

APPROVED

CHESTNUT RIDGE  
ZONING BOARD OF APPEALS  
DECEMBER 16, 2019

Present: Stephen Liebman-Chairman, Susan Silverman-Deputy Chairperson, Stanley Waldbaum, Michael Williams, Donald Cornwell, Eric Silber-Alternate

Also Present: Walter R. Sevastian-Village Attorney, Mary Ballek-Secretary to the Board, Cheryl Sluys-Recording Secretary

Absent: Duane Penister, Michael Grossman

The meeting was called to order at 8:00 P.M. by Stephen Liebman-Chairman.

1. **107 Old Nyack Turnpike-Continuation of Public Hearing** to consider the application of 107 Vogel LLC to consider variances from the requirement of Article XIII of the Zoning Code in order to continue the multi-family use to allow 11 multi-family dwellings.

**Tax Designation: 56.20-2-1, in the R-15 Zoning District.**

Minimum Front Set Back: (Old Nyack Turnpike)	35 feet required where 20 feet is provided.
Minimum Front Set Back: (Hungry Hollow Road)	35 feet required where 22 feet is provided.
Minimum Front Yard: (Old Nyack Turnpike)	35 feet required where 20 feet is provided.
Minimum Front Yard: (Old Nyack Turnpike)	35 feet required where 22 feet is provided.
Minimum Side Set Back:	20 feet required where 1.7 feet is provided.
Minimum Rear Set Back:	35 feet required where 18.9 feet is provided.

Joseph A. Churgin, Esq. (55 Old Nyack Turnpike Road, Suite 209, Nanuet, NY 10954), Attorney for Applicant appeared.

Mr. Liebman said this application was first heard in May 2019. Mr. Liebman then summarized the application to date. There were three structures in the 1950's. Originally building #1 was a one family house which was granted a Town of Ramapo C of O for four apartments in 1959. Building #2 was allegedly granted a C of O in 1982 as a two family. Building #3 is the old garage which contains one apartment and has no C of O. Mr. Liebman continued at this time building #1 has six units, building #2 has four units and there is one unit in the garage. Applicant is here for a use variance which is not easy to get as four criteria out of four must be met.

Mr. Churgin said applicant purchased this property in November 2014. He did none of the conversions to multiple apartments but comes before the ZBA after a routine inspection of each apartment by the Fire Inspector. (See attached fire safety inspection reports) Mr. Churgin has been gathering information to show the scope of this property through time. He says he has done what could be done with public records and added some documents recovered were illegible. Mr. Churgin then stated the Town of Ramapo did an inspection of the property on February 4, 1977 which verified four units in the main building, 2 units in building #2 and one unit in the garage. Mr. Churgin has submitted a chart from Orange & Rockland which reflects a lot of apartments getting their own electricity which shows the buildings have been cut up this way for a long time.

Mr. Liebman stated the list also shows illegal apartments.

Mr. Churgin replied there are independent electric and gas meters.

Ms. Silverman asked if the 11 units preceded his client's purchase of this property.

Mr. Churgin replied yes.

Mr. Liebman asked was there a title search at the time of this purchase.

Mr. Churgin replied yes.

Mr. Liebman said if your clients had a title search and bought the property knowing there was no C of O, they took a risk. Mr. Liebman added buildings 1 and 2 were before the Village of Chestnut Ridge was incorporated and they were grandfathered in.

Mr. Churgin said we are asking for the use today. Mr. Churgin then said he has evidence that the main building had multiple apartments. Building #3 is the issue; it has been utilized for one apartment at least back to 1977.

Mr. Sevastian asked what the Zoning Board can say about papers in front of them that certify pre-existence but are non-conforming as to bulk. Applicant can argue the number of units which increases the degree of non-conformity. We are talking about numbers. The Board's decision will get the property to the baseline of what exists paperwork-wise.

Mr. Waldbaum asked who the previous attorney was.

Mr. Churgin does not know.

Mr. Waldbaum then said as a real estate attorney he is trying to understand the process applicant went through. Was he represented by counsel? Mr. Waldbaum is not ready to say counsel made a mistake and asked are you advocating tonight that applicant should/should not have a title search. We both agree purchasers should secure title insurance. Your client can't say to the Board he didn't do so because his attorney made a mistake.

Mr. Churgin said his client saw people living in three different buildings. Mr. Churgin then said hypothetically, if there is municipal proof of four apartments in building #1 his client would abide and go from six apartments to four apartments. Applicant would reconfigure the building to get a fair return. Applicant would go down to two apartments in building #2. Building #3 presently has one apartment just as it did in 1977.

Mr. Liebman said you're talking about financials now. This property was purchased for \$239,000 in a short sale. What is the value of the property now?

Mr. Churgin replied it has not been appraised.

Mr. Sevastian said the assessed value is for taxation purposes.

Mr. Liebman said on the website the assessed value is \$690,000.

Mr. Churgin stated there are multiple ways to value a commercial property.

Mr. Liebman said applicant made a good deal on the property. At that market value he doesn't see a hardship. Mr. Liebman then asked the size of the property.

Mr. Churgin replied 1.5 acres. Mr. Churgin said if the assessor based the market value of the property on the number of units, decreasing the apartments from the current eleven will decrease the market value.

Mr. Sevastian said the income valuation approach is used for a lot of properties.

Mr. Liebman noted that per the leases, the monthly rent for six apartments is \$5525.00.

Mr. Sevastian said we are looking at the assessed valuation without knowing how we got there. It is hard to see what applicant says based on rent roles assessed value.

Mr. Churgin asked do you want an answer from the appraiser he works with in addition to an answer from Orange & Rockland.

Mr. Liebman asked Mr. Churgin to see what you come up with financially looking at the six apartments granted C of O's by the Town of Ramapo.

Mr. Churgin said applicant looks at this in two ways: the current rent roll and the rent role for six apartments.

Mr. Sevastian stated per correspondence from the County Highway Department the parking area on Hungry Hollow Road right-of-way is to be removed. There are to be 22 on-site parking spaces.

Mr. Churgin said the main building couldn't be used without ingress/egress onto Hungry Hollow Road. Mr. Churgin continued the Department of Highways contacted us. We have gone through the process with them. Because there was proof of the existence of eight apartments they did not ask for C of O's.

Ms. Silverman said if applicant was limited to six units he could raise rents if the apartments were re-configured.

Mr. Churgin replied yes, in two buildings but the third building couldn't be utilized.

Ms. Silverman said he could charge maximum rent on the approved buildings and six apartments.

Mr. Churgin said our task will be to show financial feasibility.

Ms. Silverman asked if there is property insurance.

Mr. Churgin replied there is a valid policy on the entire property; everything to keep the people safe.

Mr. Sevastian returned to a previous conversation and clarified he didn't say no access to Hungry Hollow Road. He just stated no parking there.

Mr. Churgin said there is nowhere else to park. The parking exists on the Hungry Hollow right-of-way but the county has a right to say no.

Mr. Sevastian noted there would be less parking with fewer apartments.

Mr. Liebman asked if there were any questions from the Board.

Mr. Williams asked if the existence of apartments can be established prior to 1986.

Mr. Churgin said all three buildings were recognized in 1977 as having apartments.

Mr. Sevastian stated building #3 was occasionally used for a tenant.

Mr. Cornwell added in 1977 #3 was a studio apartment used as a summer home.

Mr. Churgin said that reflects the fact that there was an apartment in building #3 in 1977. Mr. Churgin then requested application be adjourned to next month to allow him time to secure additional information for the Board.

Mr. Liebman stated we will appreciate receiving the paperwork the Board has requested. Mr. Liebman then opened the meeting to the public.

Jerry Liebelson of 31 Midway Road affirmed to tell the truth and asked if in these multi-family units does the scope of legal non-conformity apply to the property or the buildings.

Mr. Liebman said applicant is seeking to certify multi-family use.

Mr. Sevastian stated legal non-conformity runs with the land. The ZBA will determine the extent of non-conformity.

Mr. Liebelson asked how much of a factor is the length of time for an illegal situation.

Mr. Sevastian replied it isn't. The Zoning Board is vested with jurisdiction. We don't see a C of O since 1977. Maybe it is legal, however, this is not determinative; it is probative.

Mr. Liebman added Mr. Churgin is to provide additional information to the Board.

Hilda Kogut of 20 Pine Knoll Court affirmed to tell the truth and said she is astounded at the way the property looks. The volume of activity stops you in your tracks. Ms. Kogut then said eleven units on 1.5 acres is insane. Additionally, the purchaser of the property is not taking care of it.

Mr. Churgin states he has an issue with Ms. Kogut's last statement. He accompanied the Building Inspector and Fire Inspector on their visit and only minor issues were raised. Neither said this is dangerous and these people shouldn't be there.

Carole Goodman of 964 Chestnut Ridge Road affirmed to tell the truth and said applicant's lawyer seems nebulous and then asked the name of the assessor.

Mr. Churgin answered Bob Sterling.

Mr. Sevastian stated that is relevant because of one factor; whether there is a reasonable return of value.

Allen Resnick of 964 Chestnut Ridge Road affirmed to tell the truth and asked what the six sets of figures (see agenda) are based on.

Mr. Liebman answered the figures are from the Chestnut Ridge Zoning Code.

Mr. Sevastian stated the bulk requirements are applicable because the buildings aren't going to move. The dimensions are what they are.

Mr. Liebman said the variances from our code (not Ramapo) wouldn't be allowed now.

No one else from the public wished to speak.

Michael Williams made a motion seconded by Donald Cornwell to continue the public hearing at the January 28, 2020 meeting. The following vote was taken: Stephen Liebman-yes, Michael Williams-yes, Donald Cornwell-yes, Susan Silverman-yes, Stanley Waldbaum-yes, Eric Silber-yes.

**2. Fox Development-Continuation of Public Hearing** to consider the application of Fox Development in seeking the following variances from Article IV Table of Bulk Requirements Use Group J:  
**Tax Designation: 63.09-1-1 in the PI Zoning District**

Minimum Front Yard:	(Route 45)	19.0 ft. requested for parking.
Minimum Front Set Back:	(Scotland Rd)	46.7 ft. requested.
Minimum Front Yard:	(Scotland Rd)	23.9 ft. requested for parking.
Minimum Rear Set Back:		10 ft. requested.
Minimum Rear Yard		10 ft. requested.
Minimum FAR:		0.65 requested.

And to consider variances from the Table of General Use Requirements Park II, PI District:  
Regulations for the 66% limit on building size Column G (3)  
Regulations for distance of 300 feet for loading dock Column G (5)

The applicant has requested an adjournment of the Public Hearing until the January 28, 2020 meeting.

**3. Congregation Ahavas Yisrael-Public Hearing** to consider the application of Congregation Ahavas Yisrael and Yeshivas Ohr V'Daas in seeking variances that would accommodate the change of use.

**Tax Designation: 56.20-2-1 in the R-15 Zoning District.**

Minimum Lot Area:	10 acres required where 1.65 acres is provided.
Minimum Lot Width:	400 feet required where 300 feet is provided.
Minimum Front Setback:	100 feet required where 53 feet is provided.
Minimum Front Yard:	100 feet required where 53 feet is provided.
Minimum Side Setback:	100 feet required where 34 feet is provided.
Minimum Total Side Setback:	200 feet required where 132 feet is provided.
Minimum Side Yard:	100 feet required where 5 feet is provided.
Minimum Rear Setback:	100 feet required where 80 feet is provided.
Minimum Rear Yard:	100 feet required where 23 feet is provided.
Maximum Development Coverage:	30% required where 63% is provided.
Maximum Floor Area Ratio:	0.20 required where 0.27 is provided.

Joseph A. Churgin, Esq (55 Old Turnpike Road, Suite 209, Nanuet, NY 10954), Attorney for Applicant and Morton Silberberg, Applicant appeared.

Mr. Churgin introduced Mr. Silberberg saying he is aware of the property and can give an assist with the facts.

Mr. Sevastian said a change of use is permitted by special variance.

Mr. Churgin said we are not here seeking to build or change anything. The building has been here legally for a very long time. It operated as a shul and Hebrew school 3 days/week. The permitted use is a synagogue with religious studies. Mr. Churgin then said in 2008-2009 the shul was purchased and the classrooms were used for special needs children. Following denial of a sign by the Chestnut Ridge Building Inspector we now have site plan approval before the Planning Board and a large number of variances to accommodate the change of use. Mr. Churgin continued the building is as the building was. Applicant is spending thousands of dollars in engineering and legal work. It's a school, 100%. Mr. Churgin then reviewed the school schedule: 8:30 – 9:30 one hour of religious training; 9:30 to 3:30 secular education for 55 children between the ages of 5 and 21 provided by the Rockland Institute for Special Education. Mr. Churgin reviewed the five questions the ZBA must answer.

1. An undesirable change will not be produced in the character of the neighborhood since this building has been in use for 20 years.
2. Applicant cannot achieve the benefit sought by some method other than a variance. Again, this building has been there for 20 years.
3. Whether the requested variance is substantial. Mr. Churgin said some numbers do look substantial. This is a school. Any construction that has been done inside was approved by the village Building Inspector.

Mr. Silberberg of 95 New Clarkstown Road, Nanuet affirmed to tell the truth and stated the present owner purchased the property in 2009. The congregation will vacate the building to combine with another congregation in Montebello. The school has been located there for 20 years and currently has

55 students. The maximum number of students would be 80. It will continue as a school for special needs children, 5 days/week.

Ms. Silverman asked if it is a school for general education.

Mr. Silberberg responded the zoning is for a school of general education but it is used for special needs.

Ms. Silverman asked if the age range will be the same.

Mr. Silberberg answered the ages of 5 to 21 is by NYS Charter.

Ms. Silverman asked if only boys attend.

Mr. Silberberg replied boys and girls attend the school.

Ms. Silverman then asked where the congregation is relocating.

Mr. Silberberg stated they purchased a house and are in the process of going for an approval for religious use. He added the students need space.

Ms. Silverman inquired about after school activities.

Mr. Silberberg answered extra tutoring is provided between 4:00 PM and 5:00 PM.

Mr. Liebman asked if the number of classrooms will increase from the current six.

Mr. Sevastian asked where are you with the Planning Board. You are changing from a shul/school to a school with a special permit. Mr. Sevastian said in September 2019 the Planning Board noted no negative environmental impact. Where are you site development plan wise?

Mr. Silberberg said we have been before the Planning Board for several meetings and will return in February 2020 to request preliminary site plan approval. Then we will appear before the Village Board to request a special use permit. After that we will go back to the Planning Board for site plan approval.

Mr. Sevastian stated the bulk requirements show ten variances with the existing condition under each.

Mr. Silberberg said the footprint was completed 50 years ago. There has been no change in that footprint but improvements have been done.

Mr. Liebman asked if an attorney was involved at the sale.

Mr. Silberberg answered yes and added the C of O states synagogue with accessory classrooms and added the village Building Inspector understood that when he issued a C of O for work done.

Mr. Liebman referenced one C of O in July 1974. He would like to see the other C of O's.

Mr. Silberberg said they will be submitted and then said the July 1974 C of O is from an early phase.

Mr. Churgin then resumed the questions the ZBA considers and said look at what the use really is.

4. Mr. Churgin doesn't see how there can be an adverse impact on the neighborhood since the building has not changed since it was built.

5. Mr. Churgin asked how can the difficulty be self-created. The use was approved.

Mr. Silberberg stated the school has been in the county for 27 years and at this location for 20 years. It provides a vital function for families and the community. This building has been there and functioning for 50 years. There have been no complaints concerning the operation of the school and we have lived peacefully with the neighbors. Mr. Silberberg continued the Building Inspector issued a C of O for a permanent use as synagogue/classrooms. A 2017 C of O does not list any permanent use. There was no problem with use as a special needs school. Mr. Silberberg then said there was an existing sign in front of the building for 50 years. We wanted to change the face of the sign to indicate the school but the Building Inspector said he didn't know if the C of O was good enough for that. Mr. Silberberg said the sign passed inspection but there was no C of O.

Mr. Sevastian said there is a difference between a synagogue and classrooms.

Mr. Silberberg said the synagogue is still there.

Mr. Churgin said we are here for variances.

Ms. Silverman asked if the congregation has a deadline to vacate.

Mr. Silberberg replied the sooner the better.

Mr. Sevastian stated the ZBA is dealing with area variances. The dimensions are not going to change. The proposed use of school sans synagogue is more intense.

Mr. Silberberg said there are 400 seats in the sanctuary plus a Hebrew school 3 times a week. Our 51 kids are making the use less intense. Mr. Silberberg continued this is a 20,000 square foot building. NYS requires 20 square feet/student so we have the space for up to 80 students. The Rockland County Planning Department talks about hundreds of students but we are operating a tiny school. We are not harming the neighborhood. A December 9, 2019 letter from Elly Walden, Licensed Associate Real Estate Broker with Better Homes/Rand Realty was referenced. Ms. Walden wrote "the existence of the school has not in any way been a negative factor or detrimental to housing values or velocity of home sales". A letter from Yossie Weissman, Executive Director of Ohr V'Daas, attesting to enrollment figures from 2016 to the present was also referenced.

Mr. Silberberg said the Planning Board had questions about the separation of the school from the property immediately to the south. A photograph showing the retaining wall and trees for screening was presented to Mr. Liebman and the Board members. Mr. Silberberg then referred to a November 19, 2019 NYS DOT letter which notes sidewalks and curb ramps must comply with ADA requirements and pedestrian facilities in the public right-of-way are to be ADA compliant. The letter also states the project has minimal impact.

Next, Mr. Silberberg spoke about a November 25, 2019 Rockland County Department of Planning letter and said this building is unique. There is a C of O for a synagogue and accessory classrooms. Precedence is very limited. Mr. Silberberg said the wording in paragraphs 1, 2 and 3 is very strong. It refers to a school for general education with hundreds of students.

Mr. Sevastian said the Planning Board had the same comments and the Planning Board can say this is a Type II action.

Mr. Silberberg stated there are no extracurricular activities off site except for PTA conferences. An increase in intensity is a non-issue.

Mr. Sevastian asked do you agree to comply with the Planning Board to voluntarily cap the maximum number of students at 80?

Mr. Silberberg answered yes. He then said the Planning Board complimented us on improvements made. We re-did the stucco work on the front of the building, we improved the roof and HVAC, we installed new windows and doors and brought the building up to current standards. Parking will be addressed at a later time.

Mr. Sevastian asked do you have a problem with conditioning any action upon compliance with Planning Board recommendations in the areas of parking, traffic, etc.

Mr. Silberberg replied no. Mr. Silberberg then referred to a January 20, 2017 letter from Everette Bierker, Chestnut Ridge Code Enforcement Officer, stating as of this date there are no apparent violations on this property.

Mr. Liebman asked do you have permits for the playground equipment or the retaining wall.

Mr. Silberberg said a permit is not required for a 48 inch high retaining wall. He stated the Building Inspector said to wait for a playground permit. The Planning Board said it was okay to go ahead. He added the wooden fence along the northern property line is intact.

Mr. Liebman said the old playground was removed. Was the Building Inspector clear that you were building a new playground?

Mr. Churgin said if we need a permit we will get one.

Mr. Silberberg stated his last comment is that special needs children need special consideration. They are the most vulnerable in our society. Give them a place to learn. Most of our students are taught vocational skills. We are determined to do the best for these children in this school which meets NYS standards.

Mr. Liebman asked if the Board members had any comments or questions. There were none. Mr. Liebman then opened the meeting to the public.

Jerry Liebelson of 31 Midway Road affirmed to tell the truth and asked for a clarification of synagogue with classrooms.

Mr. Liebman said our code doesn't address that.

Mr. Sevastian added our code doesn't prohibit that.

Mr. Churgin said we're trying to establish the idea of the school being used properly from the start. Mr. Churgin read a statement and said the problem here is that if the minimum lot area variance is granted it stays with the property.

Mr. Sevastian stated there is a requirement of ten acres for general education. Approval of 1.65 acres runs with the land. Conditions can be enforced to mitigate impact. This Board can attach strict conditions which only apply for special use. Land use has to be approved by special permit. A minimum lot area variance can be granted with strict permitting conditions as to use and size.

Mildred Greaux of 980 Chestnut Ridge Road affirmed to tell the truth and said she has lived next door since 1972. They put up a wall cutting tree roots in the process and now her trees are dying. Ms. Greaux then said the school came in the 1990's. She cannot open her windows on school days because of fumes from idling school buses. There is only one way in and one way out from the property. She has traffic concerns and emergency concerns on Chestnut Ridge Road and asked the ZBA to consider surrounding homeowners in their deliberations.

Denise Rivera of 468 Chestnut Ridge Road affirmed to tell the truth and voiced concerns about traffic and increased noise. She disagrees that there is no difference between synagogue/accessory classrooms and a full blown school. Ms. Rivera asked what kinds of special needs are being handled. What is the staff/student ratio? Ms. Rivera added garbage from the school ends up on her property and the school uses her driveway to pick up students. Finally, Ms. Rivera voiced her concern about an increase to 80 students.

Mr. Silberberg said he will find out the student/teacher/aide ratio.

Ms. Silverman asked if the conditions Ms. Rivera described have been going on for ten years.

Ms. Rivera replied three to four years.

Ms. Silverman asked what triggered this change.

Mr. Silberberg said six to eight years ago the student census was in the 70's. There are less students now so traffic has decreased, not increased. Mr. Silberberg will bring census numbers for the Board.

Mr. Liebman said we would also like to see where students come from and want to receive a history of the number of vans in the past ten years.

Mr. Cornwell asked if vans or buses are used.

Mr. Silberberg replied mini vans.

Ms. Rivera said previously there have been large buses.

Mr. Churgin pointed to the diagram and said it shows where everything has been spatially for many years. Nothing has changed.

Mr. Sevastian stated we are here for variances. We are not here to design fencing, screening, traffic, etc. We are here to look at dimensional variances.

Carole Goodman of 964 Chestnut Ridge Road affirmed to tell the truth and said originally two houses were put together. A new façade was added a few years ago. Ms. Goodman questioned where the children are coming from. They are brought in to use the facility which is taking away from the residential neighborhood.

Naomi Greenwald of 8 Haller Crescent affirmed to tell the truth and said she goes past the building on a daily basis. The environment is always calm, quiet and clean. There is nothing abnormal going on. Ms. Greenwald added there is a tremendous increase in the number of children living in the neighborhood and consequently there is an increase in the number of school buses. Ms. Greenwald said the appearance of the building is much nicer, the work they do is impressive and she feels the required variances should be granted.

Anthony Shaut of 23 Mouacdie Drive affirmed to tell the truth and said the issue in granting variances for 1.65 acres where 10 acres is required sets a precedent and the variances should not be granted.

Hilda Kogut of 20 Pine Knoll Court affirmed to tell the truth and agrees that a precedent will be set if variances are granted. Ms. Kogut asked where the students come from and adds she has witnessed idling vehicles. Also, if the number of children attending the school is increased, where will the additional parking be?

Mr. Silberberg responded 48 students are from Ramapo and 7 are from other areas including Riverdale, Far Rockaway and Passaic.

A letter in support of the application from Shifra Bodenheimer of 5 Orchard Court was read into the record by Mr. Liebman.

Magali Dupuy of 49 Spring Hill Terrace affirmed to tell the truth and said she is a former teacher with a good understanding of special education. She is concerned about safety if there is another kitchen fire. No fire drills are held. Ms. Dupuy asked who pays student costs.

Mr. Silberberg said each student is paid for by their home school district. Mr. Silberberg then said a cardboard box on top of the electric stove caught fire. Nothing else burned. The school was properly evacuated. He added we comply with NYS mandated fire drills.

No one else from the public wished to speak.

Mr. Liebman asked if there were any other questions from the Board members. There were none.

Susan Silverman made a motion seconded by Michael Williams to continue the public hearing at the January 28, 2020 meeting. The following vote was taken: Stephen Liebman-yes, Susan Silverman-yes, Michael Williams-yes, Stanley Waldbaum-yes, Donald Cornwell-yes, Eric Silber-yes.

**4. Minutes: November 18, 2019.**

Michael Williams made a motion seconded by Stanley Waldbaum to approve the November 18, 2019 meeting minutes as submitted. The following vote was taken: Stephen Liebman-yes, Michael Williams-yes, Stanley Waldbaum-yes, Susan Silverman-yes, Donald Cornwell-yes, Eric Silber-yes.

Susan Silverman made a motion seconded by Donald Cornwell to adjourn the meeting. The following vote was taken: Stephen Liebman-yes, Susan Silverman-yes, Donald Cornwell-yes, Stanley Waldbaum-yes, Michael Williams-yes, Eric Silber-yes.