

**BOROUGH OF WOODCLIFF LAKE  
ZONING BOARD OF ADJUSTMENT  
NOVEMBER 24, 2015  
MINUTES**

**Call to Order:**

The meeting was called to order at 7:30 p.m. at Borough Hall by Chairwoman Christina Hembree.

**Adequate Notice Statement:**

The Chairwoman announced this meeting, in accordance with the Open Public Meetings Law, P.L. 1975, Chapter 231, at the Reorganization Meeting of January 27, 2015, in the Municipal Building. Notice of this meeting was posted, and two newspapers, The Record and The Ridgewood News, were notified. The public was advised of the Zoning Board's rule that the meeting will conclude at 10:30 p.m.

**Flag Salute**

**Roll Call:**

Christina Hembree, Chairwoman	Present
Marcia Denbeaux	Present
Gary Newman	Present
Robin Effron-Malley	Present
Brian Boffa	Absent
Justin Cohen	Absent
Dana Cassell	Recused
Victor Bongard	Present
Jay Ferreira	Present
S. Robert Princiotta, Esq.	Present
Joseph Vuich	Present
Daniel Bloch, Maser Consult. Planner	Present
John Pavlovich, Traffic	Not Requested
Tonya Tardibuono, Secretary	Present

**Minutes:**

The minutes of July 28, 2015 were approved on a motion from Mrs. Effron-Malley, seconded by Mrs. Denbeaux, and carried by all.

The minutes of September 9, 2015 were approved on a motion from Mrs. Denbeaux, seconded by Mr. Bongard, and carried by all.

The minutes of September 24, 2015 were approved as amended on a motion from Mrs. Denbeaux, seconded by Mrs. Malley, and carried by all.

The minutes of October 27, 2015 were approved on a motion from Mr. Newman, seconded by Mr. Bongard, and carried by all.

Mr. Chris Diktas, the attorney for the Woodcliff Lake opposing residents, had a conflict for the evening and will not be able to be in attendance until after 8:30 p.m. In the meantime, Mr. Princiotta read a letter he sent to Mr. Urdang and Mr. Diktas. The letter was regarding whether or not e-mail communication from Patrick Stiemke to Marc Boggio should be admitted into the record. Mr. Princiotta said in his opinion based upon all of the facts surrounding this matter, the e-mail should be deemed to be sufficiently reliable to be accepted into the record. The Board accepted Mr. Princiotta's advice and recommendation. At this time, copies of this e-mail were distributed to the Board members.

While waiting for the Valley Chabad case to be heard a Board discussion was had about when to schedule 16 Arcadia Road, the Board's next application. A Board discussion was then had about what happens if the Valley Chabad's application goes into 2016.

A woman in the audience asked if the Board Attorney can explain how the public comment portion of the meeting would work and how does the voting process go. Mr. Princiotta explained the process.

Mr. Newman asked if a chart could be supplied to the Board explaining exactly what each variance is seeking. A discussion was then had regarding this request. The applicant's engineer will prepare a report and submit it to our engineer for review.

Mr. Newman asked who owns the property to the north. Mr. Vuich replied, the Garden State Parkway.

**Old Business:**

**Valley Chabad  
100 Overlook Drive  
Block 908 / Lot 1  
Change of Use / Site Plan Application with Variances**

Mr. Diktas arrived at 8:15 pm. Mr. Princiotta stated that e-mail from Mr. Stiemke to Mr. Boggio had been admitted to the record.

The Borough's Planner Mr. Dan Bloch of Maser Consulting, located at 53 Frontage Road, Clinton, New Jersey, was sworn in by Attorney Princiotta. Mr. Bloch is licensed in the state of New Jersey and Certified by the American Institute of Certified Planners. He has a Bachelor's degree in Planning from the University of Buffalo and has been testifying before boards in New Jersey for the past 6 years. Mr. Bloch was accepted as an expert witness. Mr. Bloch spoke about the report he submitted to the Board on September 3, 2015. Mr. Princiotta marked the report Exhibit B-2. Mr. Bloch began speaking about Woodcliff Lake's master plan and what the goals and objectives are. The property is in the R30 zone, which permits houses of worship as conditional uses. There

are nine standards that must be met for it to be a permitted use. The applicant is requesting D3 variances for all of them, as they don't meet any of the requirements. Mr. Bloch went over in detail the conditions of RLUIPA. He then spoke about some past relevant court rulings.

Mr. Princiotto asked Mr. Bloch if it was his opinion that this application has to be analyzed pursuant to the standards set forth in the Coventry Square decision. Mr. Bloch replied, yes.

Mr. Newman asked if the compelling governmental interest still applies because RLUIPA takes precedence over state law. Mr. Bloch said it's not that it takes precedence over it, but you have to consider both. They aren't contradictory, they work together.

Mr. Bloch went over the nine conditions that must be met and spoke about each condition in detail. Please see page 8 of the attached letter dated September 3, 2015.

Mr. Bloch went over in detail the C variances that are being requested. Please see page 13 of the attached letter dated September 3, 2015.

Mr. Princiotto asked if Mr. Bloch obtained any data on the religious establishments in the Borough. Mr. Bloch handed out Exhibit B-3. The exhibit is an aerial snapshot of each religious establishment in town along with some basic statistics.

Mr. Newman asked if the lot to the north is a buildable lot. Mr. Bloch said no, the lot is owned by The Garden State Parkway. Mr. Newman asked about the property to the eastern side of the Parkway. Mr. Bloch said he doesn't believe it to be a negative impact.

Mrs. Denbeaux said the zoning ordinance was passed in Woodcliff Lake sometime around 1976. Do we know when each of the other religious establishments were built in town? Mr. Bloch said he believes before the ordinance, but doesn't have the specific dates, so he cannot be sure.

Mr. Joseph LaPaglia was sworn in by the Board Attorney, Mr. Princiotto. Mr. LaPaglia is the former Mayor of Woodcliff Lake. Mr. LaPaglia believes Our Lady Mother of Church was built in 1970 or 1971. Temple Emanuel of the Pascack Valley was built in approximately 1985. The other establishments that were built pre-dated the ordinance. Mrs. Denbeaux asked if Mr. LaPaglia knew when the 3-acre ordinance came into effect. Mr. LaPaglia believes approximately in 1976.

Mr. Newman asked Mr. Bloch which of the D variances would create a detrimental impact. Mr. Bloch answered in his opinion he believes there to be a detrimental impact from the building height, from the impervious coverage and the parking. Mr. Newman asked what about the wall. Mr. Bloch replied the wall is a C variance. Mrs. Denbeaux asked what type of variance the slope is. Mr. Bloch replied the slope is a C variance. Mr. Neman asked Mr. Bloch why he feels the building height was an issue. He replied he thinks the building height coupled with the slope of the site and the retaining wall – when viewed from the property to the south-will look like a very tall structure, and when you have two and a half story residential properties at the bottom of that retaining wall in the future there will be a major difference in height in those buildings. Mr. Newman asked is that the only reason why you feel the building height is an issue? Mr. Bloch replied yes, mainly the views from the south. Mrs. Denbeaux asked about overall fairness for the

other applicants that come before this Board with similar issues, but basically are told that they have to comply with the Borough ordinances. We are being asked to relax our standards because of the benefits that a religious facility provides. She believes that although there is a benefit, there is a huge fairness issue to other applicants in town. Mr. Bloch replied that every application should stand on its own merit.

Mr. Urdang asked if The Board of Adjustment is an enforcement agency. Mr. Bloch replied absolutely not. The Board is here to make a determination as to whether the requested variances meet the statutory requirements. Mr. Urdang asked if this application has any relationship to any other application that might come before this Board. Mr. Bloch replied no. Mr. Urdang asked Mr. Bloch how long he has been reviewing applications for the Borough. Mr. Bloch replied personally since March of this year with the Board of Adjustment. Mr. Urdang spoke about Mr. Bloch's report dated September 3, 2015. He questioned specific cases that Mr. Bloch referred to. Mr. Bloch then spoke about his opinions on this application. Mr. Urdang asked Mr. Bloch to explain in more detail what way he believes RLUPIA and Coventry work together. Mr. Bloch explained in detail his opinion on how they work together. A discussion was then had between Mr. Urdang and Mr. Bloch regarding RLUPIA. Mr. Urdang then asked Mr. Bloch to explain if you were to use the SEEKA analysis, how would that affect your opinion. Mr. Bloch replied that you have a very high magnitude of interest at stake, the house of worship. He believes there are many detriments imposed by the number of the D3 variances, many of the C variances, the retaining wall, the buffers and the height of the building. He believes the reasonable conditions have already been established by the zone.

Mr. Diktas asked Mr. Bloch some questions referring to his firm's qualifications. Mr. Diktas asked Mr. Bloch from a planning concept only, can this house of worship be built on this site with no variances or a minimum number of variances. Mr. Bloch replied he thinks they can reduce the variances, but he doesn't know if they can build a house of worship with no variances. Mr. Diktas asked his opinion on the number of seats and parking. Mr. Bloch replied that he hasn't seen any testimony that demonstrates they are providing adequate parking. Mr. Diktas asked about the lighting surrounding the property. Mr. Bloch replied that the lighting could have a substantial impact on the surrounding properties, especially if there is no buffer and minimal landscaping to shield the light. Mr. Diktas asked Mr. Bloch if he has seen walls of this height on properties this small. Mr. Bloch replied no. Mr. Diktas then asked Mr. Bloch to discuss his opinion of the wall and steep slope from a planning perspective.

Mr. Urdang asked Mr. Bloch if the parking standard is based on the number of seats in the sanctuary and if the sanctuary is the core function of a house of worship. Mr. Bloch replied yes, but there are also ancillary functions as well. Mr. Urdang replied yes, but not at the same time.

**The meeting was open to the public** to ask any questions of Mr. Bloch, on a motion from Mr. Newman, seconded by Mrs. Denbeaux, and carried by all.

**Bob Fisher, Woodcliff Lake** – An ordinance is a rule, correct? Mr. Bloch replied yes. Mr. Fisher asked if it is common to see this many rules broken. Mr. Bloch explained what an ordinance is and why you would need a variance. He said just the number of variances doesn't mean a whole lot. But you have to look at each one individually and weigh them to see if there is a substantial

detriment to the public good, and whether in this case, there is a substantial burden placed on the applicant to exercise their religious freedom. Mr. Fisher said so in your experience it is not uncommon to have this many rules broken. Mr. Bloch replied no, it is not uncommon.

**Cliff Levy, Woodcliff Lake** – In your survey of all of the other houses of worship in town, what is the percentage of land that the building is going to take up that the applicant has submitted compared to the others? Mr. Bloch replied that the applicant is requesting 18% for the building. The other houses of worship that are existing are 13.4%, 12%, 11%, 16% and 5%. Mr. Levy asked if those are all on larger parcels of land. Mr. Bloch replied that some are larger and some are smaller. The one that is most comparable to this property is 2.2 acres, and that one is 13.4% building coverage. Mr. Levy asked if somebody has ever asked for something as big as this and with as many changes as this. Mr. Bloch replied no, none of the existing facilities in Woodcliff Lake.

**Ghada Maney, Woodcliff Lake** – Commented that she is a neighbor to the south and would like to know more about the wall. Mr. Bloch replied that there was a presentation in October about the wall. He then went on to explain details on the wall. Mrs. Maney asked what his opinion on the wall was. He replied what the ordinance requires would be much better for the neighbors to the south, both visually and would all around be a better alternative. Mrs. Maney asked if there would be lighting on the wall. Mr. Bloch replied there was no testimony that there would be lighting on the wall. They only testified to the plants on the wall. Mr. Urdang replied that they would be having further testimony on the wall. Mrs. Maney said, but they will still be having a 30-foot wall. Mr. Urdang replied no, it's not a 30-foot wall, it's a 15-foot wall and the engineer can explain it much better than I can.

**David Kosoff, Woodcliff Lake** – Asked Mr. Bloch if he was aware that bald eagles were still endangered species in New Jersey. Mr. Bloch replied yes. He then asked him if he was aware that they have identified in the 2004 New Jersey Department of Environmental Protection bald eagle report, that they have confirmed bald eagle nesting in Woodcliff Lake. Mr. Bloch replied that he was not familiar with that. Mr. Kosoff said the confirmed nesting has been just east of Overlook Drive. There have also been recent reports of bald eagles and golden eagles just to the west of Overlook Drive. Would you find this to have significant amount of importance from a planning perspective? Mr. Bloch said based on the size of this property and the fact that it already has a house on the property, there should be no impact to the bald eagles.

**Kelly Kosoff, Woodcliff Lake** - Is it assumed that the beneficiaries of the benefits of this house of worship are also residents of Woodcliff Lake? Mr. Bloch replied that the benefits are not particularly to Woodcliff Lake residents. It is assumed that a house of worship is not just beneficial to the congregants, but they will have other benefits to the community.

**The meeting was closed to the public** to ask any questions of Mr. Bloch on a motion from Mr. Newman, seconded by Mrs. Denbeaux, and carried by all.

Mr. Newman asked Mr. Bloch if it was possible to build a house of worship without some relief, with the respect to a retaining wall on this site. Mr. Bloch replied given the topography, probably

not without some relief. A smaller building with less parking requirements, possibly, but not something of this size.

Mr. Princiotto pointed out that this is an application and no rules have been broken and according to the Municipal Land Use Law, there is no limit to the amount of variances that can be requested.

At this time a break was taken from 9:59 pm until 10:06 pm.

The applicants Planner, Joseph Burgis of Burgis Associates, Inc in Westwood, New Jersey was previously sworn in. Mr. Burgis pointed out that he did read a transcript of Ms. Brigitte Bogart's prior testimony and he takes some exception to some of what she said. Mr. Burgis then went over in detail about what he doesn't agree with on Ms. Bogart's comments about the history of houses of worship, RLUPIA, SEECA, the number of variances and the master plan.

Mr. Diktas questioned Mr. Burgis about the traffic impact from the sixties compared to the present day. Mr. Burgis said he didn't live here in the sixties, he moved here in 1976. There is greater traffic today than there was in 1976. Mr. Diktas then proceeded to question Mr. Burgis about the specific functions the applicants would like to have at the Valley Chabad. Mr. Diktas then asked Mr. Burgis a series of questions regarding the master plan. Mr. Diktas and Mr. Burgis then had a discussion regarding RLUPIA.

Mr. Princiotto then had a discussion with Mr. Burgis regarding the conditional use ordinance. They also spoke about the variances this applicant was seeking.

**The meeting was open to the public** to ask any questions of Mr. Burgis, on a motion from Mrs. Denbeaux, seconded by Mr. Newman, and carried by all.

**Joseph LaPaglia, Woodcliff Lake** – Do you recall that it was your firm that recommended a change in the height of retaining walls and to go to the step approach. Mr. Burgis replied he does not specifically remember that and he is surprised to hear that it was done for a safety issue. On steep slope property we allow only 15% coverage and it is his understanding that was done because of water run-off. Mr. Burgis commented that the engineering design that the applicant came up with affirmatively addresses the concerns that the ordinance regulation is designed to address. Mr. LaPaglia asked if it was ever recommended that we change or modify the minimum requirement of a 3-acre minimum for a religious use. Mr. Burgis replied that there is a range of minimum lot sizes. In some municipalities we have recommended less and insome we have recommended more.

**David Kosoff, Woodcliff Lake** – Asked Mr. Burgis if you have to allow the house of worship to have every accessory function or could you say, you can have some of these things, but not all. Mr. Burgis replied yes you can, but when you look at this particular application all of the different activities do not take place at the same time. Mr. Kosoff asked what makes it a house of worship. Mr. Burgis replied that it is more of a legal determination. He also stated that in this application it would allow it to be a true house of worship because now most functions take place elsewhere and not at the Valley Chabad. Mr. Kosoff then wanted more explanation on what a house of worship is. Mr. Burgis explained in detail what a house of worship is.

**Kelly Kosoff, Woodcliff Lake** – Will it be taken into consideration that there's a facility across the street that already has the same functions. Mr. Burgis replied that they are not the same type of temple. Mrs. Kosoff asked if there is a limit to houses of worship you can have in one town. Mrs. Hembree replied no.

**The meeting was closed to the public** to ask any questions of Mr. Burgis on a motion from Mr. Ferreira, seconded by Mrs. Denbeaux, and carried by all.

This application will continue at the next Board of Adjustment meeting scheduled for December 15, 2015.

**The meeting was adjourned** on a motion from Mrs. Effron-Malley, seconded by Mrs. Denbeaux, and carried by all.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Tonya Tardibuono". The signature is written in a cursive, flowing style with a large initial 'T'.

Tonya Tardibuono



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## MEMORANDUM

**To:** Woodcliff Lake Zoning Board of Adjustment

**From:** Daniel Bloch, P.P., AICP

**Date:** September 3, 2015

**Re:** Valley Chabad  
100 Overlook Road  
Block 908, Lot 1  
MC Project No. WLZ-004

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### I. DOCUMENTS REVIEWED

- Development Application
- Denial letter from Nick Saluzzi, Borough Zoning Officer, dated September 25, 2014
- Property Survey, prepared by Joseph F. Barbieri & Associates, Inc., dated November 20, 2012
- Engineering Report, prepared by Jeffrey A. Martell, P.E., of Stonefield Engineering & Design, LLC., dated October 10, 2014
- Traffic Impact Letter Report, prepared by Matthew J. Seckler, PE, PTOE, PP, of Stonefield Engineering & Design, LLC., dated October 10, 2014
- Preliminary/Final Major Site Plans, prepared by Stonefield Engineering, dated September 8, 2014, revised through July 13, 2015
- Architectural plan set, prepared by Studio 5 Partnership, dated August 14, 2014, revised through April 17, 2015

### II. OVERVIEW

- A. The subject site, known as Lot 1 of Block 908, is a 55,156-square foot (1.27-acre) parcel located on Overlook Drive, just south of the Overlook Drive/Mill Road Extension intersection. The Parcel is located in the R-30 Residential One-Family District. The parcel contains 311± feet of frontage along Overlook Drive.
- B. The subject site is currently developed with a 3,194-square foot, one and one-half story residence where the owner is currently conducting religious services. The site currently has access to Overlook Road via an existing driveway. The site slopes down approximately 35 feet from Overlook Road to the Garden State Parkway right-of-way. The site contains 18,905 square feet of critical slope areas (15 to 30 percent slope).



- C. The subject site is located within an existing single-family residential neighborhood. The Garden State Parkway right-of-way is located to the east and north of the site. To the south, the site is adjacent to a 4.8 acre farm property. Single family dwellings are located on lots to the west. The Temple Emanuel of Pascack Valley is also located to the west.
- D. The Applicant is proposing to redevelop the site by demolishing the existing structure and constructing a new 21,000 square foot, 3 ½ story house of worship. Also proposed are 73 off-street parking spaces with a reconfigured driveway access, consisting of two (2) proposed ingress and egress driveways to Overlook Drive.
- E. The Applicant is seeking Preliminary and Final Major Site Plan Approval with "D" and "C" variances.

<b>Figure 1: Bulk Requirements – R-30 Residential One-Family District House of Worship Conditional Use</b>				
	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Comments</b>
Minimum Lot Size (ac)	3*	1.27	1.27 (No Change)	D(3) Variance
Minimum Lot Width (ft)	400*	337.1	337.1 (No Change)	D(3) Variance
Minimum Front Yard Setback (ft)	50*	50	48.5 (Overhang) 53.0 (Main Floor) 52.0 (Lower Floor) 52.1 (Southern Deck)	D(3) Variance
Minimum Side Yard Setback (ft) (one/both)	50/100*	49.1	47.3 (Overhang) 77.3 (Lower Floor) 32.8 (Southern Deck)	D(3) Variance
Minimum Rear Yard Setback (ft)	50*	60.8	49.0 (Overhang) 52.0 (Lower Floor)	D(3) Variance
Maximum Building Coverage	15%*	5.8%	18%	D(3) Variance
Maximum Impervious Coverage	30%*	8.1%	74.9%	D(3) Variance
Maximum Building Height (ft)	30*	≤ 30	44	D(3) Variance
Maximum Building Height (stories)	2 ½*	1 ½	3 ½	

\* As required by section §380-13.A of the Borough Code - Conditional Uses, standards for Houses of Worship and related religious uses



**Figure 1: Overhead View of Site and Surroundings**



**Figure 2: Street View of Subject Site from Overlook Drive**



### **III. APPLICABLE LAND USE CONTROLS**

#### **A. Master Plan**

The 2002 Master Plan identifies the subject property within the R-30 Residential One-Family District. For the R-30 land use category, the Master Plan states, "The low density residential land use category encompasses a significant amount of land located west of the Garden State Parkway. The land use category corresponds to a density of 1.45 dwelling units per acre." The Master Plan continues on to indicate that the category is "primarily a single residential classification but permits municipal government uses such as parks, playgrounds and municipal services."

The following are the General Objectives of the Master Plan which are applicable to the proposed development:

1. To encourage Borough actions to guide the appropriate development or redevelopment of all lands in Woodcliff Lake, in a manner which will promote the public health, safety, morals and general welfare;
2. To secure safety from fire, flood, panic and other natural and manmade disasters;
3. To provide adequate light, air and open space;
5. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities, and regions and preservation of the environment;
7. To provide sufficient space in appropriate locations for a variety of uses and open space, both public and private, in a manner compatible with the character of the Borough and the environment;
8. To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging the location of such facilities and routes which result in congestion, blight or unsafe conditions;
9. To promote a desirable visual environment through creative development techniques and good civic design and arrangements.

The following are the Goals of the Master Plan which are applicable to the proposed development:

- Goal 1 - To reaffirm and enhance the existing residential character of the municipality which consists primarily of detached single family residential developments. The intent of the plan is to preserve and protect the existing residential densities by restricting incompatible land uses from established residential areas.



Goal 3 - To ensure development within the Borough preserves the natural features of the land to the greatest extent possible.

Goal 4 - To preserve mature vegetation and wooded areas in Woodcliff Lake, which is an integral part of the aesthetic character of the community.

Goal 13 - To adequately address stormwater impacts from development.

**B. Zoning Ordinance**

The Woodcliff Lake Zoning Ordinance designates the subject property within the R-30 Residential One-Family District (see §380-11). The R-30 Residential One-Family District permits single-family residences on 30,000-square foot lots. Houses of worship, community residences and incidental home profession or occupation are permitted conditional uses in the R-30 Zone.

Houses of worship and related religious uses are subject to the following standards:

- (1) Minimum lot size: three (3) acres.
- (2) Minimum lot width: 400 feet.
- (3) Minimum front yard setback: 50 feet each.
- (4) Minimum side yard setback: 50 feet each; 100 feet both.
- (5) Minimum rear yard setback: 50 feet.
- (6) Maximum height: 2 ½ stories or 30 feet.
- (7) Maximum building coverage: 15%.
- (8) Maximum impervious surface coverage: 30%.
- (9) Parking: one (1) space for each three (3) seats, plus one (1) space for each staff member.

**C. Redevelopment Plan**

The subject property is not within any adopted redevelopment or rehabilitation area.

**D. New Jersey State Development and Redevelopment Plan**

The site is within the PA1 Metropolitan Planning Area of the State Development & Redevelopment Plan. The intent of the PA1 Planning Area is to provide for much of the state's future redevelopment; revitalize cities and towns; promote growth in compact forms; stabilize older suburbs; redesign areas of sprawl; and protect the character of existing stable communities.

**E. Religious Land Use and Institutionalized Person Act (RLUIPA)**

In 2000, the U.S. Congress enacted 42 U.S.C. §2000cc, known as the Religious Land Use and Institutionalized Person Act (RLUIPA). RLUIPA provides that no government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution— (a) is in furtherance of a compelling



governmental interest; and (b) is the least restrictive means of furthering that compelling governmental interest.

RLUIPA also bars the government from applying zoning laws in a manner that discriminates against a particular religion, treats religious assemblies or institutions on less than equal terms than nonreligious assemblies or institutions, or unreasonably excludes houses of worship from a jurisdiction.

#### Substantial Burden

The initial burden of proof lies with the Applicant to demonstrate that that a specific land use regulation imposes a substantial burden on the religious exercise. While RLUIPA does not fully articulate what constitutes a "substantial burden", there is case law that helps define "substantial burden." Some of the relevant court rulings are as follows:

1. Substantial burden is one that bears direct, primary, and fundamental responsibility for rendering religious exercise - including the use of real property for the purpose thereof within the regulated jurisdiction generally - effectively impracticable. (*Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752 (7th Cir., 2003))
2. Regulations must have a "chilling effect" on the exercise of religion (*Westchester Day School v. Village of Mamaroneck*, 280 F.Supp.2d 230 (S.D.N.Y., 2003))
3. Substantial burden must place more than an inconvenience on religious exercise; a substantial burden is akin to significant pressure which directly coerces the religious adherent to conform his or her behavior accordingly. Thus, a substantial burden can result from pressure that tends to force adherents to forego religious precepts or from pressure that mandates religious conduct. (*Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214 (11th Cir., 2004))
4. To meet the "substantial burden" standard, the governmental conduct being challenged must actually inhibit religious activity in a concrete way, and cause more than a mere inconvenience. (*Guru Nanak Sikh Society of Yuba City v. County of Sutter*, 326 F.Supp.2d 1140, (E.D.Cal., 2003))
5. For a land use regulation to impose a 'substantial burden,' it must be oppressive to a significantly great extent. (*Bikur Cholim, Inc. v. Village of Suffern*, 664 F.Supp.2d 667 (SDNY 2009))
6. RLUIPA does not guarantee that a religious organization may build a complex as large as that organization desires. A municipality can control growth and expansion within its city limits. (*Vision Church, United Methodist v. Village of Long Grove*, 468 F.3d 975, 7th Cir., 2006; 397 F. Supp. 2d 917, N.D. Ill., 2005).



### Compelling Governmental Interest

Once the Applicant has demonstrated that there is a “substantial burden”, the board would then have to show that the regulation furthers a “compelling governmental interest.” RLUIPA does not clarify what types of government interests are considered compelling.

Regulations based on legitimate health and safety concerns are typically found as furthering a compelling governmental interest. Some examples include prohibition of development in a flood hazard area or regulations intended to ensure structural integrity or fire safety.

Historic preservation and neighborhood compatibility may also be considered “compelling” reasons for denying the use of property for religious purposes. The court found, in *Christian Gospel Church v. City and County of San Francisco*, (896 F.2d 1221), that the government has “a strong interest in the maintenance of the integrity of its zoning scheme and the protection of its residential neighborhoods.” In citing *Grosz v. City of Miami Beach, Fla.*, 721 F.2d 729 (11th Cir.1983), the court also found that a zoning system “protects the zones’ inhabitants from problems of traffic, noise and litter, avoids spot zoning, and preserves a coherent land use zoning plan.”

Other tangential issues commonly considered when deliberating a development application (such as parking, traffic, noise and environmental concerns) tend to have a lesser “compelling” governmental interest. Of course there may be instances where those issues have substantial impacts on the health and safety of the public, which would constitute compelling governmental interests.

The governmental interest should be specific, articulated, fact-based reasons, as opposed to vague, generalized concerns. A land use regulation may also be vulnerable to challenges if it prohibits religious uses while permitting similar non-religious uses, which would arguably have similar impacts on the surrounding area.

### Least Restrictive Means

After it is established that a land use regulation furthers a compelling governmental interest, the government has the added burden of showing that the regulation is the least restrictive means of furthering that compelling governmental interest. Again, RLUIPA contains no definition of “least restrictive means” and case law must be consulted for guidance. In some cases, imposing conditions that could help mitigate the impacts of the use rather than an outright denial of the use could be viewed as the least restrictive means of achieving the compelling governmental interest.



#### IV. "D" USE VARIANCES

##### **§380-13 Conditional Uses - Houses of Worship**

The Applicant is proposing to demolish the existing 1-1/2 story residence on the subject site to construct a 21,000 square foot, 3-1/2 story house of worship. Houses of Worship are permitted conditional uses in the R-30 District, subject to the conditions codified at §380-13. Since the proposed house of worship does not meet the required conditions, as outlined below, "D(3)" variance relief is required.

- (1) Minimum Lot Size: three (3) acres required – The Applicant is proposing to construct a new house of worship on the existing 1.27 acre lot.
- (2) Minimum Lot Width: 400 feet required – The Applicant is proposing to construct a new house of worship on a lot with an existing lot width of 337.1 feet.
- (3) Minimum Front Yard Setback: 50 feet each required - The Applicant is proposing a 48.5 foot front yard setback measured to the overhang of the building.
- (4) Minimum Side Yard Setback: 50 feet each; 100 feet both - The Applicant is proposing a 47.3 foot side yard setback measured to the overhang of the building.
- (5) Minimum Rear Yard Setback: 50 feet required - The Applicant is proposing a 49.0 foot side yard setback measured to the overhang of the building.
- (6) Maximum Height: 2 ½ stories or 30 feet permitted - The Applicant is proposing to construct a new 3 ½ story, 44 foot high, house of worship.
- (7) Maximum Building Coverage: 15% permitted - The Applicant is proposing a building coverage of 18%.
- (8) Maximum Impervious Surface Coverage: 30% permitted - The Applicant is proposing an impervious surface coverage of 74.9%.
- (9) Number of Parking Stalls Required: One space for each three seats, plus one space for each staff member: The Applicant is proposing 73 parking spaces where 108 ( $324/3 = 108$ ) spaces are required for the proposed use.

##### **Conditional Use Variance – Positive Criteria**

###### Coventry Square Criteria

In a traditional use variance application, pursuant to 40:55D-70d(1), the applicant must demonstrate that the use is particularly suitable to the site and that special reasons exist to support the grant of the variance.



In this application, however, a conditional use variance pursuant to 40:55D-70(d)(3) is sought. The court found in Coventry Square v. Westwood Board of Adjustment that a conditional use should be viewed as a permitted use rather than a prohibited use, as the governing body has established that the zone is appropriate for such uses.

The Coventry Court held that to establish "special reasons" for a (d)(3) variance, the applicant must show "the site proposed for the conditional use, in the context of the applicant's proposed site plan, continues to be an appropriate site for the conditional use notwithstanding the deviations from one or more conditions imposed by the ordinance." Thus, a conditional-use variance applicant must show that the site will accommodate the problems associated with the use even though the proposal does not comply with the conditions the ordinance established to address those problems. The focus is on the "specific deviation" from the conditions that are imposed by the zoning regulations.

#### SICA Balancing Test

In D(1) use variance cases involving an inherently beneficial use, the courts have found that such uses presumptively satisfy the positive criteria, as they are assumed to serve the zoning purposes of promoting the general welfare. It is important to note that the "inherently beneficial use doctrine", as established by the courts, generally applies only to those cases seeking a D(1) use variance to permit a principal use or structure in a district restricted against such uses. The issues in consideration of a D(3) conditional use variance are quite different from a D(1) use variance. This distinction is clarified by the courts in the case of *Mount Holiness Temple of Pentecostal Faith Inc. v. Hackensack Board of Adjustment (A-2629-12T2)*. Therefore, in my opinion, it is improper to use the SICA balancing test to review this application.

Furthermore, the third step of the SICA balancing test is to determine whether any detrimental effect can be reduced by imposing reasonable conditions. In the case of a conditional use variance application, the reasonable conditions have already been established legislatively by the governing body as part of the zoning ordinance.

#### **Conditional Use Variance – Negative Criteria**

In accordance with the MLUL, the Applicant must demonstrate that the grant of the variances would not be substantially detrimental to the public good or substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance. The Coventry Court defined slightly revised conditional-use standards for meeting the traditional "negative criteria", which must be established to receive a variance.



Substantial Detriment to the Public Good

Regarding the “substantial detriment to the public good” prong of the negative criteria, the court affirmed in *Medici v. BPR Co., 107 N.J. 1*, that the focus is on the impact of the proposed use variance upon the adjacent properties and whether or not it will cause such damage to the character of the neighborhood as to constitute “substantial detriment to the public good”. The Coventry Court modified the first prong of the negative criteria to focus on the effect on surrounding properties of the grant of the variance for the specific deviations from the conditions imposed by ordinance. Therefore, it is prudent for the Zoning Board to review each deviation from the conditional use requirements to determine whether the impacts will have a substantially detrimental impact on the character of the surrounding neighborhood.

- (1) Minimum Lot Size: The subject site is undersized, having only 1.27 acres whereas 3 acres are required. The undersized nature of the lot, in and of itself, does not have a negative impact. However, the lot size does tend to correspond to other deviations, such that a smaller lot also has lesser lot width and depth and ability to meet required setbacks, which may have negative impacts.
- (2) Minimum Lot Width: The subject site has an existing lot width of 337.1 feet where 400 feet are required. Again, the deficient lot width does not have a direct negative impact on the neighborhood.
- (3) Minimum Front Yard Setback: The Applicant is proposing a 48.5 foot front yard setback where 50 feet is required. From a planning perspective, this deviation is de minimis and has no negative impact on the character of the neighborhood.
- (4) Minimum Side Yard Setback: The Applicant is proposing a 47.3 foot side yard setback where 50 feet is required. From a planning perspective, this deviation is de minimis and has no negative impact on the character of the neighborhood.
- (5) Minimum Rear Yard Setback: The Applicant is proposing a 49 foot rear yard setback where 50 feet is required. From a planning perspective, this deviation is de minimis and has no negative impact on the character of the neighborhood.
- (6) Maximum Height: The Applicant is proposing a 3 1/2 story, 44 foot high, house of worship whereas a maximum height of 2 1/2 stories or 30 feet permitted. Due to the undersized nature of the lot, the Applicant is proposing to construct additional stories in order to provide the desired floor area. The steep slope of the property has the effect of giving the proposed structure the appearance of a 2 1/2 story structure with a height of 29.42 feet



when viewed from Overlook Drive, as shown on the architectural elevations.

However, the full scale of the structure would be visible when viewed from the north, south and east sides. In combination with the proposed 18 foot high retaining wall, the building has a potentially negative visual impact on the properties to the south. The massing of the structure would be out of scale with both the existing use and potential future conforming uses that may be developed on the adjacent property to the south.

- (7) Maximum Building Coverage: The Applicant is proposing a building coverage of 18% where a maximum of 15% permitted. The purpose of the maximum building coverage is to control the massing of the building to maintain a sense of scale within the neighborhood. While a 3 percent deviation is not substantial on its own, when coupled with the requested height deviation, the result is a building mass much larger than what the zone anticipates.
- (8) Maximum Impervious Surface Coverage: The Applicant is proposing an impervious coverage of 75% where a maximum of 30% permitted. The purpose of the MIC standard is two-fold: to reduce stormwater runoff and to provide adequate open space areas. The stormwater concerns are presumably being mitigated by the underground detention system proposed by the applicant (we defer to the Board Engineer on stormwater issues). Regarding the open space areas, the site would be almost completely developed. The only remaining pervious areas would be small areas at the bottom of the retaining wall (which are unusable) and landscaped areas within the parking lot and surrounding the building. There are no usable green spaces proposed on the lot and the landscape buffering and screening is minimal.
- (9) Number of Parking Stalls Required: The Applicant is proposing to serve the proposed house of worship with 73 off-street parking spaces, whereas 108 spaces are required by ordinance.

The Traffic Impact Report submitted by the Applicant indicates that based upon 12 churches surveyed by the *ITE Parking Generation, 2<sup>nd</sup> Edition*, an 85th percentile peak parking demand of 0.25 vehicles per seat would equate to 81 parking spaces at the proposed Valley Chabad House of Worship. The report notes that the *Parking Generation, 2<sup>nd</sup> Edition*, does not contain a parking ratio for synagogues that relates the park parking demand to the number of seats. If the Applicant contends that 73 spaces is adequate to meet the needs of the proposed facility at this location, the Applicant should provide parking statistics that would more accurately reflect the proposed facility as opposed to the 12 churches analyzed by ITE.



Based on the ordinance requirement, the site would be deficient by 35 parking spaces. This parking deficiency has a potential to negatively impact the health, safety and general welfare of the neighborhood. There are no public parking areas nearby which could be used as overflow parking should the parking demand exceed the capacity of the proposed parking lot.

While there is no prohibition against parking along Overlook Drive, it should not be encouraged. According to the NJDOT road profile, Overlook Drive is a two-lane road with a pavement width of 28 feet (including narrow shoulders of 2 to 4 foot width) and a posted speed limit of 40 miles per hour. Due to the steep slopes in the vicinity of the roadway, the shoulders are also protected by steel guardrails. There are also no sidewalks along Overlook Drive. In my opinion, there is not adequate shoulder width on the roadway to safely park vehicles.

The Applicant should be required to address the parking deficiency either on site or by some alternative off-site arrangement for events when the attendance would likely exceed the parking capacity on site. Some potential solutions include valet parking, tandem parking, or shuttles to and from an off-site parking lot.

If the Applicant intends to utilize Mill Road Extension for on-street parking, the Applicant should demonstrate that there is adequate parking space for 35 vehicles within walking distance of the site. The Board should also consider requiring sidewalks connecting from Mill Road Extension to the subject site to provide for safe pedestrian access.

#### Substantial Detriment to the Zone Plan and Zoning Ordinance

The Medici court found, with regards to the “substantial detriment to the zone plan and zoning ordinance” prong of the negative criteria, that the Applicant must provide an enhanced quality of proof, which reconciles the omission of the proposed use from those uses permitted in the zone. The courts recently ruled in *TSI East Brunswick, LLC v. Zoning Bd. of Adjustment of Twp. of East Brunswick (A-124-11)* that the enhanced quality of proofs standard typically attributable to use variance cases has no application at all in the evaluation of an application seeking conditional use variance relief. The court stated that as a conditional use is considered a permitted use, the inability of an applicant to comply with one or more of the conditions of the conditional use does not convert the use into a prohibited one.



**V. "C" BULK VARIANCES**

The Applicant is requesting a number of "C" variances from the bulk standards of the ordinance. N.J.S.A. 40:55D-70(c) sets forth the criteria by which a variance can be granted from the bulk requirements of a zoning ordinance.

The first criteria is the C(1) or hardship reasons including exceptional narrowness, shallowness or shape of a specific piece of property; or exceptional topographic conditions or physical features uniquely affecting a specific piece of property; or extraordinary and exceptional situation uniquely affecting a specific piece of property.

The second criteria involves the so-called C(2) flexible variances where the purposes of the MLUL would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.

In both instances, the Applicant must still satisfy the negative criteria, demonstrating that the variance can be granted without substantial detriment to the public good and the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance. Additionally, the MLUL states that the fact that a proposed use is an inherently beneficial use shall not be dispositive of a decision on a "C" variance.

**A. §380-111C(1) through (5): Retaining Wall**

The ordinance recognizes that retaining walls typically are necessary components for development in critical slope areas. Therefore the ordinance establishes regulations for retaining walls in critical slope areas:

1. Retaining walls shall not have any continuous exposed wall face in excess of three feet in height measured from the lowest elevation of the finished grade, except that age-restricted multiunit housing in the ARHO District shall be permitted to have retaining walls with wall faces up to six feet in height. If a fence is required atop a retaining wall, the height of the fence shall not be considered in measuring the height of the retaining wall.
2. In any embankment which is constructed by the use of retaining walls, each wall shall also be subject to a maximum height limitation of three feet and shall be tiered at every three-foot interval of height.
3. Each tier shall be set back a minimum of three feet to provide for the placement of landscaping on the tier.
4. Plantings shall be required at each tier level (except the top level adjoining a lawn area) to minimize the appearance of the wall's height and enhance its aesthetics.
5. Retaining walls shall not be erected within five feet of a street right-of-way, side or rear property line and be constructed in such a way so as to enable the property owner to perform periodic maintenance and upkeep to the area between the retaining wall and the right of way, side or rear lot line.
6. Retaining walls shall be designed to provide for proper drainage.



7. The use of interlocking block materials for retaining wall construction is encouraged.

The Applicant is proposing to erect a keystone retaining wall that exceeds 20 feet in height and is set back 1 foot from the property line on the south, east and north sides of the property. The proposed retaining wall would be a single continuous surface with no landscaped tiers. The Applicant is proposing two rows of planter units along the southerly facing wall. In accordance with the ordinance, this retaining wall is required to consist of a total of nine tiers, each 3 feet high and setback 3 feet from the previous tier. Each tier must contain landscape plantings, and the bottom tier must be set back 5 feet from the lot line. Accordingly, if the bottom of the wall were set back 5 feet from the lot line, the top tier would be set back 23 feet from the property line. The Applicant requires five bulk variances from conditions (1) through (5) for the construction of the proposed retaining wall.

In my opinion, the Applicant's planning testimony failed to demonstrate that the requested variances for the proposed retaining wall would advance the purposes of the MLUL or that the public benefits would outweigh the detriments. In my opinion, the proposed retaining wall does not further the intent of the ordinance, which is to enhance the aesthetics of the retaining wall by utilizing a tiered system with landscaping to soften the appearance. Even with the proposed planter box mounted on the wall face, the wall would present a large monolithic structure directly on the property line, which would present a substantial negative impact visual to the adjacent property owner.

In addition, there are safety concerns that should be taken into account. Typically a tiered retaining wall system would be more structurally sound than a singular surface. Also, the proposed retaining wall encroaches on the area where there is an existing drainage easement along the southern property line. This area should be kept clear to provide adequate access to the easement and infrastructure for maintenance.

There should also be adequate area on the subject site to construct and maintain the proposed retaining wall without encroaching on the neighboring property. Otherwise, the Applicant should be required, as a condition of any approval, to obtain an easement from the adjacent property owner.

In order to provide a retaining wall more in conformance with the intent of the ordinance, the Applicant should consider removing southerly driveway so that the retaining wall can be set back from the property line and tiered with landscaping. Strict adherence to the 3 foot tier requirement may not be necessary to achieve a wall that meets the intent of the ordinance.



**B. §380-80B: Buffer Areas**

Any lot utilized for a nonresidential use abutting a lot in a residential zone or a lot used for residential purposes shall have a thirty (30) foot buffer area consisting of fencing, evergreens and other barriers determined suitable by the Board (in consultation with the Shade Tree Committee) to screen the nonresidential use from the residential use. No such buffer is proposed by the Applicant. "C" bulk variance relief is required to permit the deviation.

The Applicant has not presented testimony demonstrating that the requested variance for the deficient buffer area would advance the purposes of the MLUL or that the public benefits would outweigh the detriments. In my opinion, there is a need for a buffer on the south side of the property to mitigate negative impacts of the proposed use.

**C. §380-109A: Steep Slopes**

No buildings, improvements or structures, including roads, driveways or parking areas, shall be constructed, nor shall any displacement of soil or removal of vegetation occur within critical slope areas, except in accordance with the following schedule provided below. The Applicant is proposing to disturb 100% of the critical slopes on the property. "C" bulk variance relief is required to permit the deviation from the steep slope ordinance.

Permitted Levels of Disturbance in Critical Slope Areas			
Slope Category	Percent Grade	Maximum Disturbance Area	Proposed Disturbance Area
1	15% to 19.99%	35% (1,979 sq ft)	100% (5,653 sq ft)
2	20% to 24.99%	25% (508 sq ft)	100% (2,032 sq ft)
3	25% or greater	15% (1,683 sq ft)	100% (11,220 sq ft)

The purpose of the steep slope regulations is to preserve critical slope areas in the Borough of Woodcliff Lake. These regulations are necessary to minimize the adverse impacts commonly associated with disturbance of "steeply sloped areas," which are defined as a slope of minimally 15%. Development on grades of 15% or greater generally requires additional safeguards against erosion and other conditions such as siltation, surface water runoff and pollution of potable water supplies. The most appropriate method of alleviating such conditions is through the regulation of disturbance to soil and vegetation in critical slope areas. Such regulation promotes the public health, safety and welfare of Woodcliff Lake.

**D. §380-78A(12): Parking Landscaping**

The ordinance requires off-street parking areas having 10,000 or more square feet of paved area to provide landscaping for the interior parking lot areas at a minimum of



20 square feet of interior lot landscaping for each parking space. The proposed 73 parking spaces would therefore require a minimum of 1,460 square feet of landscaping. The Applicant proposes no parking lot landscaping.

The purpose of this regulation is to reduce the impacts associated with large parking areas. Properly established and maintained landscaping would screen the parking areas, reducing the visual impacts. The landscaping can also help offset the heat-island effect of paved parking areas by providing some shaded areas.

This application involves a proposed single-loaded parking aisle around the perimeter of the property. Theoretically, the Applicant could replace some of the parking spaces with landscape islands to fulfill the ordinance requirement. However, there is already a parking deficiency with the proposed site plan. It would not be advisable to further reduce the parking supply. There will be a narrow landscape area along the Overlook Drive frontage and a few small landscape areas internal to the site, which will provide at least some screening of the parking areas.

## **VI. DESIGN WAIVERS**

It is important to differentiate between waivers and variances. Variances are for deviations from standards contained with the "Zoning" section of the Land Use Code, adopted pursuant to N.J.S.A. 40:55D-62. Waivers are deviations from items listed under the "design standards" section of the Land Use Code, which may also be located within the "site plan" or "subdivision" sections. The right of a board to grant exceptions from design standards is found at N.J.S.A. 40:55D-51.

Granting of a "waiver" is an acknowledgement by the Board that the condition of the property (as designed) is satisfactory (see Garofalo v. Burlington Twp., 212 NJ Super 460). Thus, the standard of proof for a waiver is not as vigorous as that for a variance.

The following waivers or exceptions from the adopted design standards are required for this application:

### **A. §168-5: Fence Height**

The ordinance indicates that no solid fence shall exceed the height of five (5) feet above the ground. The Applicant is proposing to install fence that is six (6) feet high along the top of the retaining wall.

### **B. §287-4D(1)(d): Permitted Signs**

The ordinance allows for one (1) bulletin board or sign for houses of worship. Said sign is limited to 20 square feet in area and may be freestanding or attached. The Applicant is proposing two (2) monument signs, each of which measures 6 feet by 10 feet, having an area of 60 square feet.



The Applicant should provide additional information on the proposed sign including, but not necessarily limited to, letter type, letter size, sign colors, lighting, etc. in order to confirm conformance with the ordinance.

- C. **§292-26B(2): Parking Within 30 feet of Right-Of-Way**  
The ordinance prohibits parking within thirty (30) feet of the street Right-Of-Way. The Applicant is proposing parking stalls five (5) feet from the Overlook Drive Right-Of-Way line.
- D. **§292-26C(2): Size of Parking Stalls**  
Parking stalls shall have a minimum area of 200 square feet, and shall measure 10 feet in width and 20 feet in depth. The plan shows parking spaces measuring 9 feet by 18 feet. The Zoning Board may permit parking stalls of 180 square feet, which measure 9 feet in width by 18 feet in length, where it can be shown by the Applicant that such parking stalls are safe and adequate for the parking and circulation of vehicles.
- E. **§292-32: Refuse Storage.**  
The plans do not illustrate any refuse area. The ordinance requires a refuse area to be provided.
- F. **§292-28A(10): Illumination at the Property Line**  
The ordinance limits illumination to a maximum of 1.0 footcandle at the property line. The plans illustrate numerous locations where 1.0 footcandle is exceeded at the property line.
- G. **§292-29A(8): Size of Shrubs**  
The ordinance requires shrubs to be installed at a minimum height of 24 inches. The Applicant proposes to plant Little Princess Spirea at a height of 15 to 18 inches.
- H. **§292-29A(10): Parking Lot Landscaping**  
The ordinance requires at least five (5) percent of parking areas to be landscaped. The Applicant proposes 1.8% of the parking lot to be landscaped.
- I. **§292-29B(3): Buffer Along Parking Areas**  
The ordinance requires fences, landscaping, berms and/or mounds to be located where parking areas abut other properties. Roughly 25% of the parking area is not buffered from adjacent properties.



We reserve the right to make additional comments based upon further review or testimony presented before the Board. Should you have any questions on this correspondence please do not hesitate to contact us.

Very truly yours,

MASER CONSULTING P.A.

A handwritten signature in cursive script, appearing to read 'Daniel N. Bloch'.

Daniel N. Bloch, P.P., AICP

Cc: Tonya Tardibuono, Board Secretary  
Sal Princiotto, Esq., Board Attorney  
Elliot W. Urdang, Esq. Attorney for the Applicant

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