

**TOWNSHIP OF MARLBORO
ZONING BOARD OF ADJUSTMENT
RESOLUTION OF MEMORIALIZATION
MONMOUTH COUNTY, NEW JERSEY
USE VARIANCE RELIEF WITH
AMENDED PRELIMINARY AND FINAL
SITE PLAN APPROVAL**

**Approved: December 12, 2023
Memorialized: January 23, 2024**

MATTER OF: JEWISH RUSSIAN CENTER INC.

APPLICATION NO.: ZB 21-6752A

WHEREAS, an application for use variance relief along with amended preliminary and final site plan approval has been made to the Marlboro Township Zoning Board of Adjustment (hereinafter referred to as the "Board") by Jewish Russian Center, Inc. (hereinafter referred to as the "Applicant") on lands known and designated as Block 207, Lot 10 as depicted on the Tax Map of the Township of Marlboro (hereinafter "Township"), and more specifically located at 176 Rt. 79 in the LC (Land Conservation) Zone; and

WHEREAS, a public hearing was held before the Board on December 12, 2023 with regard to this application; and

WHEREAS, the Board has heard testimony and comments from the Applicant and with the public having had an opportunity to be heard; and

WHEREAS, a complete application has been filed, the fees as required by Township Ordinance have been paid, and it otherwise appears that the jurisdiction and powers of the Board have been properly invoked and exercised; and

WHEREAS, the following exhibits were marked into evidence:

- | | |
|-------|---------------------------------------|
| A – 1 | Application |
| A – 2 | Variance Application with Attachments |

A – 3	Indemnification and Hold Harmless Agreement
A – 4	Conflict and Contribution Disclosure Statements
A – 6	Owner’s Affidavit of Authorization and Consent
A – 7	Affirmation of Local Pay to Play Ordinance
A – 9	Land Use and Development 220 Attachment 4
A – 10	Disclosure Statement
A – 11	Resolution ZB 21-6752 dated 12-14-21
A – 17	Environmental Impact Statement dated 5-4-21
A – 18	Stormwater Management Narrative
A – 19	Traffic Study dated 9-21-23
A – 19A	Traffic Study dated 5-11-21
A – 20	Survey dated 12-23-19
A – 21	Architect Plans dated 9-20-23
A – 22	Site Plan dated 8-16-23
A – 23	Engineer Review dated 11-17-23
A – 24	Proposed Aerial Display Plan

NOW, THEREFORE, does the Marlboro Township Zoning Board of Adjustment make the following findings of fact and conclusions of law with regard to this application:

1. The subject Property contains 3.4 acres with 306 feet of frontage along the east side of New Jersey Highway Route 79 within the LC Zone. The subject Property is currently improved with the “Center for Jewish Life” building. Access to the subject Property is provided by one full access driveway from Route 79 and the site contains 140 parking spaces, landscaping, lighting, stormwater management, and trash refuse.

2. The Applicant was previously granted preliminary and final major site plan approval with use variance relief to construct a 9,996 square foot two-story addition with basement to the rear of the existing building. The addition included a mikvah, classrooms, restrooms, bedroom accommodations for visitors, and a teen center. The proposed site improvements including sidewalks, Belgian block curb, and a relocated refuse enclosure. The number of parking spaces was reduced from 140 to 127 to accommodate the space for the building addition. The Applicant never received Resolution Compliance.

3. The existing House of Worship is not a permitted use within the LC Zone. The Applicant now proposes to expand the existing non-compliant use within the LC Zone, thereby requiring use variance approval. The proposed use will include classrooms and overnight guest rooms, which are not permitted principal or accessory uses within the LC Zone.

4. Properties to the north and south of the subject Property contain single family dwellings. Directly across Route 79 from the subject Property is the Frank Defino Central elementary school. Properties to the east are undeveloped with woods. All surrounding properties are similarly zoned LC.

5. Counsel for the Applicant, Kenneth Pape, Esq., stated that the Applicant was seeking an amended site plan. Mr. Pape stated that the Applicant had previously received preliminary and final site plan approval with use variance relief to construct an addition on the rear of the existing House of Worship. Mr. Pape stated that the application was unique because it required Rabbinical approval in addition to other outside agency approvals. He explained that the Applicant's application for Rabbinical approval was denied and that modifications to the Miksvah were required. Mr. Pape stated that the Applicant was now seeking to modify the site plan to add an additional 300 square feet in order to conform to the Rabbinical requests. Mr. Pape stated that the additional 300 square feet to

the site plan created the need for new variance relief to permit an additional 0.012% of impervious coverage.

6. The Applicant's Engineer and Planner, Lorali Totten, P.E., P.P., introduced a Proposed Aerial Display Plan as Exhibit A-24. Ms. Totten explained that coloration on Exhibit A-24 with orange highlighting the original approved addition, green highlighting the removed sidewalk, and red highlighting the proposed additional 300 square feet.

7. Ms. Totten next testified that the proposed amended site plan and additional impervious coverage would not have any additional impact on the public good, zoning, or master plan. She also stated that the proposed use was inherently beneficial and that there were no proposed changes to the use which was previously approved.

8. The Board has received, reviewed and considered various exhibits and reports with regard to this application. Those exhibits and reports are set forth on the Exhibit List, and all exhibits and reports as set forth on said Exhibit List have been incorporated herein in their entirety.

9. There were no members of the public expressing an interest in this application.

WHEREAS, the Marlboro Township Zoning Board of Adjustment, having reviewed the proposed application and having considered the impact of the proposed application on the Township and its residents to determine whether it is in furtherance of the Municipal Land Use Law; and having considered whether the proposal is conducive to the orderly development of the site and the general area in which it is located pursuant to the land use and zoning ordinances of the Township of Marlboro; and upon the imposition of specific conditions to be fulfilled, hereby determines that the Applicant may be granted use variance relief pursuant to N.J.S.A. 40:58D-70d(1) as well as amended preliminary site plan approval pursuant to N.J.S.A. 40:55D-46 and amended final site plan approval pursuant to N.J.S.A. 40:55D-50.

The Applicant requires use variance relief in order to permit the construction of the proposed addition. The New Jersey Courts have been willing to accept a showing of extreme hardship as sufficient to constitute a special reason. The courts have indicated that there is no precise formula as to what constitutes special reasons unless the use is determined to be inherently beneficial, and that each case must be heard on its own circumstances. Yet, for the most part, hardship is usually an insufficient criteria upon which the Board can grant a variance. In addition, special reasons have been found where a variance would serve any of the purposes of zoning as set forth in N.J.S.A. 40:55D-2. However, in the last analysis, a variance should only be granted if the Board, on the basis of the evidence presented before it, feels that the public interest, as distinguished from the purely private interests of the Applicants, would be best served by permitting the proposed use.

In these instances, the Board must also find that the granting of the variance will not create an undue burden on the owners of the surrounding properties. The Board also notes the special reasons requirement may be satisfied if the Applicants can show that the proposed use is peculiarly suited to the particular piece of property. With regard to the question of public good, the Board's focus is on the variance's effect on the surrounding properties and whether such effect will be substantial. Furthermore, in most "d" variance cases, the Applicants must satisfy an enhanced quality of proof and support it by clear and specific findings by this Board that the variance sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance. The burden of proof is upon the Applicants to establish the above criteria.

The Board finds that the Applicant has satisfied the positive criteria. New Jersey case law explicitly identifies houses of worship as inherently beneficial uses. Inherently beneficial uses presumptively satisfy the positive criteria. The Board therefore finds that the positive criteria has been satisfied.

The Board also finds that the negative criteria has been satisfied. The Board accepts the professional testimony that the proposed addition will not increase capacity. The proposed amenities are also unlikely to increase the membership of the Congregation. Traffic and noise will therefore remain as currently exists. The Board further finds that the available number of parking spaces far exceeds the daily need of the Applicant. The Applicant has further demonstrated that adequate parking exists during the High Holy Days. Additional excess parking is further available on neighboring properties.

The Board's decision regarding the negative criteria is expressly based upon the stipulations previously discussed as well as the conditions of this Resolution. Any deviations will require additional relief from the Board. Based upon the foregoing, the Board finds that the proposed expansion does not substantially impair or detriment the zone plan, zoning ordinance or the public welfare. The negative criteria has therefore been satisfied.

The Board finds that the positive criteria substantially outweighs the negative criteria and that variance relief may be granted pursuant to N.J.S.A. 40:55D-70d(1).

The Board also finds that any bulk variances and design waivers are subsumed within the granting of use variance relief. Puleio v. Tp. of North Brunswick Zoning Bd. of Adj., 375 N.J. Super. 413 (App. Div.) certif. den. 184 N.J. 212 (2005).

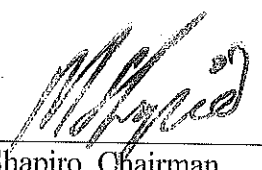
The Board also finds that the proposed expansion may receive site plan approval. This decision, however, expressly relies on the stipulations contained herein as well as the following conditions of approval. The Board further finds that the Municipal Land Use Law does not contain a section permitting "field changes". Any change at all from the approved plan shall require further approval from this Board. Based upon the foregoing, the Board finds that preliminary site plan approval pursuant to N.J.S.A. 40:55D-46 and final site plan approval pursuant to N.J.S.A. 40:55D-50 are appropriate in this instance.

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Marlboro on this 23rd of January 2024, that the action of the Board taken on December 12, 2023 granting Application No. ZB 21-6752A of Jewish Russian Center Inc. use variance relief pursuant to N.J.S.A. 40:55D-70d(1) and amended preliminary and final site plan approval pursuant to N.J.S.A. 40:55D-46 and 50 are hereby memorialized as follows:

The application is granted subject to the following conditions:

1. The development of the site shall take place in strict conformance with the testimony, plans and drawings which have been submitted to the Board with this application.
2. Except where specifically modified by the terms of this Resolution, the Applicant shall comply with all recommendations contained in the Reports of the Board's professionals.
3. Except where specifically modified by the terms of this Resolution, the Applicant shall comply with all prior conditions of approval.
4. The Applicant shall provide a certificate that taxes are paid to date of approval.
5. Payment of all fees, costs, escrows due or to become due. Any monies are to be paid within twenty (20) days of said request by the Board Secretary.
6. Subject to all other applicable rules, regulations, ordinances and statutes of the Township of Marlboro, County of Monmouth, State of New Jersey or any other jurisdiction.

BE IT FURTHER RESOLVED that the Board secretary is hereby authorized and directed to cause a notice of this decision to be published in the official newspaper at the Applicant's expense and to send a certified copy of this Resolution to the Applicant and to the Township Clerk, Engineer, Attorney and Tax Assessor, and shall make same available to all other interested parties.



Michael Shapiro, Chairman
Marlboro Township Zoning Board of Adjustment

ON MOTION OF: Chairman Shapiro

SECONDED BY: Saul Mankes

ROLL CALL: Saul Mankes, Kevin Royce, Robert Renna, Alon Salon and Chairman Shapiro

YES: 5

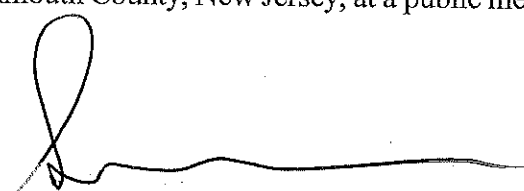
NO: 0

ABSTAINED: 0

ABSENT: 0

DATED: January 23, 2024

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Marlboro Township Zoning Board of Adjustment, Monmouth County, New Jersey, at a public meeting held on January 23, 2024.



Suzanne Rubinstein Administrative Secretary
Marlboro Township Zoning Board of Adjustment