

Zoning Board of Appeals Minutes, 03212018

**Zoning Board of Appeals
Minutes
March 21, 2018
Land Use Meeting Room**

Members in Attendance: Acting Chair Shawn Leary Considine, SLC; Robert Fuster, (RF); (Al Harper, AH); Robert Fuster Jr., (RFjr); and Cliff Snyder, (CS)

Staff present: Peggy Ammendola, Land Use Clerk, (PA); Gwen Miller, Land Use Director, (GM)

The meeting was recorded. Clarence Fanto of the Berkshire Eagle also recorded the meeting.

Chabad of Berkshire County, Inc., 17 West Street, informal presentation

Present were Attorney Lori Robbins of Heller and Robbins; Marc Volk of Foresight Land Services; EDM of Pittsfield (I was unable to find out who their representative was.); Attorney Maurice Cahillane from Springfield, MA; Rabbi Levi Volovik and his wife.

Attorney Robbins stated that Chabad of Berkshire County Inc. recently bought this derelict property which had formerly been used as a multi-family residence. Chabad is proposing to renovate the structure for an educational/religious use in the residential district. It would be a synagogue, school and a residence for the rabbi and his family.

Attorney Robbins said that Attorney Heller had discussed this proposal with the Building Commissioner, BJ Church, and Commissioner Church didn't think, based on Section 8.6 of the Zoning Bylaw, that she could issue a permit unless the Zoning Board approved. Section 8.6 is much more stringent for religious and educational uses and states that the density is limited to 4% and a 200 foot setback is required.

Attorney Robbins stated that there are two similar cases in years past in which the Zoning Board has rendered decisions. One was Austin Riggs at 33 Main Street and the other was St. Ann Church. With regard to Austin Riggs, the ZBA denied the petitioners' request. This was subsequently granted upon appeal. The Board approved the request of St. Ann Church which was appealed by abutters to federal court. The appeal was overturned as it was seen to be a violation of RLUIPA, the Religious Land Use and Institutionalized Persons Act, Pub. L. 106-274, codified as 42 U.S.C. § 2000cc et seq., which is a United States federal law that prohibits the imposition of burdens on the ability of prisoners to worship as they please and gives churches and other religious institutions a way to avoid zoning law restrictions on their property use.

Mr. Volk detailed the site plans showing the current conditions and the proposed project. There would be a two way traffic access to the back. The current setbacks are 70 feet to the west, 50 feet to the east, 96 feet in the front and 190 feet in the rear. The proposed setbacks would be 52 feet to the west, 47 feet to the east, 159 feet to the rear. The front would remain the same. Mr. Volk pointed out that the proposed plans are preliminary.

Attorney Robbins pointed out that with this property it would not be possible to meet the 200 foot buffer that is required under Section 8.6. The existing density of the structure is 5.4% which would increase to 10.9% with the proposed square footage. Twenty percent is allowed in the residential zone.

It is preferred that parking will be in the front and the intent is to screen the parking. Attorney Robbins said that they would probably ask for a variance for such parking

The rabbi's residence will be on the second and third floors and square footage will be roughly 5,000 square feet. The addition is almost double the existing.

If this size project were proposed for strictly a residential use, it would comply with zoning and be permitted by right.

Attorney Cahillane, who represented St. Ann Church when the Zoning Board's decision to allow the construction of a parish hall was appealed by abutters, discussed in depth the law with regard to a project such as this. Enforcement of the existing provisions of the zoning ordinance would violate Chabad's rights under the Religious Land Use and Institutionalized Persons Act of 2000 and G.L. c. 40A §3.

Rabbi Volovik addressed the Board stating that Chabad came from Brooklyn in 2004. He summarized the proposal and said that Chabad provides spiritual services for all faiths and backgrounds and that they are "people helping people".

Attorney Robbins said that they requested to have this informal presentation to get its guidance on how to proceed.

The Board felt that they should get Town Counsel's opinion.

Respectfully submitted,
Peggy Ammendola

