will be presenting testimony from the applicant, our engineer, our traffic engineer and our planner.

Mr. Anderson said to Mr. Linnus, despite this applicant being before this Board on several occasions, my understanding is that this amended application is being presented starting fresh, not relying on any previous record.

Mr. Linnus said we are prepared to start over.

Mr. Anderson stated for the record that the application is starting over and that Board members will make a decision based on testimony offered here tonight.

The Board voted to open the public hearing.

Chairman Fenwick gave guidance to the audience on the courtroom proceedings.

Rabbi Shmaya Krinsky was sworn in and gave the following testimony in response to question asked by Mr. Linnus:

I am the Rabbi for Chabad of Greater Hillsborough and the Director of the organization. The properties were purchased at 2 separate times. I purchased the front property (Lot 20.02) in November, 2009 with the intention that the Chabad Rabbi and family will be able to live there. We exercised our right to have some services there, limited to around 10 people. We had finished the lease with the bank which was 2 doors down and in September, 2011, purchased the rear lot (Lot 20.01) with the intension of having that be the area where we could have services, classes and so on; used as a house of worship.

In the house of worship we would like to conduct Sunday morning Hebrew school; a 2-3 hour session for children that go to public schools to learn about there heritage, which takes place throughout the school year, September through May or June (9 a.m. to around 1 p.m.); Saturday morning services (10 a.m. – around 1 p.m.); Friday evening services (6:30 p.m. – 7:30 p.m.); regular office hours Monday – Friday; a religious pre-school Monday - Friday (7:00 a.m. – 6:00 p.m.); adult education classes – usually Tuesday evenings (7:30 p.m. – 9:00 p.m.); women's' group classes once a month, usually on a Monday or Wednesday evening (7:30 p.m. – 9:00 p.m.); and mommy-and-me programs for toddler aged children. The front building will be used as a home for myself, my wife and our 6 children.

Mr. Stamler questioned Rabbi Krinsky on the uses in the front house.

Rabbi Krinsky said we are doing services in the house now. Once we hopefully get the approval, we will be moving to the back; everything will be in the back building.

Mr. Linnus asked, what happens if there is a service or ceremony that requires a capacity of more than 49 seats?

Rabbi Krinsky said what we have done in the past and will continue to do is that we lease out other locations. Right now we lease out our Hebrew school from Auten Road School on Sunday mornings.

Mr. Linnus referenced Mr. White's engineering report dated April 02, 2013. In response, the following was said:  
P. 3/Item #4: Rabbi Krinsky said we have been out of the bank building for about a year-and-a-half now. We will not be using that building in the future and we do not use their parking. We have our own at our own location.

P. 3/Item #8: Rabbi Krinsky agreed with Mr. Linnus' statement that should this Board approve the application and the

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Building Department require revised architectural plans, they will be submitted at that time. P. 5/Item #8: Rabbi Krinsky said I am agreeable to the request for an easement to protect the pervious surface. P. 5/Item #14: We will not have bus service.

Mr. Linnus referenced Mr. Kois' planning report dated March 28, 2013. In response, the following was said:

Reference to the existing residence in the front of the property: Rabbi Krinsky said it will be used as a residence for my family. Once this application is approved everything will be moved to the back property. Two of the 28 spaces proposed are the 2 spaces within my garage.

### Questions

Rabbi Krinsky was asked to clarify "staff" members, office hours and the office location. Rabbi Krinsky said the staff is myself and my wife; sometimes we have an intern helping us. When we have Hebrew school we have teachers that come in and teach. The office hours are 9 a.m. to 5 p.m.

Vice Chairman Haines asked what the maximum number of 44 children is being based on.

Rabbi Krinsky said we had a member who was in charge of the Somerset County area. The Department of Education takes a look and determines the maximum number of students. We have a letter from them.

Vice Chairman Haines asked if there will be school daycare going on at the same time as religious services.

Rabbi Krinsky said there will not be. Our preschool will be closed on Jewish holidays and secular holidays.

Vice Chairman Haines asked about the maximum capacity for the entire building. Adding up the numbers given you could have 101 people.

Rabbi Krinsky said it would never be at the same time. We cannot offer school when it is a religious holiday.

Mr. Stamler asked what the maximum number of people at one time would be.

Rabbi Krinsky said I would have to ask the architect. I do not believe we will have more than 49 for services on Saturday and the numbers we put down for the school and things like that but they do not happen at the same time.

Mr. Stamler again asked what the maximum number of people would be in that building at one time.

Rabbi Krinsky answered whatever the legal amount is by the Fire Commissioner.

Mr. Linnus said this question comes up in all church and school applications. That is why it is very important that Mr. Anderson place in the Resolution, if indeed this is approved, that there is a limitation of 49 seats in the house of worship. If there is a complaint and a zoning violation, your Zoning Officer can call it into question.

Mr. Linnus asked Rabbi Krinsky what will you do if there is a special service, wedding or event?

Rabbi Krinsky replied we will go to another location.

Mr. Stamler asked for clarification on when activity in the back building would stop for the night.

Rabbi Krinsky reviewed the hours for activities again and confirmed there will be no sleepovers.

Vice Chairman Haines asked Mr. White how he determined the number of parking spaces required.

Mr. White said it is based on available seating. You need 1 space per 3 seats. For a 49 seat church that equates to 16 parking spaces. The architect will have to look to see what he can do based on fire codes.

Vice Chairman Haines said my concern is what happens when you have more than 49 spaces and then there is a problem with parking and access.

Mr. Linnus said the architect will not be testifying but the traffic engineer will be.

Mr. Dietz asked what the average for a Saturday worship service is.

Rabbi Krinsky said right now the average is 10 people. Rabbi Krinsky confirmed they are seeking a license for 44 students and 8 teachers for a total of 52 people for preschool.

Vice Chairman Haines said everyone is hoping the congregation grows so this congregation may not be there forever. If we

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give the variance, it goes with the property so some other religious community can come in then. Mr. Linnus stated they would still be limited by what is in the Resolution.

Mr. Stamler asked was it your intension to have the back building as a house of worship in 2011?

Rabbi Krinsky said it was. I was not certain of the details of how things work here but thought the process of making it a house of worship would be fairly simple. We had been in the bank building just 2 doors down which was approved for religious use.

Mr. Linnus said you will hear more from our Planner on this but this zone does allow houses of worship as a conditional use in the Residential Zone. There are a variety of uses allowed on that property.

Rabbi Krinsky said before I purchased the property I went into the Planning Office and spoke with the Township Planner. Mr. Ringelheim did not tell me everything I had to do to get it approved but did indicate it was doable.

Chairman Fenwick asked the ages of the children attending the preschool.

Rabbi Krinsky said from 2 1/2 to 5 or 6 years old.

Chairman Fenwick asked if the 5 and 6 year olds would also be attending public school.

Rabbi Krinsky said no.

Chairman Fenwick asked if at any time, including the summer months, would there be children in attendance above the ages of 5 and 6.

Rabbi Krinsky said "preschool" is defined as ages 2 1/2 through 6 by the Board of Education. Children above that age would not be going to preschool. We may have camps during the summer, I have not thought about that but it is possible. They might be the same age as the children in the Sunday morning Hebrew School. We would still limit it to the number of children allowed and will use the rooms as we do for Hebrew School. We are committed to the number of 44 no matter what.

Open to the Public

### **Leon Krals**

Mr. Krals said at the time this application was started I was the Chairman of the Board of Adjustment. The last time the Rabbi was here, the seating capacity was 33, now it is 49. Where did the other 16 seats come from? Does the 49 worshipers include any staff?

Rabbi Krinsky said the limit of 33 had to do with the limited parking in relation to the seats. We were proposing not having enough parking on the site with additional parking at the bank. Now that we are widening the driveway according to the recommendations of the Fire Official and making 28 parking spots, we can seat up to 49 people in total.

Mr. Krals said the preschool must be licensed by the State. Who will hold that license?

Rabbi Krinsky said that is something we will determine. We do not plan on starting the preschool until 2014.

Mr. Krals said the application is for Chabad of Greater Hillsborough. If the license is held by another entity, would that be another use for the building?

Mr. Linnus said the legal answer is that we are applying for a religious preschool and it does not matter who holds the license as long as the zoning limitations will be imposed by the Board.

Mr. Krals asked a question about previous testimony.

Mr. Linnus said as made clear by Mr. Anderson, this is being viewed as a new application. The record of this application begins tonight.

Zoning Officer/Assistant Planner, David Kois, said for the purpose of this application, the use in the front house is listed as a parsonage/rectory/ residence. In the prior application it was just listed as a parsonage/rectory. The Township does not have a specific definition of "parsonage/rectory". My understanding of parsonage/rectory implies it is a residence. I would like you to explain the uses listed for the front house.

Rabbi Krinsky said I understand that different towns have a preference in names. They all mean the same exact thing.

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Mr. Kois said the residence is for the Rabbi. Do you have an idea of what staff, in addition to your family, would live with you?

Rabbi Krinsky said at times we will have 1 or 2 interns that live with us for 6 months before moving on.

Mr. Kois reiterated no one will be living in the back house.

Rabbi Krinsky agreed.

Mr. Kois asked Rabbi if he would be willing to accept that as a Condition of Approval.

Rabbi Krinsky said "absolutely".

Vice Chairman Haines asked if there would ever be a time when you rent out a bedroom?

Rabbi Krinsky said no.

Mr. Kois said as the Zoning Officer, it is important for me to understand the uses before the Board. I would like to understand if there would be a separate operator for the childcare, the religious operations and such. For instance, in other houses of worship, there is the actual church name but then they have a name for their childcare services. That requires approval before this Board for 2 separate uses. I would like you to provide some clarification regarding that.

Rabbi Krinsky said we have not gotten there; it will all be under "Chabad".

Mr. Kois asked would it be possible for you to bring in a childcare company and allow them to essentially become a tenant and rent space from you?

Rabbi Krinsky said we will not be renting out the space. We may call the preschool "ABC" instead of "Chabad" but it is all under our instruction, guidance and religious use.

Mr. Kois said I would like to talk about the sign.

Rabbi Krinsky said the sign will be 6 ft. high.

Mr. Kois said there would have been a need for a waiver when it was 2 properties but no longer now that both are going to be merged as one. I have some questions about the ornamentation of the sign that may be answered by another witness. My understanding is that you are proposing a sign but that you will comply with all zoning regulations. If you are going to advertise multiple uses, you will fit it all on the one sign.

Rabbi Krinsky agreed.

Mr. Linnus asked, can we ask for a 6 ft. 6 in. sign?

Mr. Kois said yes. It is entirely up to the Board as to what is granted.

Mr. Dietz asked if the sign was in the sight triangle.

Mr. White said I have requested that they show the sight triangle on the plan.

Mr. Linnus said Mr. Fleming will testify to that.

Mr. Stamler asked about the lit sign being on all night.

Mr. Kois clarified when any non-residential property adjoins a residential property, there is a requirement that the sign be turned off at a certain hour.

Joseph Fleming, P.E. of Paulus, Sokolowski and Sartor, LLC was sworn in, provided his credentials, was accepted by the Board and gave the following testimony in response to Mr. Linnus' questions:

**Exhibit A-1** – Colorized Site Plan shows the existing conditions of the property. What is proposed is a widening of the driveway from approximately 10 ft. in width to 20 ft. in width to comply with the Fire Marshal's requirement. We are providing a total of 28 parking spaces which include 2 parking spaces in the garage. We are providing a handicap ramp from the driveway to the house of worship. We are providing a low wattage series of lights on the perimeter that is compatible with the residential neighborhood so we will have no upward glare. The lights simply light the pavement area as required by ordinance. We have provided a 24 in. gravel strip that is relatively deep with an underdrain that will basically provide water quality run-off from the paved surfaces to the side. It will intercept water that is coming from the

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neighbors and deliver that to the catch basin that exists on New Amwell Road. We are matching up to the existing 6 ft. fence replacing it with a wood fence. We are not looking to expand any of the structures on the property. The only change will be the extensive handicap ramp which meets the ADA requirements. Mr. Linnus asked Mr. Fleming to review the waivers requested.

Mr. Fleming said today the driveway is hugging the eastern edge of the property line. We are widening it to the west. To comply with the ordinance we would have to push the driveway out into the lawn area. It does not serve any purpose; it actually creates more impervious coverage and would put the access to the driveway centered on the catch basin. We are complying with the Fire Marshal and widening the driveway to 20 ft.

We are proposing a 20 ft. driveway instead of the required 24 ft. The Residential Site Improvement Standards recognize that smaller roadways are encouraged. We feel the 20 ft. roadway meets the criteria of the Fire Marshal and provides safe ingress and egress and complies to multiple standards within the RSIS.

We have a 24 in. wide strip of curbing on the eastern edge of the pavement. We are trying to do a passive attribute for this water quality system. The increased impervious coverage does not promulgate modifications in the eyes of the NJDEP. The DRCC does require some form of water quality attributes for the expansion of the driveway for which we are providing this deep clean water strip. It will have to be maintained over time. It has a porous drain that takes the runoff through the gravel trench and delivers the excess to the catch basin. This is a very affective means of addressing stormwater quality in the eyes of the DRCC. In order to do that it does not help to put curbing in on that side. On the western side we are allowing sheet runoff from the adjacent lawn areas to come across the pavement areas. For that reason curbing is not necessary for this design.

10 ft. x 20 ft. parking stalls are required; we are proposing 9 ft. x 18 ft. If we had a high turnover like a Quick Check, it is appropriate to have a 10 ft. x 20 ft. stall to ensure vehicular and pedestrian safety in that rapid exchange of cars. As testified, this is a relatively light use. The standard for the RSIS is 9 ft. x 18 ft. which I believe is appropriate for this use.

Mr. Stamler said there is a safety issue here with the children and asked for more information on the water runoff.

Mr. Fleming reviewed the overflow would either get delivered through percolation to the soil or gets picked up in overflow through the underdrain directly to the catch basin located in New Amwell Road. There is a gentle slope from north to south along the front access of the driveway.

Mr. White asked to see where the underdrain is in the swale on the plans.

Mr. Fleming said that is the intent. I actually do not have it on the plan but it is in the Stormwater Management Report. The lay of the land seems to be that there is a gentle slope from west to east and that the neighboring backyards can receive some runoff if the swale exceeds its capacity. There are no calculations provided for that. I will provide the calculations to your satisfaction that the swale is adequate and that beyond the level of percolation there is overflow relief that carries that flow to the catch basin.

Mr. White asked if any perc tests were done.

Mr. Fleming said we have to do a base and flooding test as a condition of approval for the DRCC. As for the parking aisle width, your Ordinance calls for 30 ft., 20 ft. is provided, 22 ft. counting the stoned area. We are encouraging a slow velocity of movement in and out of the parking spaces. We find it to be acceptable and a routine maneuver in many parking garages. Although we have the capacity for 28 parking spaces, we do not have any events that call for more than 18 cars at one time. We would expect between the slow maneuverability of going through the driveway and ample number of parking spaces provided, thus backup room is sufficient for the intended use.

Vice Chairman Haines said I have concerns that you are making everything narrower and more confined. Again, this particular use may not be overly intensive but the next congregation that comes in could be and have a filled parking lot.

Mr. Fleming said the width of the parking lot is a standard of care with the RSIS.

Vice Chairman Haines said but not in Hillsborough.

Mr. Fleming said you still have to comply with the State standard on housing, unless you get an exception. Most of the regional shopping malls have 9 ft. x 18 ft. stalls.

Mr. Stamler asked how much space is there from the back end of the parking stall to the end of the driveway.

Mr. Fleming said the backup space is 20 ft. with the flush area of 2 ft. for a total of 22 ft. to the fence. The Ordinance calls for 5 ft. but we are proposing a 6 ft. high fence. We are looking to match the existing fence height. We believe the additional screening to the residential neighborhood is a positive thing. That fence height also allows us to conceal the lighting and cast light down on the pavement area rather than have standard light fixtures above the fence.

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Mr. Linnus said with regard to Mr. White's April 2, 2013 report, if approved we will get the lot numbers from the Tax Assessor. We intend to file the subdivision by Deed. Mr. Fleming confirmed he will correct the building numbers on the site plan C-2. Providing additional 90 degree parking and widening the driveway will add in excess of 7,400 sf. of impervious coverage. Mr. White suggested a drainage system of a series of inlets that discharge to the inlet in Amwell Road adjacent to the driveway.

Mr. Fleming said we have design calculations for this. If we cannot reach an accord on this we will put inlets in conventional storm sewers. I still have an obligation to deal with the DRCC. We have the same goals and objectives to make sure the neighbors to the east are not adversely affected by this application, have continual care of the runoff from the site from north to south and have safe conveyance to the inlet in New Amwell Road. We will provide the sight triangles from the driveway. We will comply with items 4, 5 and 6 related to ADA items. We are not providing any pervious pavement, we are proposing standard concrete. The Board may still want to have a requirement for the perpetual care of the stone channel.

Mr. Linnus said Rabbi Krinsky has already testified that he will agree to a Deed restriction to satisfy that particular comment.

Mr. White noted the amended narrative stated 'pervious pavement is proposed for the emergency vehicle turnaround'.

Mr. Fleming said at this point we are treating everything as full impervious. I agree with your comment that the care of the channel is warranted.

Mr. Dietz asked what the recharge from the drainage ditch for ground water will be.

Mr. Fleming said this area of Somerset County experiences somewhere between 46 – 54 inches of total annual precipitation. We have at least 70 to 90 such events. The lion share of those events will drain into the soil and slowly move through the stone filter. Some will go through the under drain and reach the catch basin but for the most part it will actually work to drain. Chances are this cannot keep up with a high intensity, short duration storms or long lasting storms such as Floyd, so there would be continuous runoff along the surface of the stone leading out to New Amwell Road. If the stone is not maintained, it can reduce the capacity quickly. It is important for these types of systems to have perpetual care and maintenance. The applicant will comply with items 9 through 13 and 15 through 22. Rabbi addressed item 14.

Mr. Fleming addressed item #23 by saying we tried to keep very low level lighting around the perimeter to be sensitive to the residential neighbors to the east. When we get to the turnaround there will be a dark spot. We had to choose between a spot light, a mounted fixture or perimeter lighting. We think perimeter lighting is the best solution for this use up against a residential area. If you would like us to provide additional lighting to take care of the area, we can do that.

Vice Chairman Haines asked when the shut-off time for the lighting would be.

Mr. Fleming said we did not discuss it. It would not be dusk till dawn.

Mr. Linnus offered the latest testimony we had on any use was 9 p.m. so perhaps 10 or 11 would be an appropriate shut-off time.

Mr. Stamler said 10 p.m. should be the cut-off.

Mr. Linnus said 10 p.m. is fine. The applicant will comply with Item #24. It is my professional opinion that the site plan is adequate for the proposed uses.

Mr. Lipani asked how snow would be handled on the site.

Mr. Fleming said the snow will need to be pushed to the lawn area, not on the gravel or near the fence. Snow operations have to be carefully orchestrated to keep the stone channel free and push the snow from north to south to the lawn area.

Mr. Lipani asked if there might be a pervious area with a drain designated for snow. Pushing it on the lawn will tear up the grass.

**Vince Santonastaso**

Mr. Santonastaso asked about the placement of the lighting fixtures.

Mr. Fleming said the light poles are on the west side of the driveway. The lights on the east side are mounted on the fence.

**Patricia Wagner**

Ms. Wagner said the testimony said the runoff runs east to west but it really runs west to east. We have a hill behind our house so the water is going to come down to our property.

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Mr. Fleming said topographically it runs north to south and there is some water that is coming towards your property. We are intercepting that to make sure we are protecting the integrity of the water that may be draining from the property.  
Break

Jay Troutman, P.E. of McDonough and Rea Associates was sworn in, reviewed his qualifications, was accepted by the Board and gave the following testimony in response to questions asked by Mr. Linnus:

**Exhibit A-2 – Traffic Report Dated 03-20-13**

Mr. Troutman said the first step in our analysis was to read all of the narrative information and discuss with Rabbi Krinsky exactly how he was going to operate the building because the traffic impact directly flows from the operation of the building. What we noted was that there are a lot of meetings that take place outside of regular street peak hours. We looked for the worst case this site would generate when traffic was busiest on New Amwell Road. We surveyed the traffic on New Amwell Road and found the busiest times are on a weekday between 7 – 8:30 a.m. and later in the day between 5 – 6 p.m. There are also peak hours on a weekend between 11 a.m. – 1 p.m.

We found that the religious preschool would be the most intense site impact. We used a childcare center traffic generation category from the Institute of Transportation Engineers in order to model that activity. We superimposed it over the existing volumes on New Amwell Road to test the capacity of the driveway to handle those turning movements. The finding was that there is plenty of capacity for this size use at that driveway. Traffic engineers look at it in terms of “levels of service” which can range from “A” to “F”. In this case the driveway would operate at levels of service “A” and “B”.

The other thing we looked at in terms of the driveway was the availability of adequate site distance for a safe operation. The driveway is along a straight level section of roadway with clear site distance in each direction. From a capacity and safe distance standpoint you can have a safe operation for the use proposed.

For parking there is a non-coincident operation going on in this building. You would need 1 spot for each staff member of the religious pre-school; there are 8. You would also need 1 parking spot for 10 students for pick-up/drop-off. We anticipate peak parking at 13 spots for the religious preschool. The heaviest use on the weekend is the religious services with occupancy of 49 and a parking demand of 1 space per 3 seats for a total of 16 spaces. That would be the only use of the property at that time. There is the ability to store 28 vehicles including the spaces in the Rabbi’s garage however, the peak is 16.

Mr. Linnus asked Mr. Troutman if 26 spaces would be adequate for the site.

Mr. Troutman said yes. We took a look at the on site circulation due to some of the waivers that are going to be requested. You need to look at the turnover of the spot which determines how much or how little pavement you need on a site. The size of the parking spaces works on a site like this that has low turnover. There is not an opposing row of parking so you effectively have the room to back a passenger car out of a parking spot along the aisle.

Mr. Stamler asked for clarification on the size of the spaces and the area marked “pavement in disrepair”.

Mr. Fleming said the area in disrepair is marked on the plan but there is a constant 20 ft. aisle which does include that area.

Mr. Linnus said we had to show existing conditions. Right now it is in disrepair but the applicant has agreed to repair it so it is usable.

Mr. Troutman continued his testimony, focusing now on the Fire Marshal’s report. There were a lot of concerns with the initial plan because there was not an area where a large vehicle could reverse itself inside the site. The Fire Marshal gave the applicant a couple of alternatives from the International Fire Code. One of which is a “70 ft. Hammerhead” which has been provided at the end of the parking driveway. We will follow up with the Fire Marshal so he can understand how it will operate, as requested.

Vice Chairman Haines said the Fire Department does not send 1 vehicle to a fire. Would there be adequate space back there for emergency vehicles?

Mr. Troutman said there is but you would not be able to turn 2 vehicles around. We have satisfied the requirements of the Fire Official as said forth in his April 21, 2013 report. Our finding is based on the stated operation of the building with the non-coincident uses, low intensity uses, off-peak uses, that this design can accommodate the traffic anticipated during heaviest times of street and site traffic.

Mr. Herbert asked for further explanation of the emergency vehicle turnaround which Mr. Troutman reviewed. He confirmed the turnaround would be able to accommodate the 47 ft. ladder truck. There will be no parking in the fire zone. We have agreed to look at the height issues of the trees as well.

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Mr. Linnus said we recognize we have to satisfy your Fire Official.

Vice Chairman Haines suggested a Condition of Approval should be that the child care and religious services will never be in operation at the same time.

Mr. Troutman said our finding is that the driveway design is safe and adequate for the projected traffic the site will generate. The parking and the on-site circulation is adequate as well.

Mr. Kois asked Mr. Troutman to review the garage parking in relation to potentially other faiths that may occupy the property in the future.

Mr. Troutman said given that it is all on one lot, I would treat it similar to any other residential use where you count the driveway spot in front of the garage as a tandem parking spot.

Mr. Kois said the Ordinance says that parking for residential may be located in any yard. However, I have concluded there is no mention of a garage fulfilling the off-street parking. It certainly can be up for interpretation from this Board. There is another section that states that spaces shall have vehicle access without requiring the moving of any other vehicle. I would like you to review that further to see if that would require additional waivers.

Mr. Troutman said in light of what you mentioned, technically it would. I would still submit that the effective parking supply on the property is 28 spaces. We do have the space to put the car even though it technically does not count under the regulations.

Mr. Linnus stated you would request a **waiver** for the 2 spaces then.

Mr. Troutman said that is correct.

Mr. White asked if Mr. Troutman could provide a visual for the Board regarding the fire truck turnaround.

Mr. Troutman agreed.

Mr. White asked when the vehicle counts were done.

Mr. Troutman stated they were done January 2 through January 8, 2013.

Mr. White asked if the summertime traffic will be significantly increased and have an affect on the level of service for the driveway, perhaps degrading it one level.

Mr. Troutman said I think there are other times of the year when the volume would be higher than it is in January but I do not think it would affect the level of service grade at all, possibly maybe one grade.

The Board granted an extension of time for testimony until 10:15 p.m.

Alan Schectel, P.P., was sworn in, reviewed his qualifications, was accepted by the Board and provided the following testimony in response to questions asked by Mr. Linnus:

I have prepared a zoning analysis of the property. The property is in the CR District which permits single family detached dwellings, libraries, parks, playgrounds, agricultural activities and home occupations as principal permitted uses. Churches, nursery schools, and private schools are permitted as conditional uses.

### **Exhibit A-3 – Land Use Survey**

Mr. Schectel described the surrounding properties. The applicant is here essentially for a d(3) variance which is needed for both the house of worship and religious preschool which will be incorporated within the house of worship. The preschool is a private school. A d(3) variance is necessary since the property does not meet the requirements of: minimum lot width, 200 ft. is required where 149.72 ft. exists; minimum side yard setback, 50 ft. is required where 19.3 ft. exists to the west. Both are existing conditions. It is important to note that there are 7 other conditions of the conditional use that the applicant meets including minimum lot size; lot depth; minimum front yard; minimum side yard (east side); and minimum rear yard.

The proofs required for a d(3) variance are quite different than those required for a standard d(1) variance. In this instance by permitting churches and schools as a conditional use, the governing body has already established that the entire CR Zone is suitable for church and preschool uses. The applicant does not have to prove that the site is particularly suited for the proposed use. Under the Coventry Decision, the proof of special reasons must be that the site proposed for the conditional use continues to be an appropriate site for the conditional use notwithstanding the conditions imposed by the Ordinance. The negative criteria must also be proven.

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### **Exhibit A-3 – 3 Scenarios**

Mr. Schectel reviewed 3 scenarios related to the requirement for the applicant to try to obtain additional properties from adjoining properties. Mr. Schectel stated from a planning perspective, not meeting the 2 conditions noted will have no negative impact upon the adjacent properties.

We have also applied for a d(1) use variance for the Sunday school. From my perspective this is not needed because a Sunday school is typical of any religious school I know. However, it is not specified in the Land Development Ordinance so we submitted for the variance to permit it to operate within the house of worship. The Sunday school will not be run concurrently with the Saturday services. In this religion teaching is considered work. You are not permitted to work on the Sabbath.

From a planning perspective the proposed use is particularly suited for the use. The existing building is configured to accommodate a Sunday school. Sunday schools are inherently beneficial uses. The closest Chabad is a distance away so this is a very good location to serve your community. We do not believe a Sunday school will have a negative impact on the neighborhood.

We were told we need a d(1) variance for multiple uses and multiple buildings. In terms of my knowledge of your Ordinance, a waiver would be required but be that as it may, we are applying for a d(1) variance. The multiple uses would include the house of worship, the religious preschool and religious Sunday school all within 1 building. We have the 2 buildings on 1 lot because we are now merging the lots. It is usual to find a rectory or parish house in a building on the same lot as a church. Mr. Schectel noted numerous other reasons as to why the application would not have a negative affect on the zoning and neighborhood.

Vice Chairman Haines said you stated there would not be an overuse of the property because the different operations are happening on different days. As a Planner, how can this Board grant a use variance and restrict it to a Jewish religious operation?

Mr. Schectel said you are talking about a very small building with 49 seats. For another faith, you are coming with your children and worshipping while your children are in Sunday school so there will not be any increase in vehicles. The Board can craft its Conditions of Approval anyway you like. From a Planner's viewpoint, the controlling factors are the number of seats in the Sanctuary and the number of parking spaces.

Vice Chairman Haines said your traffic expert just testified that he is basing the adequacy of the parking and the circulation on the fact that no 2 operations or uses would be going on at the same time.

Mr. Linnus said the answer is in the Resolution of Approval. It will be strictly controlling to the extent that there will be 49 seats that will drive the parking. Another faith can have its' Sunday school and worship in 1 building at one time but they are limited to 49 seats. The Zoning Officer would investigate any complaints. There is only so much you can control. If the application is worthy of your approval, grant it and put as tight of a control on it as possible. The Religious Land Institute Performance Law adopted in 2000 states when an application is being reviewed for a house of worship, the Federal Government tells you that you have to have substantial reasons for denying the use. If we get an approval, it will be restricted to 49 seats and parking.

Mr. Kois asked Mr. Schectel, in consideration of different faiths, would you consider the office hours as an accessory use as opposed to a principle use.

Mr. Schectel said I think it would be accessory in the sense that you need the administrative offices but that is not the principal use. During the course of the day most of the spaces are going to be vacant.

Mr. Linnus said we have concluded our presentation.

The Board agreed to extend additional time to the applicant.

### **Comments from the Public**

#### **Member of the Public – Farm Road**

The audience member was sworn in and stated he has taken a few of the classes offered by the Chabad and found them to be life changing. You do not need to be Jewish to take them.

#### **Michelle Kidd – Robin Road**

Ms. Kidd was sworn in and spoke favorably about the religious education her children have received from Hebrew School. She said although I am grateful it is held at the Auten Road Intermediate School but that is not a house of worship. I think it is important for the kids and community to have that.

#### **Eugene Tsuprun – Whitehall Court**

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Mr. Tsuprun was sworn in and said he and his wife recently moved to Hillsborough and selected this town because it had the Chabad Center. He asked that the Board expedite the approval.

### **Shirley Santonastaso – Cumberland Road**

Mrs. Santonastaso was sworn in and said my concern is with the parking because when the spaces fill up they will use Cumberland and block driveways and mailboxes as the swim club currently does.

Chairman Fenwick asked in the event of overflow parking, where would the attendees park.

Mr. Linnus responded they would have to resort to the same parking as the swim club. Parking in the bank parking lot is not an option.

Close Public

Chairman Fenwick asked for a clarification on what is involved with “summer camp”.

Rabbi Krinsky said we have not planned a summer camp yet but if we do it will be under the limitations of 49 people in the building and number of parking spaces.

Open to the Public  
No comments/questions

Close Public

Mr. Linnus concluded reviewing the variances and waivers requested and stated right now there are 2 structures on 2 lots. We are proposing to erase the lot line and create 1 lot to contain a house of worship and a residence. The plan you have before you accommodates the Board’s suggestions from a prior meeting. The applicant has widened the driveway and agreed to just about all of the conditions that have been set forth in your professional reports. This application is subject to the laws under the Municipal Land Use Law, which we believe we have satisfied. This being a house of worship application, is inherently beneficial as stated by the New Jersey Courts. What that means is that the site is suitable. We still have to establish the negative criteria. We believe we have shown that this application will not have a detrimental impact on the zone plan and scheme. In a religious context, you have the Religious Freedom and Institutional Purposes Act which is a Federal Law that came into affect in 2000. It does not say that you cannot deny applications but what it tells you is that you have to be very careful when you consider houses of worship because of freedom of religion.

We believe we have answered all of your questions. We will comply with all of the reports, including the Fire Marshal’s report. We ask that the Board consider this application with all of the conditions that are appropriate for an application of this nature.

Mr. Dietz spoke in favor of the application and made a motion to approve with all of the comments from the Board’s staff and all that has been agreed to tonight, seconded by Vice Chairman Haines with the condition of asking Mr. Anderson if there could be a periodic review of the limited parking situation.

Mr. Anderson said no, once an application is approved, it is approved. You can limit it to the number of spaces available. That then becomes an enforcement issue, perhaps a very difficult one at that.

Vice Chairman Haines said my concern is not with the Chabad but perhaps another religious group in the future.

Mr. Anderson reviewed, there has been no testimony tonight that parking is available at the bank.

Mr. Stamler said I am concerned and wish this use was on a different site. Safety, drainage and the future use of the property should the current tenant leave concern me.

Mr. Anderson said the Board needs to vote and the applicant needs to understand that it is intended to be subject to all of the conditions discussed, even though they are not specified as part of the motion. The alternative would be for the Board to carry the application.

Mr. Linnus said we are comfortable that there is a record of these proceedings which can be relied upon for the specific conditions that will be imposed.

Mr. Anderson stated that is not entirely true. The conditions are not necessarily those that have been offered but those that the Board feels are necessary. It may be on reflection that the Board may want to impose conditions as part of their Resolution.

After continued discussion Chairman Fenwick asked if there was testimony to be offered by the Architect or an architectural rendering.

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Mr. Linnus said no.

Mr. White pointed out that there may be architectural revisions required.

Mr. Linnus responded that the testimony was that we already supplied the architectural plan to your Building Department as well as what we think will comply with the building permit. If there are any architectural revisions necessary, we will supply them at the time of the Building Permit.

Chairman Fenwick asked Mr. Anderson about what recourse the Board would have if they are not satisfied with the rendering.

Mr. Anderson said the Resolution would specify that the plans are satisfactory to the Board Engineer. I am concerned that the Board is being pressed at a few minutes before 11:00 p.m. to adopt a Resolution without having a chance to reflect on the series of conditions that have been offered. I think we can pick those out from the record and those that the Board feels are necessary to ameliorate any negative impacts on this property. The alternatives are that if the applicant understands what is being placed in the Resolution may not have been articulated in the motion itself, then I would be more comfortable for the Board. If the Board wants all of the conditions spelled out in the motion, my suggestion is that the discussion and adoption of the Resolution be carried.

Further discussion ensued on the same. Mr. Anderson said if there is an approval and the record does not reflect a condition the Board feels it wants to impose, then we are going to get the argument "it is not in the record". If the applicant accepts that may happen, then I feel more comfortable about the Board acting this evening. If the applicant is reluctant to do that, my suggestion to the Board is to adjourn this, think about this case and decide what conditions are appropriate based on your experience.

Since the second made by Vice Chairman Haines was conditional, Mr. Dietz requested to withdraw his motion to approve.

Mr. Dietz made a motion to carry the application to the next meeting.

Mr. Linnus said my client has no objection as long as it is carried to the next meeting.

Vice Chairman Haines withdrew her second on the original motion.

Chairman Fenwick stated the next available meeting would be May 15<sup>th</sup> since the May 1<sup>st</sup> meeting already has 4 applications scheduled.

Mr. Linnus said my client is signing an extension of time in which the Board has to act through the May 15<sup>th</sup> meeting.

The Board decided to move the continuation of the application ahead, scheduling it to May 1, 2013 without further notice.

After continued discussion, Mr. Dietz made a motion to continue the application to May 1, 2013 without further notice, seconded by Vice Chairman Haines.

**Roll Call:** Mr. Valcheck – yes; Mr. Lipani – yes; Mr. Volpe – yes; Mr. Dietz – yes; Mr. Stamler – yes; Vice Chairman Haines – yes; Chairman Fenwick – no. Motion carries.

### **ADJOURNMENT**

The meeting adjourned at 11:04 p.m.

Submitted by:  
Debora Padgett  
Planning Board/Board of Adjustment Clerk