

TOWN OF MONROE: COUNTY OF ORANGE
ZONING BOARD OF APPEALS

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In the Matter of the Application of

MIKVAH YISROEL

For an area variance as follows:

DECISION

- *Grant of a parking space variance to allow a minimum of 39 spaces where the Code requires a minimum of 203 spaces; and*
- *Grant of a lot coverage variance allowing a total lot coverage of 70% where the Code requires a maximum lot coverage of 50%; and*
- *Modification of a prior Condition Imposed upon the Grant of a Prior Variance.*

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INTRODUCTION

Mikvah Yisroel by Isaac Walter seeks two (2) area variances as follows:
(1) Grant of a parking space variance to allow a minimum of 39 spaces where the Code requires a minimum of 203 spaces; and grant of a lot coverage variance allowing a total lot coverage of 70% where the Code requires a maximum lot coverage of 50%.

Pursuant to the grant of prior area variances for this project site the Zoning Board imposed a condition that the premises were to be used for a mikvah only. The Applicant now seeks relief from that condition to allow use of the premises for educational classrooms.

BACKGROUND

The property is a parcel located at 509 Forest Avenue in the LI Zoning District and is identified on the Town of Monroe tax maps as Section 1, Block 2 Lot 39.1. The property is currently under construction pursuant to a site plan approved by the Town of Monroe Planning Board which approved the site for a mikvah on the first floor and “religious instruction” on the second floor. As part of that prior approval two variances were previously granted by the Town of Monroe Zoning Board (“ZBA”). Those variances were a parking variance to allow for 28 spaces where the code requires a minimum of 203 spaces; and, a lot coverage variance to allow a maximum coverage of 56% where the code requires a maximum coverage of 50%. [See, ZBA Decision dated November 26, 2012]

The applicant now seeks to modify and amend the prior site plan to allow for the use of the second floor of the structure for the construction and use therein of 18 instructional classrooms. Due to this change the present request is made for the two variances, to wit: parking and lot coverage.

The applicant attributes the lot coverage increase as being due to the increased number of parking spaces going from 28 spaces to 39 spaces to accommodate the anticipated educational staff as well as the addition of driveways to serve the expanded parking and for buses to stack and drop off students for the intended classrooms.

A public hearing was opened on July 26, 2016, continued on August 23, 2016, and thereupon closed. Notice of said meeting was published in the Times Herald Record and mailed to adjoining property owners as required by Code.

The matter was again reviewed by the Board on September 27, 2016 on which date the Board resolved a decision on the matter.

LAW

Section 57-10 of the Code of Ordinances of the Town of Monroe [Zoning], entitled "Schedule of District" requires compliance with the bulk regulations set forth in the bulk and use schedules set forth within the zoning ordinance.

Section 57-10, Column 10 sets forth the maximum lot coverage within the LI zone as 50%.

Section 57-49.A(7) sets for the minimum parking requirements. As calculated for the proposed use the minimum number of parking spaces is computed as being 203.

As noted earlier herein this project previously received variances of both these requirements to allow a minimum number of parking spaces to be 28 and maximum lot coverage to not exceed 56%.

SEQRA

This matter constitutes an unlisted Type action under the State Environmental Quality Review Act. The Planning Board as an involved agency has indicated its consent to an uncoordinated review by the ZBA. On July 26, 2016 the ZBA resolved to conduct an uncoordinated review; resolved to act as lead agency; and, typed the action as Unlisted. The ZBA thereupon commenced a review of the short form EAF as prepared by and presented by the Applicant. Part I of that form was amended in several respects and directed to be filed within the files of the ZBA.

The ZBA thereupon undertook a review of Part II of the EAF. The Board was concerned with the possible impacts of the project upon water resources and requested the applicant to present a water usage study.

The ZBA continued its review of the EAF on August 23 and September 27, 2016. At the September meeting Tom Cusack from Leggette, Brashears & Graham,

Inc. was present to address the Board's concerns concerning impacts upon private and public water resources. Upon considerable testimony and documentation, the Board determined that no negative environmental effects would result from this project and thereupon resolved to issue a negative declaration.

GML 239 REFERRAL

This application was required to be referred to the Orange County Planning Department for review. In a letter dated July 25 and revised August 23, 2016, the Orange County Planning Department reported that the variance application was a matter for local determination and further commented upon the pending site plan amendment application then still pending.

FINDINGS OF FACT

After receiving all the materials presented by the applicant, the comments from members of the public who appeared and gave testimony, and the testimony of John Szarowski, P.E., on behalf of the applicant the Board makes the following findings of fact:

1. The applicant is the owner of a 2 +/- acre parcel (tax parcel Section 1, Block 2 Lot 39.1) located at 509 Forest Avenue.
2. The property is currently under construction pursuant to a site plan approved by the Town of Monroe Planning Board which approved the site for a mikvah on the first floor and "religious instruction" on the second floor.
3. The applicants' proposal is set forth on a set of plans prepared by Atzl, Nasher & Zigler P.C. dated May 11, 2016, last revised 6-8-16. Those plans are hereby incorporated into this decision and a set shall remain in the zoning board's file in

this matter.

4. The Planning Board referred this matter to the ZBA by the letter of its attorney, Michael Donnelly dated June 8, 2016.
5. Mr. Donnelly's letter also asks the ZBA to consider whether a condition imposed upon the prior variance granted should be modified or released, to wit: that use of the premises be limited to a mikvah only. That request will be addressed herein.
6. The required, existing and proposed dimensions (in feet) and the extent of the variances requested are as follows:

Bulk Requirement	Required	Proposed	Variance
Minimum Parking Spaces	203 required by Code; 28 required pursuant to prior variance granted	39	164
Max. Lot Coverage	< 50% required by Code; <56% required by prior variance granted	70%	20%

7. Several members of the public were heard during the hearing. The concerns expressed included:
 - Impacts upon area well and water resources
 - Days of operation for the school use and mikvah use
 - The number of buses serving the school, the days of their operation, and their impact upon the neighborhood
 - Whether the members of the ZBA should conduct a site visit

After hearing the testimony at the public hearing and considering the materials received by the Board, the Board decides as follows:

FINDINGS

In reviewing the facts presented for the requested area variances, the Board considered the five standards for determining whether the applicant has sustained its burden of proof as required by Town Law Town Law Section 267-b (3). Each factor has been considered relevant to the decision of the board of appeals, but no single one is viewed as precluding the granting of the variances.

(1) UNDESIRABLE CHANGE—DETRIMENT TO NEARBY PROPERTIES

No undesirable change in the character of this neighborhood or detriment to the neighbors in that neighborhood will result if the requested variances are granted because the building is across the street from an existing school and is alongside an existing bus garage.

(2) NEED FOR VARIANCE

The Board determined that the building has already been approved for use as a mikvah with religious instruction to take place on the second floor. The construction of the requested 18 classrooms is consistent with the previous variance as granted and is needed by the applicant.

(3) SUBSTANTIAL NATURE OF VARIANCES REQUESTED

The Board determined that the variances as requested are substantial but within the context of the existing neighborhood with a bus garage alongside one boundary of the property and a school across the street that in the contest of the

neighborhood, though substantial, because the focus of the inquiry by the Zoning Board of Appeals is upon the character of the neighborhood in question, we believe, under the circumstances presented here, that the nature of the variance requested does not prohibit us from granting the application because there will be no material degradation of the neighborhood resulting from this grant of a variance.

(4) ADVERSE PHYSICAL & ENVIRONMENTAL EFFECTS

The variance will not adversely impact the physical or environmental conditions in this neighborhood because of the existing conditions in the neighborhood already having a school and a bus garage. And, upon considerable review that the project will not adversely impact private or public water resources.

(5) SELF-CREATED DIFFICULTY

The need for this variance is clearly self-created, however, the board believes, under the circumstances presented, that the self-created nature of the need for the variance requested does not preclude granting the application. Moreover, as noted earlier, no undesirable change in the character of the neighborhood will occur as the result of the granting of the side yard variance.

DECISION

In employing the balancing tests set forth in Town Law Section 267–b (3) the Board hereby determines that the applicant has satisfied the requisites 267-b and grants the parking and lot coverage variances as requested and referred to herein, to wit: That the project may have a minimum of 39 parking spaces; and that lot coverage shall not exceed 70%. The variances granted hereby are conditioned upon the following:

1. That the classroom/education use is to be for school aged children of an age that requires them to be bused to the facility those obviating the need for additional parking spaces beyond the 39 spaces granted by this variance;
2. That the maximum occupancy of the classroom/education component of the facility shall not exceed 342 persons.

The Board also determines that the “mikvah use only” condition of the variance granted by this Board by its Decision dated November 26, 2012 is not violated by the proposed use of the second floor for 18 classrooms for religious studies.

Information Note: Town of Monroe Code Section 57-65.C(12) provides that: “Any area or use variance granted by the Zoning Board of Appeals, or any variance granted under Subsection A(2), (3), (6) or (7), shall be deemed expired if the physical improvements associated with that variance are not completed by the recipient of the variance, and a certificate of occupancy or certificate of completion issued by the appropriate Town official, within two years of the filing of the variance with the Town Clerk, unless a longer period is specified in the decision of the Zoning Board of Appeals. Nothing shall preclude the applicant who receives a variance from seeking a rehearing on the decision granted to seek an extended period of time to complete the improvements and receive the certificate of occupancy or certificate of completion for the improvement which is enabled in part or in all by the variance which was granted. [Added 7-11-2011 by L.L. No. 4-2011] “

Dated: September 27, 2016

Abe Mueller, Acting Chair
Town of Monroe ZBA

By roll call a motion to adopt the decision was voted as follows:

AYES: Acting Chair Abe Muller
 Member Joseph Davis
 Member Robert O’Neill
 Member Seth Bader

NAYS: None

ABSENT: Jonas Hoffman

