

ZONING BOARD OF APPEALS
TOWN OF RAMAPO

SUPPLEMENTAL
NARRATIVE SUMMARY

HILLSIDE MIKVAH
Tax Lots 62.18-2-1.1, 1.2 and 62.13-2-3

A narrative summary for the Hillside Mikvah application was submitted by Civil Tec Engineering and Surveying. The narrative described the project and identified the requested variances.

This supplemental narrative will address the reasons justifying the requested variances.

As noted in the application and the narrative summary, the applicant seeks to construct a public mikvah at the site. A mikvah is a facility for ritual cleansing in accordance with Jewish religious law. As such, it is a religious facility protected by New York State case law and federal statutory law. The proposed mikvah is classified as a “Community Mikvah” under the Ramapo Zoning Code, and is a special permit use in the applicable R-50 zone. The three existing tax lots will be combined into a single tax lot. (A fourth tax lot, in Bergen County, New Jersey, will remain separate. It is landlocked and will remain under the ownership and control of the applicant.)

The following variances are requested:

<u>Dimension</u>	<u>Required</u>	<u>Proposed</u>
Front Setback	50ft	31ft
Front Yard	50ft	31ft
Development Coverage	20%	45% (35% if NJ lot considered)

Criteria for Variance

One of the purposes of a zoning board of appeals, and of the ability to grant variances, is to provide a “safety valve” where the strict application of a zoning code cannot allow an otherwise appropriate use of property because of the peculiar circumstances applicable to that property. For this reason, any municipality that adopts a zoning code must also establish a board of appeals. *See, 2 Salkin, New York Zoning Law and Practice (3d ed.),*

§§27:07 – 27:10; *McKinney's Town Law*, Practice Commentary to § 267-a; Town L. § 267.2; *McKinney's Village Law*, Practice Commentary to § 7-712-a; Village L. § 7-712(2).

In making a determination to grant an area variance, a board of appeals “shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.” Town L. § 267-b.3(b); Village L. § 7-712-b.3(b). The board must also consider five questions when engaging in this balancing test. The questions, and the applicant’s responses, are set forth below:

(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 area variance”:*

The applicant has worked with CDRC, and, to a lesser extent, with officials of the neighboring Borough of Upper Saddle River, to achieve the current site plan. Originally, the building was to be further from the road, oriented on a North-South axis, and located in the eastern portion of the site. A large parking field, visible to the road, was centered on the site. This plan would not have needed front yard and front setback variances, although variances would still have been needed for development coverage and for rear setback. A copy of the original layout plan is attached as Exhibit 1.

The Borough of Upper Saddle River objected to this layout for a number of reasons, including the intrusion into the rear yard, the amount of development coverage, and the potential impact on a stream immediately to the East. A copy of the Borough of Saddle River’s letter of objection is attached (without attachments) as Exhibit 2.

Working with CDRC, the project was revised. The building was re-oriented to an East-West axis and centered on the site, as suggested by Upper Saddle River’s consultants. This revision moved the building further from the rear lot line and from homes in Upper Saddle River, moved most of the parking to behind the building, reduced the amount of development coverage, and provided other improvements. The price, for this, however, was that the building was moved closer to the road.

The applicant believes that the trade-off of variances for front yard and front setback variances is appropriate. The current layout uses the building to protect neighbors across Hillside Avenue. The building entrance, and thus most activity, faces the rear of the site. Since most activity will occur at night, this is a significant mitigation of noise and light impacts.

As noted, the amount of development coverage has also been reduced, from 50% to 45% (or to 35% if the land area in the New Jersey portion of the site is considered). It is simply unrealistic, if not impossible, for a permitted institutional use of any kind to conform to the development coverage allowance of 20%. These uses require parking areas and driveways, along with internal sidewalks and other impervious surfaces. Yet, the maximum allowable development coverage for institutional uses is exactly the same as for single family houses: 20%. The problem, therefore, is not with the project, it is with the Code.

Under New York law, schools and religious institutions receive favored zoning treatment. New York courts have long held that all schools are beneficial to the public welfare, and, to

the extent that zoning laws are valid only if they are reasonably related to the public health, safety, morals or welfare, restrictions on schools are difficult to support. 1 New York Zoning Law and Practice, § 11.08; see, *Concordia Collegiate Institute v. Miller*, 301 N.Y.189 (1950); *New York Institute of Technology, Inc. v. Ruckgaber*, 65 Misc.2d 241, 317 N.Y.S.2d 89 (Sup. Ct. 1970).

When dealing with zoning variances, the Court of Appeals has held:

The presumptive value of religious facilities must be balanced against any actual detriment to the public health, safety or welfare, bearing in mind that typical hazards of traffic congestion, noise, diminution in property values, and the like, are generally insufficient to outweigh the public benefit of religious institutions and the constitutional protection to which such organizations are entitled.

Matter of Westchester Reform Temple v Brown, 22 N.Y.2d 488, 496 (1968), also cited in *High Street United Methodist Church v. City of Binghamton*, 715 N.Y.S.2d 279, 283 (Sup. Ct., Broome County, 2000).

In that same case, the Court of Appeals went on to say, “where an irreconcilable conflict exists between the right to erect a religious structure and the potential hazards of traffic or diminution in value, the latter must yield to the former.” *Westchester Reform Temple*, at 497, reiterating its holding in *Matter of Diocese of Rochester v. Planning Board*, 1 N.Y.2d 508.

(2) “whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance”:

As discussed above, the applicant has made significant changes to its original layout in order to reduce the number and magnitude of the variances needed. The mikvah must have enough room to serve its clientele and to have appropriate occupancy to operate in a financially feasible manner.

The mikvah will be operated by a not-for-profit corporation. While it does not need to make a profit, it must cover its operating expenses and plan for future needs. The operating entity has determined that the proposed size of the mikvah is appropriate to serve its community and to operate efficiently.

Reducing the size of the mikvah is not feasible. The number of parking spaces, for example, is driven by the number of shower heads to be provided. At 53 shower heads, 57 spaces are required. 57 spaces is approximately equal to 17,100sf (@ 300sf/space). Thus, the parking spaces, alone, take up 12.4% of the overall site. This is more than one-half of the allowable development coverage, and does not include driveways, walkways and other non-building surfaces.

The current building footprint is 18,517sf, or 13.47% of the site. Again, the footprint, alone, constitutes more than one-half of the allowable coverage.

At 20% development coverage, the Code limits this site to 27,488.8sf of impervious surface. In order to come close to the allowed coverage, both the building footprint and the number of parking spaces would have to be reduced by about one-third, to 35 shower heads. Such a reduction is substantial, and would make the project economically unfeasible.

(3) *“whether the requested area variance is substantial”*:

Whether a requested variance is “substantial” is more than simple arithmetic. It requires an understanding of the general area and of the existing conditions. *See*, 2 New York Zoning Law and Practice, § 29:15.

The requested front yard and front setback variances are mitigated by the use of the building to shield activity. They will be further mitigated by landscape screening.

The development coverage variance should be viewed against the larger lot area (including the New Jersey portion) and the fact that the Zoning Code’s coverage requirements are inappropriate for institutional uses in residential districts.

(4) *“whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district”*:

The variances are appropriately mitigated with landscape screening (front yard and front setback) and stormwater management facilities that will achieve zero net incremental runoff when comparing pre-construction and post-construction rates.

(5) *“whether the alleged difficulty was self-created”*:

The difficulties result from the applicant’s attempts to respond to concerns from a neighboring municipality and from the Zoning Code’s overly restrictive controls over development coverage.

On balance, therefore, the requested variances are beneficial to both the applicant and the community.

Relief requested

Accordingly, the applicant requests the following variances:

<u>Dimension</u>	<u>Required</u>	<u>Proposed</u>
Front Setback	50ft	31ft
Front Yard	50ft	31ft
Development Coverage	20%	45% (35% if NJ lot considered)

Dated: February 1, 2021
New City, New York

EMANUEL LAW PC

 By: _____
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