



Ira M. Emanuel, Esq. | Amy Mele, Esq. *Of Counsel*
Counsel to Freeman & Loftus, RLLP

Four Laurel Road
New City, NY 10956

Info@EmanuelLaw.com

www.EmanuelLaw.com

Tel: 845-634-4141

ZONING BOARD OF APPEALS
VILLAGE OF CHESTNUT RIDGE

NARRATIVE SUMMARY

THE WELLINGTON EDUCATIONAL INITIATIVE
Tax Lots 68.05-1-12, 13, 14 and 22

The Wellington Educational Initiative (“WEI”) has been formed to provide a proper campus for the education of Jewish children. WEI has acquired a parcel at the corner of Summit and Red Schoolhouse Roads in the Village for that purpose. This parcel is of sufficient size, and has appropriate access, to host two school divisions in a setting similar to that of typical suburban schools.

The parcel consists of four existing tax lots that will be merged. Previously, the parcel had been proposed for further subdivision into single family lots. That project never reached fruition, and the parcel has stood vacant for many years.

The parcel has a total gross lot area of 23.8 acres (23.04 acres, net). It is in an R-25 zoning district, which allows schools by special permit of the Board of Trustees.

The site is bounded by Red Schoolhouse Road on the East, De Salvo Court and single-family residences on the South, Fleetwood Elementary School on the West, and Summit Road on the North. Red Schoolhouse Road is a County highway (Route 41). Summit Road is an east-west thoroughfare. An interchange with the southbound Garden State Parkway extension of the New York State Thruway is directly opposite the site, having a signalized intersection with Red Schoolhouse Road.

Transport of Rockland bus route 92 passes directly in front of the site on Red Schoolhouse Road. There are no sidewalks in the area, other than an older, overgrown sidewalk along portions of Summit Road.

The surrounding area is mixed. There are residences to the North, Northwest, and Southwest. Fleetwood Elementary School abuts the site to the West, and The Promenade, an assisted living facility, is across Red Schoolhouse Road. Also across Red Schoolhouse Road is a multi-tenanted office building. Light industrial uses are to be found further north and further south on Red Schoolhouse Road. Chestnut Ridge Middle School is nearby, north of Summit Road.

WEI proposes a campus for two schools: a girls' elementary school and a boys' secondary and post-secondary school (hereafter referred to as the secondary school). The girls' school will be a preK-8 day school with up to 1,000 students. The boys' school will be a residential secondary school for up to 328 students. Dormitories will be provided.¹ Parking appropriate to the size and use of the schools is proposed.

The proposed site plan provides for an integrated internal road network for safe passage, as well as for emergency access. However, the two divisions will be separately administered. Little to no day-to-day interaction between the two divisions is expected, although the schools will coordinate activities to assure that no conflicts arise. Operational narratives for each of the schools have been provided to the Planning Board.

The building sites and configurations have been designed to blend into and to take advantage of the site topography. The site generally slopes upward away from Red Schoolhouse Road to the West. School buildings and parking area have been located in areas of more gentle slopes. Buildings take advantage of the slopes by having exterior entrances on either side. Site improvements are set well back from the respective roadways in order to provide privacy to the students and to minimize adverse visual impacts on the streetscape.

Traffic Impacts

The applicant submitted a traffic impact study prepared by Provident Design Engineering, dated August 15, 2019, to the Planning Board. Subsequently, the applicant joined with other stakeholder/developers on Red Schoolhouse Road to commission a corridor-long traffic impact study of the road, which was conducted on behalf of the Village by Maser Consulting (now Colliers Engineering). The Maser Study built on the applicant's traffic study, and provided its own, independent, review.

The Maser Study laid out a master plan for addressing traffic congestion issues along the corridor, running from Williams Road to the New Jersey border. It included recommendations to be implemented by individual sponsoring stakeholders as well as longer-term, regional projects. In this way, the Maser Study sought to assure that improvements made for individual projects would foster, or at least not interfere with, longer-term solutions.

The applicant participated fully in the preparation of the Maser Study. It has agreed to adopt and implement those portions of the Study that showed traffic generation impacts from the WEI project, and also to provide land to widen the Red Schoolhouse Road right of way to accommodate future road improvements by others.

¹ Dormitories are expressly permitted as accessory uses to schools of general instruction, as here. Zoning Code, Art. XII, § 2.

Among the road improvements to be undertaken by WEI are:

- widening of Red Schoolhouse Road to allow construction of left turn lanes at the intersection of the elementary school driveway and Red Schoolhouse Road;
- construction of shoulders on both sides of Red Schoolhouse Road between Summit Road and the Garden State Parkway exit ramp; and
- installation of a multi-use (pedestrian and bicycle) path on the West side of Red Schoolhouse Road.

In addition, WEI will agree to provide land along its entire Red Schoolhouse Road frontage, from Summit Road to DeSalvo Court, to accommodate a potential future traffic signal at the intersection with Summit Road and potential future improvements to the Garden State Parkway exit ramp. These improvements are not needed to accommodate WEI's traffic, and will be built by others. The land dedication will significantly help those improvements become reality.

Separate from the Maser Study, WEI has also agreed to replace the existing sidewalk along its frontage on Summit Road.

More details of the improvements are shown on the plans submitted herewith.

The author of the Maser Study, Phillip Grealy, Ph.D., P.E., has approved WEI's plans, as set forth in a letter to the Planning Board, submitted herewith.

WEI's plans received preliminary site plan approval from the Planning Board on August 5, 2021.

Subdivision

The parcel currently consists of four tax lots. These tax lots will be consolidated into one as part of the site plan proposal. An application for "re-subdivision" has been made to the Planning Board.

Special Permits

Both the school and the dormitory require special permits from the Board of Trustees.

GML and SEQR Status

The site is located adjacent to County Highway 41 (Red Schoolhouse Road) and the Garden State Parkway extension of the New York State Thruway. The project must therefore be referred to the Rockland County Planning Department for review for its regional and county-wide impacts, if any. No other referral features are implicated.

The project is a Type I action under SEQR, as it proposes a total of approximately 203,028sf of new floor area.² The Planning Board, as lead agency, has conducted a thorough environmental review based on a Full Environmental Assessment Form. At its meeting of August 5, 2021, it issued a negative declaration.

Variances Required

The following required variances have been identified by the applicant:

<u>Dimension</u>	<u>Required</u>	<u>Proposed</u>
Front Yard	100 ft	38.0 ft (Elementary Parking vs East front lot line)
Side Yard	100 ft	71.6 ft (Parking vs South lot line)
Rear Yard	100 ft	48.2 ft (Parking vs Southwest lot line)
Height (Dormitory) ³	2 stories	3 stories
Parking spaces @ 1/300sf	547	213
Loading berths	6	4

Parking in required front, side and rear yards

The front yard, side yard, and rear yard variances all relate to the location of parking spaces for the elementary school. The applicant also seeks variances to allow parking in these required yards. The front yard variance is for 15 parking spaces opposite the Garden State Parkway exit ramp. The side yard variance is for four parking spaces at the southern end of the elementary school building. The rear yard variance is for 11 spaces at the southern end of the main parking lot for the elementary school. The variances for side yard and rear yard parking affect an abutting commercial nursery use. The applicant proposes landscape screening to mitigate the impacts of these variances.

The height variance is for the number of stories of the dormitory buildings, only. It is requested in order to efficiently use the sloped topography. Note that the overall height of the buildings, in feet, complies with the bulk requirements.

The Zoning Code uses two ratios to compute the required number of parking spaces: the first is based on the overall floor area of the buildings, the second is based on the number of student seats. The Code requires that the larger number be used. Here, the Zoning Code requires a total of 547 spaces based on floor area, and 186 spaces based on student population. As with many other schools, the number of parking spaces required using the floor area method far exceeds the number actually needed or reasonably anticipated. The proposed plans show 213 spaces, which includes 67 overflow spaces. This parking complement conforms to the student seat calculation method.

² 6 N.Y.C.R.R. § 617.4(b)(6)(v).

³ Zoning Code Art. XII, § 2.D.

The proposed secondary school is a residential school. Although some students will be of driving age, none will be permitted to have vehicles on campus. The secondary school will employ 37 full-time and 5 part-time faculty and staff.

The proposed elementary school is a day school. Most students will arrive and depart via bus, with usual exceptions on a daily basis for doctor's appointments, tardiness, etc. It will have 73 full-time equivalent faculty and staff, of which 48 are half-time, and two are night custodians.

Based on the foregoing, the two schools, combined, need 100 parking spaces for faculty and staff on a daily basis (37 at the secondary school, plus 73 at the elementary school). 213 parking spaces are provided: 50 at the secondary school building; 36 at the dormitories; and 127 at the elementary school (96 standard and 31 overflow). It is anticipated that the dormitory parking spaces will be used almost exclusively during move-in/move out periods, as all deliveries, visitors, and car services will be directed to the secondary school building. If needed for after-school events, the elementary school will have access to the parking spaces at the dormitory.

The requirement for loading berths is based solely on floor area: 1 berth for the first 20,000sf plus 1 additional berth for every additional 40,000sf. It bears no relationship to the needs or requirements of the facilities. The project architect, in conjunction with school administrators, has determined that the number of loading berths provided is appropriate for the proposed uses. There will be one berth for the elementary school, at its South end; one berth for each of the two dormitory buildings, at their South ends; and one berth at the secondary school building, at its South end. The locations of these berths have been determined in relation to the interior layouts of the respective buildings, and also to minimize the impact of loading activities on adjoining roads and properties.

Deliveries to the two school buildings will be for school supplies and food. Deliveries to the dormitories will be for linen service (there are no kitchen or dining facilities in the dormitories).

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”:

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.

The immediately surrounding area consists of a mix of single-family homes, an assisted living facility, an office building, the Garden State Parkway, Chestnut Ridge Middle School, and Fleetwood School, a large public elementary school. Fleetwood School has approximately 596 students on its 11.1 acre campus, a ratio of 53.7 students per acre.⁴ The proposed school buildings are on a 23.76 acre campus with a total of 1,332 students, or 56.06 students per acre. Chestnut Ridge Middle School has almost no screening along one of its access roads, Ferruzza Drive, and is clearly visible from homes across the street. Its baseball field has no or minimal buffers against residences along Garrett Ct. (According to Rockland County GIS mapping, any buffers are maintained by individual homeowners, not by the school.)

By contrast, the proposed school has extensive landscape screening along all lot lines. The project was modified at an early stage to remove a parking area that had been proposed near residences to the West. In the two locations where the proposed campus abuts an

⁴ Source: N.Y.S. Education Dept, (data.nysed.gov) 2019-2020 school year (latest available).

established residential area (at the northwest and southwest corners of the site), the site is designed to maximize distance and screening from the existing dwellings. Great care has been taken to reduce the visual impact of the school buildings so that they do not adversely impact the architectural scale and character of the surrounding area.

(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”:

The design of the site is dictated by its topography. There is a significant amount of grade change (75 feet +/-) on the property, as the topography slopes from northwest to southeast. There are several areas of slopes of 15% or greater. The proposed buildings are located, as much as possible, in the flatter areas to minimize impacts to steep slopes and to work with the sloping topography. The buildings are designed so that the finished floor elevations on the west side of the buildings are set one floor higher than the east side. This significantly reduces the amount of retaining walls and grading.

The Front Yard, Side Yard, and Rear Yard variances all arise from site constraints created by slopes to the West and a wetland in the southeast corner of the parcel. The applicant sought to work with these site constraints in order to minimize site disturbances. In doing so, and in order to provide the amount of parking necessary for the schools to function properly (especially the elementary school), some encroachment into otherwise required yards became necessary. Relocating these parking areas outside of the affected yards would require greater disturbance to existing slopes, with attendant potentially adverse environmental impacts. The variance for parking in a required yard stems from the same considerations.

Variances for the number of parking spaces and loading berths are sought simply because the magnitude required by the Zoning Code is simply not needed. The number of parking spaces is consistent with the Zoning Code’s requirement based on the number of seats. However, the number required based on gross floor area would create significant areas of unused pavement that are better left in a more natural state.

The variance for the heights of the dormitories, like those for required yards, is the result of the applicant working with the existing topography. The dormitories meet the Zoning Code’s measured (feet) requirement. The additional story is built into the hillside, and will be exposed on the East side of each building. If this floor area was to be built at grade, in order to adhere to the two-story maximum, then the building footprints would be larger, with consequent impacts.

(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.

In the context of the site, the requested variances have minimal impact on surrounding properties. None of the requested variances are in areas that abut existing single-family homes. The variances allow for better screening and protection of these nearby homes, and

of the adjacent Fleetwood Elementary School, while also allowing a functioning campus that is sensitive to the existing conditions.

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

The Planning Board has studied the environmental impact of the project as lead agency under SEQRA. In doing so, it identified a number of areas of potential impact:

- Impact on Land
- Impact on Surface Water
- Impacts on Air
- Impacts on Plants and Animals
- Impact on Aesthetic Resources
- Impact on Transportation
- Impact on Energy
- Impact on Noise, Odor, and Light
- Consistency with Community Character

After identifying these areas of potential impact, the Planning Board reviewed numerous studies prepared by the applicant and by the Village with respect to all aspects of the project. The project, as studied, included the variances requested herein. The result of the Planning Board’s review was a finding that the project, including the requested variances, would have no significant adverse impacts on the environment.

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

The difficulties stem from the applicant’s desire to maintain significant undisturbed woodland areas on the site while providing adequate and appropriated resources for the schools to flourish.

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 Yard	100 ft	38.0 ft (Elementary Parking vs East front lot line)
Side Yard	100 ft	71.6 ft (Parking vs South lot line)
Rear Yard	100 ft	48.2 ft (Parking vs Southwest lot line)

Height (Dormitory) ⁵	2 stories	3 stories
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Parking in required front, side and rear yards

Dated: August 13, 2021
New City, New York

EMANUEL LAW P.C.



By: _____
Ira M. Emanuel
Attorneys for applicant

⁵ Zoning Code Art. XII, § 2.D.