

**Village of South Blooming Grove Zoning Board of Appeals
Resolution - September 7, 2023**

NAME OF APPLICANT: MOCHE HAPLERN, CONGREGATION AVODAS YISROEL KOSNITZ
SITE ADDRESS: 8 KINGSVILLE DRIVE
ZONING DISTRICT: RB RESIDENCE B
SECTION-BLOCK-LOT: 221-8-19

VARIANCES REQUESTED:

1. **FRONT YARD:** Reduce from 45 feet to 12.7 feet.
 2. **REAR YARD:** Reduce from 50 feet to 6.6 feet.
 3. **MAXIMUM COVERAGE:** Increase from 35% to 58.11%.
 4. **MAXIMUM BUILDING HEIGHT:** Increase from 35 feet to 38 feet, 8 inches.
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WHEREAS, an application was submitted to the Zoning Board of Appeals (ZBA) by the above identified Applicant for the variances indicated above on the assumption RR District yard and coverage requirements would ordinarily apply as the default standards for the RB District; and

WHEREAS, the variances sought to develop a shul, as shown on a site plan prepared by its engineer, was reviewed by Fusco Engineering as well as by its planning consultant, Shepstone Management Company; and

WHEREAS, the ZBA determined the application was reasonably complete and, following public notice, held a public hearing thereon on July 13, 2023 and continued through August 10, 2023; and

WHEREAS, over the course of public hearing and thereafter, the Applicant modified its variance requests to create greater conformance with zoning standards and already existing non-conformities; and

WHEREAS, the ZBA has duly considered public comments received; and

WHEREAS, in response to such public comments, the applicant has agreed to utilize property located at 4 Kingsville Drive to provide additional parking by demolishing existing improvements and constructing an improved parking area suitable to standards provided by the Village Engineer; and

WHEREAS, the ZBA has determined, for the purpose of review under the State Environmental Quality Review Act (SEQRA), that granting front and rear yard variances constitute a "Type II" action requiring no further review thereunder, and

WHEREAS, the ZBA has determined, for the purpose of review under SEQRA, that granting maximum coverage and building height variances constitute "Unlisted" actions thereunder; and

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WHEREAS, the ZBA has, of this same date and as Lead Agency, declared that granting of the requested maximum coverage and height variances will not have a significant adverse environmental impact on the environment, and

WHEREAS, in considering whether to grant or deny each of the requested variances, 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, the ZBA herein has addressed the requisite statutory factors in approving the each proposed variance after a review of the recommendation 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 ZBA considered whether the requested Variance were substantial when compared to the nearby buildings, would improve the physical and environmental condition and character of the neighborhood, and whether the requested variance was the minimum variance required to promote the legitimate interests of the Applicant in due regard to the interests of the general public; and

WHEREAS, the ZBA believes the substantial evidence in the record supports the rationale for the ZBA's determination to grant the requested Variance;

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 for the granting of the requested variances, subject to conditions set forth herein and/or limitations imposed by applicable law, based upon the following findings and determinations:

1. **Whether undesirable change would be produced in character of neighborhood or a detriment to nearby properties:**

Determination: No

Reason: This is a proposed religious use that is appropriate to the area. 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. Also, the 3,759 SF House of Worship (HOW) is not an excessively large structure that can be situated on the subject lot which was previously used as a residence. The HOW has large rear yard separation distances to any nearby residences. There are also existing trees and brush in the adjacent parcel that aid in screening the subject parcel. A larger footprint was utilized to obtain the required area for a HOW and thereby minimizing the height of the building.

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

Determination: No

Reason: The HOW must be located within this residential neighborhood to serve the large Jewish population and to allow for members to be able to walk to it during days of worship. The structure is modest in size and the size was chosen to minimize the footprint and associated variances.

3. Whether the requested variances are substantial:

Determination: No

Reason: The structure is modest in size and has been designed to minimize the zoning variances being requested. The building height increase from 35' to 38'-8" is not substantial. A larger footprint with a reduced height has been developed to have less of an impact on the neighborhood.

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

Determination: No

Reason: The structure is modest in size. The members will walk to the house of worship thereby minimizing traffic. The water & sewer use for a HOW is often less than a residential dwelling. Moreover, the applicant has agreed to provide significant additional parking at 4 Kingsville Drive,

5. Whether the alleged difficulty was self-created:

Determination: No

Reason: A majority of the parcels in this neighborhood have similar lot dimensions and areas; the subject parcel has a pre-existing lot area of approximately 0.5 acres. The pre-existing dimensions of the lots in this neighborhood make it difficult to design a modest size HOW without any area variances.

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

Determination: Yes

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Reason: The Village Board regulates religious uses and is obligated to apply the standards of the U.S. Religious Land Use And Institutionalized Persons Act, which ensures the interests of justice will be served by allowing the variances. The variances requested will simply establish, for the record and enforcement purposes, the standard that will be applicable. It will also have no impact on population density and generate no significant traffic or other adverse impacts.

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 foregoing variances are 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 variances are not substantial in relation to the requirement and to other factors set forth herein and otherwise made applicable by relevant law.
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 variances 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 variances are 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 variances 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

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variances are 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: The applicant is the Owner of the parcel and is willing to convert the building from a personal house to a house of worship. This applicant has already taken this into consideration and has provided the smallest footprint feasible while also allowing for the future growth of the congregation. 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 8 Kingsville 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. The subject site is in a safer location for pedestrians than other parcels, for example, that are closer to or along New York State Route 208 or Mountain Road.

- 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 8 Kingsville 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 under any different conditions.

- 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?**

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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 under any different conditions.

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 XXXXXXXXXX, seconded by XXXXXXXXXX and carried by a vote of XXX Ayes, XXX Naes, with one member being absent, that the Zoning Board of Appeals makes the foregoing findings and determinations, and it hereby grants the above-stated variances, which are subject to any conditions stated herein, and the within 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: September 7, 2023

Zoning Board of Appeals
Village of South Blooming Grove

Hon. Yehoshua Bittman, Chairman