

Village of South Blooming Grove Zoning Board of Appeals
Resolution - July 25, 2024

NAME OF APPLICANT: CONGREGATION YETEV LEV D'SATMAR
SITE ADDRESS: 1 ROANOKE DRIVE
ZONING DISTRICT: RB RESIDENCE B
SECTION-BLOCK-LOT: 211-3-16
VARIANCES REQUESTED:

1. **FRONT YARD:** Reduce from 45 feet to 12.5 feet.
 2. **SIDE YARD:** Reduce from 30 feet to 13.5 feet.
 3. **BOTH SIDE YARDS:** Reduce from 80 feet to 42.2 feet.
 4. **MAXIMUM HEIGHT:** Increase from 35 feet to 42 feet and from 2 stories to 3 stories.
 5. **PARKING:** Reduce from 73 spaces to 29 spaces on-site.
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WHEREAS, the Applicant is the owner of that certain premises located at 1 ROANOKE DRIVE, which premises are identified on the Village's tax maps as SBL 211-3-16 (hereinafter referred to as "Site"); and

WHEREAS, the Site is located in a residential area of the Village that is predominantly developed with single-family residential dwellings, with some multiple family dwellings; and

WHEREAS, the Site was formerly improved with a single-family dwelling; and

WHEREAS, the Applicant previously redeveloped the Site as a House of Worship ("HOW"), which it needs enlargement to accommodate the Applicant's growing number of congregants; and

WHEREAS, the extent of the current proposed development is shown on a "Site Plan" prepared by the Applicant's engineer Michael A. Morgante, P.E. of Arden Consulting Engineers, PLLC; and

WHEREAS, the Applicant reported that the enlargement of the HOW is necessary because the number of congregants attending the HOW has increased such that a house of worship in the community where the Site is located is needed, however, nearly all sites within the community are developed with single-family homes and there are no larger buildings and/or lots within the community readily available for development to accommodate the immediate needs of the growing congregation; and

WHEREAS, even if there were other sites more suitable for a larger HOW, the Applicant reports that it is not feasible to develop another site given its limited financial resources; and

WHEREAS, the Site Plan was reviewed by Fusco Engineering for the Village as well as by Shepstone Management Company, as the Village's planning consultant, and is subject to further review, revision and approval by the Village Planning Board; and

WHEREAS, the layout of the proposed development of the Site as shown on the Site Plan indicates that the proposed HOW will result in certain non-conformities with the Village Zoning Code; and

WHEREAS, the Planning Board referred this application to the Zoning Board of Appeals (ZBA), which has the authority to grant relief, in the form of variances, from the requirements of the Village Zoning Code; and

WHEREAS, an application was submitted to the ZBA by the Applicant for the variances indicated above, which application appeared to assume RR District yard and coverage requirements would ordinarily apply as the default standards for the RB District; and

WHEREAS, the ZBA determined the application was reasonably complete and, following public notice, held a public hearing thereon on July 11, 2024, at which time members of the general public were allowed to offer their comments relative to the proposed development of the Site; and

WHEREAS, on July 11, 2024, the ZBA closed the public hearing, except it kept the record open for written / electronic submissions to be made over the following ten (10) days; and

WHEREAS, none of the negative comments that were offered during the public hearing and the ensuing comment period variances were by persons who gave any indication that they had any particular expertise or experience in planning, engineering and/or other expertise in any area relevant to the matter before the ZBA concerning the variances being sought; and

WHEREAS, the ZBA has duly considered public comments received as the ZBA members considered appropriate, notwithstanding the lack of expertise of the persons who spoke in opposition to the matter before the ZBA; and

WHEREAS, a review of the application by the Village Planner and Village Engineer determined RR District standards do not apply to the Site, and that the standards for the RB District should be considered in connection with this application; and

WHEREAS, under the RB Standards, and layout shown on the Site Plan does not require any area variances; and

WHEREAS, the Applicant proposed creating off-site parking as provided in §235-25.E of the Village's Zoning Law, and certain questions were raised by the public as to whether the area proposed for the off-site parking is legally suitable for such purpose; and

WHEREAS, the Village Code provides that the Planning Board has authority to waive the Village Code's requirements as to parking, and, in this regard, the Village Code provides:

§ 235-23 Minimum number of off-street parking spaces.

The minimum number of accessory off-street parking spaces shall conform to the requirements in Subsection C below, except that:

A. The Planning Board, in conjunction with site development plan approval, may permit a reduction in the number of developed parking spaces where adequate accessible reserve areas are available and designated on the plan as areas for overflow parking.

B. The Planning Board may reduce the required number of parking spaces upon demonstration by the applicant that the number exceeds the design-hour requirement and a demonstration that such reduction would not induce parking on public ways or result in hazardous conditions for vehicles and pedestrians within or proximate to the site. This reduction by the Planning Board may not exceed 25% of the normally required amount.

; and

WHEREAS, the Applicant should first seek relief from the Planning Board or the Village Board as to the minimum number of required off-street parking spaces that it will be required to provide for the expansion of the HOW; and

WHEREAS, the only remaining request for a variance to be considered by the ZBA is that pertaining to the height of the proposed HOW; and under the standards for the RB District, the building height limitation is thirty-five (35) feet; and

WHEREAS, the ZBA determined, for the purpose of review under the State Environmental Quality Review Act (SEQRA), that granting of a height variance constitutes an Unlisted Action, which does not require coordinated review with the Planning Board and/or other involved or interested agency(ies), and

WHEREAS, in considering whether to grant or deny the requested variance, the ZBA engaged in a balancing test, weighing the proposed benefit to the Applicant against the possible detriment to the health, safety and welfare of the community, as well as consider the five statutory factors enumerated in the applicable law; and

WHEREAS, on July 25, 2024, the ZBA reviewed Parts 2 & 3 of the short form EAF prepared by the Village Planner and reviewed by the Village Engineer, and the ZBA adopted Part 2 of the EAF and made a Negative Declaration whereby it determined, as stated in Part 3, that there will be no significant environmental impacts resulting from granting the requested height variance and allowing the Applicant to proceed with its application for such other permits and approvals as are necessary under the circumstances; and

WHEREAS, the ZBA herein has considered and addressed the requisite statutory factors in connection with making the within determination, which included giving due consideration to the comments and advice of its planning and engineering consultants, the ZBA members' knowledge of the location of the site and the relevant surrounding areas and also such material and relevant public input as received; and

WHEREAS, the land use provisions of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. §§ 2000cc, et seq., that were enacted to protect

individuals, houses of worship, and other religious institutions from discrimination in zoning and laws have been considered by the ZBA in connection with making the within determination; and

WHEREAS, the proposed use of the Site as a House of Worship is a protected activity under RLUIPA, which prohibits state and local governments, such as this Village, from imposing a land use regulation in a manner that imposes a substantial burden on the exercise of religion unless it is in furtherance of a compelling governmental interest and is the least restrictive means of furthering said compelling governmental interests; and

WHEREAS, requiring the Applicant to strictly comply with all applicable zoning requirements as to the limitation of the height of its HOW will impose a substantial burden on the free exercise of religion by the Applicant and its congregants, which is prohibited under RLUIPA; and

WHEREAS, in the matter before the ZBA the Village has not demonstrated, via the advice and guidance of the Village Planner and Village Engineer, that requiring strict compliance with the relevant zoning requirements (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest; and

WHEREAS, the ZBA considered whether the requested variance is substantial when compared to the surrounding community, would improve the physical and environmental condition and character of the neighborhood, and whether the requested variances were the minimum variances required to promote the legitimate interests of the Applicant in due regard to the interests of the general public, but subject to the law applicable to these considerations via RLUIPA; and

WHEREAS, the ZBA believes the substantial evidence in the record supports the rationale for the within determination, and the ZBA determined that granting the variance stated above to allow a HOW as tall as 42 feet and with 3 stories is the least restrictive means, and that there is no compelling interest that warrants the imposition of the limitation of a building height of 35 feet and two stories;

NOW, THEREFORE, BE IT RESOLVED, that the ZBA of the Village of South Blooming Grove finds the Applicant has submitted all required materials, and met all applicable requirements as set forth in the Zoning Code and applicable law, including for the granting of the requested variance to allow a HOW as tall as 42 feet and with 3 stories, subject to conditions set forth herein and/or limitations imposed by applicable law, based upon the following findings and determinations:

1. **Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the requested variances?**

Determination: No

Reasons:

- A. This is a proposed religious use that is an expected and appropriate use within a residential district such as where the Site is located. It is, in fact, a permitted use, by Village Board Special Permit, in all Village of South Blooming Grove zoning districts, indicating it has been determined to be in general harmony with all other uses in a residential district.
- B. Historically, it is not uncommon for a religious use, such as a House of Worship (“HOW”), to have a more dominate appearance and prominent appearance from the immediate surrounding area, which permits the building to be taller than the surrounding structures,.
- C. In large part, the requested variance is necessitated by the need to efficiently utilize the developable area of the Site, so as to allow the Applicant to have as large of a HOW as possible, while, at the same time, maximizing the area for parking and traffic circulation on the Site.
- D. Granting the variance to allow a three story building of 42 in height will not result in a detrimental change to the character of the neighborhood and/or the nearby properties given that the proposed use is religious facility that historically are prominent features in a residential neighborhood.

2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variances:

Determination: No

Reason: It is readily apparent that the surrounding area is fully developed, such that there is no nearby vacant land available for the Applicant to purchase at a reasonable price construct and relocate to a two story facility that would have the same area of gross usable space, so the more feasible and less burdensome alternative is to grant the a variances that will permit the Applicant enlarge its current facility by making the HOW three stories and 42 feet high.

3. Whether the requested variances are substantial:

Determination: No

Reason: The building height increase from 35’ to 42 feet and two stories to three may seem mathematically substantial, but a HOW with a larger footprint with and reduced height would be an inefficient utilization of the Site and it would not accommodate the needs of the Applicant’s increased membership.

Requiring the Applicant to undertake measures to reduce the size of the HOW and/or acquire additional land, where it available, are clearly unreasonable measures that would entail a substantial financial burden on the Applicant and its congregation. The Applicant's congregation does not have unlimited economic resources to buy adjoining properties and demolish the existing structures to accommodate the bulk table requirements of the Village Code.

The health, safety and general welfare underpinnings of the Village Code would not be undermined by granting the variances requested.

There is no compelling public interest that is compromised by allowing the proposed 30 high / three story HOW.

4. Would the variances have an adverse impact on the physical or environmental conditions in the neighborhood:

Determination: No

Reason: Granting the variance to allow a HOW as tall as 42 feet and with 3 stories does not have any adverse impact on physical or environmental conditions in the neighborhood. No scenic vista was identified, no impairment of community character will occur, and there is no compromise of community safety. Historically, the most physically prominent structures in residential areas, like here, are religious facilities.

5. Whether the alleged difficulty was self-created:

Determination: No

Reason: The pre-existing dimensions of the lots in this neighborhood are insufficient for a modest sized House of Worship without any area variances. The recent change in the demographics within the surrounding area have generated the need for neighborhood shuls, such as proposed. This change in the relevant community and resulting demand for neighborhood shuls, is not "self-created" by this Applicant.

6. Whether the variances will comply with other Village variance criteria.

Determination: Yes

Reason: The Village Board is obligated to apply the standards of the U.S. Religious Land Use And Institutionalized Persons Act. The interests of justice will be served by allowing the above variances. The variances requested will have no impact on population density and will generate no significant increase in traffic or other

adverse impacts, rather, they will establish, for the record and enforcement purposes, the standard that will be applicable.

DETERMINATION OF ZBA BASED ON THE ABOVE FACTORS:

Upon the foregoing reasons and evidence in the record of the proceedings before the ZBA, the ZBA further finds that the height variance is the minimum variance that should be granted to preserve and protect the character of the neighborhood and the health, safety and welfare of the community. The ZBA, therefore, hereby makes the following findings in connection with its granting the variances set forth above:

1. That the variance is not substantial in relation to the requirement and to other factors set forth herein and otherwise made applicable by relevant law. That the variance is the least restrictive means of allowing for the Applicant to increase the size of its HOW, so it can continue to provide a house of worship for its congregants to engage in their religious worship and practices.
2. That the effect of any increased population density which may thus be produced upon available services and facilities is not significant.
3. That a substantial change in the character of the neighborhood or a substantial detriment to adjoining properties will not be created.
4. That the difficulties cannot be alleviated by some method feasible for the applicant to pursue other than variances or that lesser variances cannot alleviate the difficulty.
5. That, in view of the manner in which the difficulties arose and considering all of the above factors, the interests of justice will be served by allowing the variances.
6. That the variance will not cause adverse aesthetic, environmental or ecological impacts on the property or on surrounding areas and will not harm the general health, safety or welfare.
7. The difficulty addressed by the variance is not self-created.

The ZBA did not identify any detriment that would result to the neighborhood or community by reason of allowing the land to be developed with the variance requested. Moreover, the ZBA, taking into consideration the above factors, finds that the benefit to the Applicant outweighs any potential detriment to the neighborhood or community, and, therefore the requested variance is hereby granted. Nonetheless, the granting of the requested variances shall not relieve the Applicant from obtaining any other necessary approvals, permits, etc. for the use and development of the site.

DETERMINATION AS TO ALTERNATIVES PURSUANT TO RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT:

Upon the foregoing reasons and evidence in the record of the proceedings before the ZBA, the ZBA further finds as follows in response to questions posed by interpretation the Religious Land Use and Institutionalized Persons Act (RLUIPA):

- 1. Is the building proposed the minimum size of facility that is reasonably tailored to satisfy the Applicant's present and reasonable future needs?**

Finding: All the proposed rooms are required for the proper religious operation of this congregation, which prevents the removal of any rooms or the reduction in room size.

- 2. Are other building lots available in close proximity to 1 Roanoke Drive, which are more suitable to development into a reasonably tailored House of Worship suitable for the applicant present and reasonable future needs?**

Finding: This was the only property the applicant owns and within the financial means of the congregation. This location provides for a site that is within walking distance to the members of the congregation.

- 3. As to each such building lot, will any of these lots fill the Applicant's needs without requiring as substantial relief from the Village's bulk zoning code as required to build a reasonably tailored House of Worship on 1 Roanoke Drive?**

Finding: This location provides for a site that is within walking distance to the members of the congregation and no other lots are available in the neighborhood without imposing a substantial financial burden on the Applicant.

- 4. As to each other building lot that will satisfy the Applicant's needs are available, are any of these lots economically feasible for the Applicant to acquire and develop?**

Finding: This location provides for a site that is within walking distance to the members of the congregation and no other lots are available in the neighborhood without imposing a substantial financial burden on the Applicant.

- 5. If there are no such lots that are available, then which of the zoning restrictions are incidental to compelling interest in imposing the burden on the Applicant's religious exercise in this particular proposal?**

Finding: As noted above, the proposed rooms are required for the proper religious operation of this congregation which prevents the removal of any rooms or the reduction in room size. All the rooms and room sizes are necessary for religious functions.

6. Does the action, notwithstanding the relief a religious user is entitled to under RLUIPA, comply with NYS-DEC Stormwater Regulation?

Finding: The site will disturb less than 1-acre of soil which exempts the applicant from completing a Stormwater Prevention Pollution Plan (SWPPP) with post construction controls. An Erosion & Sediment Control Plan is all that is required for this project. One has been prepared and will be followed.

NOW, THEREFORE, BE IT FURTHER RESOLVED

On a motion by member _____, seconded by member _____ and carried by a vote of **XXX** Ayes, **XXX** Naes, the Zoning Board of Appeals makes the foregoing findings and determinations, and it hereby:

- A. Adopts the findings and determinations set forth in the recitals set forth above.
- B. Grants a variance MAXIMUM HEIGHT: Increase from 35 feet to 42 feet and from 2 stories to 3 stories.
- C. All construction shall be subject to review by the Village Engineer and meet such standards as the Village Engineer shall impose in accordance with applicable law.
- D. The above does not relieve the Applicant from obtaining any other permit, approval, and/or license required in connection with the proposed use of the site.

Dated: July 25, 2024

Zoning Board of Appeals
Village of South Blooming Grove

Hon. Yehoshua Bittman, Chairman