

JULY 16, 2018

CUPON DETAILED COMMENTS TO VILLAGE OF CHESTNUT RIDGE

PROPOSED ZONING TEXT AMENDMENTS FOR PLACES OF WORSHIP

The proposed zoning text amendments are incorporated in a Memorandum from Nelson, Pope & Voorhis, LLC (Village Land Planning Consultant) to the Mayor and the Members of the Village of Chestnut Ridge Planning Board. The Memorandum is dated February 9, 2017 which the Village claims is a typographical error and should read February 9, 2018. This claim is debatable and verifiable by proper record searches, meeting dates and invoice payment dates as permitted by the Freedom of Information Act.

The Memorandum makes reference to input from Brooker Engineering who was retained by the Orthodox Jewish Coalition to represent **their** interests and concerns. At a Village Planning Board meeting, Maximilian Stach representing Nelson, Pope and Voorhis, LLC admitted during questioning from Planning Board Member, Mr. Antonio Luciano, that members of the Orthodox Jewish Coalition participated in meetings with Brooker Engineering and Nelson, Pope & Voorhis for the drafting of the proposed amendments.

The opening paragraphs of the Memorandum makes use of words like “reconcile, comply, remove impediments, least restrictive methods, as required by law” referring to the Religious Land Use and Institutionalized Person Act and other New York State Law. The implication that the Village is not in compliance or has violated these laws is vexatious and untrue. The Village Mayor and Board of Trustees should vigorously defend the Village and all its residents from these unfounded allegations and threats.

The Memorandum proposes to **add** new defined terms to Article XVIII of the Village Zoning Law as follows with **Comments in Bold Italics**:

RESIDENTIAL PLACE OF WORSHIP – The use of no more than 50% of the gross floor area of an existing one-family detached residence for regular organized religious assembly. ***The determination of 50% of the gross floor area ratio and the restriction to only EXISTING residences is arbitrary and irrational as detailed in further comments below. There is no minimum lot size nor any limitation to the number of residential places of worship in the Village. The Village Planning Board would issue the Conditional Use Permit.***

NEIGHBORHOOD PLACE OF WORSHIP – The use of a building or structure for regular organized religious assembly in a structure or structures with a total floor area up to 10,000 square feet and other than a residential place of worship. The use may take place in a structure with or without a residential component. ***The draft language is essentially allows up to 10,000 square feet of religious use without any residential use and without ANY lot size requirements or limitation to the number of neighborhood places of worship in the Village. The Planning Board would issue the Conditional Use Permit.***

COMMUNITY PLACES OR WORSHIP – The use of a building or structure designed for regular organized religious assembly in structures with a floor area of more than 10,000 square feet. ***Note that the building must be DESIGNED for religious assembly and the minimum lot size may be reduced to 3 or 4 acres from the currently permitted 5 acre lot size.***

The Memorandum then adds Conditional Use Permit **conditions** for the above newly proposed Place of Worship categories to Article XII as follows:

17. RESIDENTIAL PLACE OF WORSHIP

A. The building containing the residential place of worship shall comply with all applicable building codes of New York State and the zoning code of the Village of Chestnut Ridge. ***The applicable State building code and Village zoning code would only be for residential structures since the definition of Residential Place of Worship is restricted to existing one-family detached residences, regardless of the actual***

usage and number of people in the building. Note the absence of reference to fire and safety codes.

B. The maximum number of non-resident persons using the residential place of worship at any time shall be determined by dividing the net lot area by 400 square feet per person up to 60 persons maximum. **Using lot size to determine maximum capacity inside a structure is nonsensical. Further, note the 60 maximum only applies to non-residents. If 10 people occupy the structure as residents, the total people in the structure would be 70. How would one know who is and who is not a resident?**

C. No more than 50% of the gross floor area of the structure may be used for the religious assembly. **If one assumes a 1,500 square foot structure, then the religious assembly would be restricted to 750 square feet. Fitting 60 or more people safely into 750 square feet is not advisable. If one assumes a 3,000 square foot structure, then the density may be acceptable. This illustrates the nonsensical Article B above which limits the number of congregants by lot size. This clause does not say that the other 50% of the floor area must be used for residential purposes. Articles B and C are very poorly thought out and drafted with conditions that are not measurable and not enforceable.**

D. Accessory facilities and functions such as administrative offices, social halls, public baths, gymnasiums, indoor recreation facilities, schools and classrooms shall not be permitted in Residential Places of Worship except for the exclusive use of residents and where such are proposed to be available to non-resident congregants, the use shall be considered a Neighborhood Place of Worship. **Now one has to go back to the definition of residential place of worship wherein no more than 50% of the floor area can be used for regular organized religious assembly and Article C which says that no more than 50% of the floor area may be used for the religious assembly. So this would mean that up to 50% of the remaining floor area could be used for the above accessory uses as long the facilities are only used by residents in the one-family detached residence even though residential use is not required. Article B, C and D are unenforceable and render the meaning of residential place of worship to be unintelligible.**

E. This article allows a residential place of worship to conform to only 80% of the minimum lot area requirement AND allows for 5% greater floor area ratio AND allows for extra 10% lot coverage than for a simple single family residence. ***These extra property rights and allowances create a privileged class of owners/users which is not equitable or justifiable. Nor are these extra rights and allowances required by any federal, state, county, town or village law. In fact, such extra rights and allowances likely violate the United States Constitution.***

F. This article states that “all parking should be provided on the lot on which the neighborhood place of worship is located”. ***Another fine example of poor drafting – applying “neighborhood” in the residential section of the code! The article goes on to say that parking can be within 1,500 feet walking distance from the residential place of worship. If on street parking is allowed in that location, then street parking would be permissible. The proposed zoning code changes cannot take away on street parking rights of residents. This parking clause gives the appearance of addressing this serious parking problem already experienced by many people in the Village, but it is nothing more than appearance.***

G. No parking or loading shall be permitted between the structure and any street line on which the property fronts. ***This is a real head scratcher! Most driveways are located between the structure and the street line. So is parking or loading on the driveway not allowed? Or is the intent to prohibit parking on the grass between the street line and the structure, but you can do so on the sides and back of the lot? This drafting giving the appearance of regulation but is in fact wide open to interpretation – which means it is not enforceable.***

H. All outdoor lighting shall be shielded in a manner to direct lighting away from adjacent properties and the public street. Exterior lighting shall be limited to the minimum requirement by code for safety. ***No kidding! The first reference to safety!***

I. Architectural Review Board approval shall be required to ensure that all structures shall be in character with the surrounding neighborhood, and be of a similar design aesthetic to a one-family residence. ***The definition of residential place or worship says for existing structures, so what is the Architectural Review Board needed for? Given the relaxed lot conformance requirement and the extra floor area and extra***

lot coverage, one can assume that existing structures will have additional structures constructed for religious assembly or other accessory uses. The history in the Village permitting this type of additional construction is not enviable. The proposed zoning laws have not properly contemplated these and other complexities.

J. No regularly scheduled religious assembly may be held between the hours of 12:00 AM and 6:00 AM. For the purpose of this provision, regularly scheduled shall mean occurring in greater frequency than three times per calendar year. ***So if the religious assembly is not regularly scheduled, it can occur any time day or night and as frequently as the irregular schedule allows. This is how a seeming restriction becomes a loophole to amble through.***

L. No space within the residential place of worship may be rented to or utilized by non-congregants or used for meetings or functions not directly associated with the place of worship. ***This would be enforceable how?***

M. One building mounted or mailbox hang sign is permitted with no greater than 1.5 square feet on each facing. Any non-English text shall be repeated in English and the appearance and lighting of the sign, if necessary, shall be approved by the Planning Board. ***Very encouraging that the Planning Board has been entrusted with such an important responsibility – if necessary.***

N. Use of any outdoor areas of the property shall be limited to parking and passive recreational use only, which may include a small jungle gym for children, benches and picnic tables. ***Recall above the make-believe parking restrictions. Here it is clear that outdoor areas can be used for parking. Try to issue a violation for parking on the grass and see what the Court says given this language.***

O. The Planning Board may impose such additional restrictions and conditions on the location of parking spaces, landscaping and/or fencing to screen the residential place of worship from adjacent residential properties, outdoor lighting, and other conditions of use of the residential place of worship as, in the judgement of the Board, are necessary for the residential place of worship to be able to operate in a manner that is consistent with public safety and neighborhood character. ***First, this should not be the task of the Planning Board. Passing judgement on Village zoning***

code conformance is the task of the Zoning Board of Appeals which has the proper organization and quasi-judicial powers to opine on such issues. CUPON has publicly stated that the proposed zoning law amendments for places of worship are simply a blanket variance which usurps the proper role of the Zoning Board of Appeals. Second, while this clause gives the appearance of restrictions, judgement and balance of land use rights, the language is restricted to minor items like landscaping, fencing and lighting AND the judgment is tilted towards “are necessary for the residential place of worship to be able to operate”.

P. The Planning Board shall have the authority.....to waive any bulk provisions of the zoning chapter, except for the floor area and coverage requirements already relieved herein, by up to 3% by supermajority. ***Very interesting and unclear Article. Bulk is comprised of floor area, lot coverage and the relevant zoning density allowed. Seems the 3% additional building rights are on top of the already granted additional floor area and coverage allowances. Most importantly, why is this task assigned to the Planning Board? This waiver/variance decision should be under the jurisdiction of the Zoning Board of Appeals.***

Q. No cooking facilities will be permitted, other than residential cooking facilities and warming kitchen equipment for use by the congregants of the residential place of worship. No catering facilities are permitted and no non-religious assembly shall be permitted. ***At first glance it looks like no cooking will be permitted, but then it says it permitted by the congregants and the residents, if there are any. Recall per Article D above, the residential place of worship may not even have any residents. This make-believe restriction is unenforceable.***

R. A narrative summary shall be submitted, providing the anticipated number of congregants, square footage of the residential and worship spaces, days and hours of services, and number of parking spaces provided. ***This is woefully inadequate. The Village should develop an application form with relevant questions about the religious entity and site plan, floor plan, safety plan, parking plan and all other items required to determine if the request for permit should be granted or not. The applicant should sign and state that all information provided is accurate and truthful. There should be an application fee and allowance for Village compliance***

personnel to visit and inspect the facilities. This article does not state who in the village grants the conditional use permit, although the Memorandum suggests that the Planning Board is intended to issue the permit. Once again, this task is way outside the intended role of the Planning Board.

S. Compliance. Assigned to the Planning Board which is not correct.

T. Grandfathering. The provisions of this Section shall not apply to any application for a residential place of worship, which is, as of the effective date hereof, the subject of a Stipulation of Settlement or Order of a court of competent jurisdiction. Many people have tried to interpret this clause. Some say it means no grandfather rights for existing residential places of worship operating without any use permit. Others say such existing residential places of worship will automatically have grandfather right UNLESS they are already subject to a Stipulation or Court order. The Village and its Attorney should say what they intend this article to mean, then one can evaluate the merits. There appear to be approximately 39 such active places of worship in the village which makes the application of this Article very significant.

U. Renewal. The permit survives for two years and is renewable as long as there has been no violation or change at the discretion of the Building Inspector, who can make the decision “without the requirement of a further public hearing”. This is the first and only reference to a public hearing in the proposed zoning amendment! Perhaps the public hearing process was included in earlier versions but later deleted?

18. NEIGHBORHOOD PLACE OF WORSHIP

Most of the above comments are the same for neighborhood places of worship. There is no minimum lot size and the structures may be up to 10,000 square feet and there is no residential requirement. Accessory uses such as religious schools, social halls, administrative offices, public baths, gymnasiums and indoor recreation facilities may be provided as long as they as “subordinate in size and function” to the religious use. The parking requirements and grandfathering articles are as vague as for residential places of worship.

19. COMMUNITY PLACES OF WORSHIP

Virtually the same as the above neighborhood place of worship article, but instead of the Planning Board issuing the Conditional use Permit, the Village Board would make such decision which once again usurps the proper role of the Zoning Board of Appeals. This type of religious place of worship is currently included in the Village zoning laws and requires at least 5 acres of land. This and other requirements have been strictly enforced by the Village in the last several years, which begs the important question – why the sudden need for additional house of worship categories with extra property building rights and other relaxed poorly drafted conditions?