

**CITY OF EGG HARBOR
MUNICIPAL LAND USE BOARD
October 19, 2021
Live Meeting
7:00 P.M.**

A Live meeting of the Egg Harbor City Municipal Land Use Board was held on October 19, 2021. Those in attendance were Council Representative Karl Timbers, Chairman Jack Peterson, Vice Chairman Todd Warker, Egg Harbor City Fire Department Representative John Garth, Regular Members; Michael McKenna, Keith Mullineaux, Alternate #1 Andrew Dixon, Alternate #2 Dashawn Hare, Leo Manos Esquire, Land Use Board Engineer Ryan McGowan and Secretary Donna Heffley. (Not Present were Mayor Jiampetti, the Mayors Representative Marie Johns, Regular Members Dennis McKenna and Gladys Torres).

Chairman Peterson opened the meeting with the flag salute.

Chairman Peterson called the meeting to order and made the following announcement.

This meeting was advertised pursuant to the NJ Open Public Meetings Act N.J.S.A. 1:4-6 Seq. Notices were sent to official publications for the Egg Harbor City Municipal Land Use Board; the Press of Atlantic City, the Egg Harbor News, the Atlantic Current and the Hammonton Gazette. A copy of the notice was posted on the bulletin board of the Egg Harbor City Municipal Building.

Chairman Peterson directed the Secretary to enter this public announcement into the minutes.

Mr. Dixon arrived at the meeting.

Roll Call: Mayor Jiampetti absent, Mr. Timbers present, Chairman Peterson present, Vice Chairman Warker present Mr. Garth present, Mr. Mullineaux present, Michael McKenna present, Dennis McKenna absent, Mrs. Torres absent, Mrs. Johns absent Mr. Dixon present, Mr. Hare present, Mr. McGowan present, Mr. Manos present and Secretary Donna Heffley present.

Approval of Minutes: September 21, 2021

Upon motion made by Mr. Warker, seconded by Mr. Michael McKenna and carried the September 21, 2021 Minutes were approved.

Approval of Resolutions: 4-2021

#2021-01 LUB
Egg Harbor City Partners, LLC
600 White Horse Pike Rehabilitation Area
Egg Harbor City, NJ 08215
Block 319, Lot 5
Minor Subdivision Approval

Upon motion made by Mr. Warker, seconded by Mr. Mullineaux and carried.

Mr. Manos, Esq. addressed the Board and noted Mayor Jiampetti is not present and Council Representative Karl Timbers will step down for this application.

Mr. Manos also noted a few letters were received concerning this application. Letters are not admissible and are considered hear say. The law states the board Secretary is to accept them and add them to the file. Letters received were from James Farber, Joseph and Stephanie Kuehner and Al Jiampetti. All were notified and given the meeting time for tonight and were advised they would have to attend the meeting to express their concerns.

Steve Nehmad, Esquire presented an Interpretation in August which was tabled. The Applicant is returning tonight to incorporate that testimony with tonight's request for an Interpretation and a Use Variance. Mr. Manos noted that two members Mr. Hare and Mr. Dixon were not present for the Interpretation and would have to abstain for that vote but can vote on the Use Variance.

Mr. Timbers stepped down for this application.

New Business: #2021 – 04

Yeshiva Shagas Aryeh, Inc., a N.J. Religious non -profit corporation
 500-518 and 526 Chicago Avenue
 Egg Harbor City, NJ 08215
 Block 440, Lots 1-5 & Block 440, Lots 6-16
 Ordinance Interpretation or Variance relief

Steve Nehmad, Esquire with Nehmad Davis and Goldstein was present representing the Applicant Yeshiva Shagas Aryeh, Inc. a religious nonprofit charitable Corporation whose mission is educating today's youth. This is their second appearance before this Board. The Applicant originally appeared in August for an Interpretation and are making this application with consent of the Diocese whom their benefactor is under contract with to purchase. Many of the students who will attend this school are studying to become Rabbi's which is a very intense program.

The St. Nicholas School built in the 1920's has been closed for 10 to 15 years but remains in good condition and is located on Chicago Avenue. The Applicant presented the proofs with respect to the legal Interpretation at the August meeting.

Mr. Nehmad noted their position was and continues to be that in this zoning district schools are allowed. The Land Use Ordinance and the City's Zoning Ordinance does not contain the definition of what constitutes a school. Mr. Nehmad understands that when St. Nick's school was in operation they did not have dormitories. But school is a generic term and would like to continue the school use and add dormitories within the existing building. Everything they proposed to do will be within the building foot print except maintenance activities outside such as power washing the building, restriping the parking, repairing the fence, supplementing the landscaping, and bringing the building up to modern day esthetic. There will be substantial interior renovations and asbestos remediation. All permits required will be obtained from the Construction Office. The Applicant is proposing to utilize the existing 3 story building as a Yeshiva. A Yeshiva is an institution for higher education in the study and practice of the Jewish faith rather than the Catholic faith. This is and intends to be a Seminary.

Mr. Nehmad tabled the application in August so all of the proofs presented at that time would be incorporated into this record. Mr. Nehmad recognized there are some Board Members who were not present at the August Meeting who do not know about the nature of the proposed use. The testimony of Rabbi Avorhm Verschleiser the Assistant Dean in Lakewood was present at the last meeting however he had a scheduling conflict for tonight and was unable to attend. Rabbi Zev Spira, Assistant Rabbi will be presenting testimony tonight to educate those who were not present at the last meeting. Mr. Nehmad will also present the testimony of Ms. Tiffany Morrissey, Licensed Professional Planner in the State of New Jersey in respect to the use variance.

Mr. Nehmad discussed “inherently beneficial use” under New Jersey law and will demonstrate that the proposed use meets the positive criteria to support the use variance relief. The Applicant must also satisfy the negative criteria’s by demonstrating that the variance can be granted without causing substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. In conclusion they will have demonstrated that a religious school satisfies the definition of an “inherently beneficial use” under the New Jersey Municipal law. The Board must conduct the four-part Sica test to determine whether these detrimental effects can be reduced by imposing reasonable conditions on the use.

Rabbi Zev Spira and Tiffany Morrissey were sworn in by Leo Manos.

Rabbi Spira provided testimony and began by describing a Yeshiva, who will be attending the school and their course of training. The Applicant operates another facility in Hamilton which has been in operation for about 3 years and is very successful. The Township Officials are very impressed with the operation of their school. This Yeshiva will educate and house about 75 male students between the ages of 18 and 21 who are interested in becoming Rabbi’s. The number of students allowed will depend on the Construction Codes. Rabbi Spira described these young men as very disciplined and partake in a very intense daily program Sunday thru Thursday. Friday everyone prepares for the Sabbath which is a day of rest. Sunday, students begin their studies again. There are holidays including Passover but also a time between semesters that the school closes down and students go home to their families. In the summer they also have a two week break however some students may remain for summer programs. There will be about 6 morning staff members replaced by 6 afternoon staff members. Students do not drive however the applicant is requesting 10 to12 parking spaces for staff. The renovations should be able to be completed in about 6 months to a year. The kitchen will be totally renovated. Deliveries will take place 1 to 2 times a week.

Rabbi Spira noted Egg Harbor City is a quiet town and the least attractions students have the better. From this point they will move to a larger Seminary some being in Jerusalem.

Mr. Nehmad noted the parking spaces may have to be restriped. The interior of the building will be entirely renovated. If there is asbestos in the building it will be remediated properly. The basketball court will be repaired. All of their facilities are licensed by the State of NJ department of education.

Mr. Nehmad questioned Rabbi Spira that if the board authorized this variance did he acknowledge that it would only authorize their school and if he agreed that no students will be permitted to drive.

Rabbi Zev Spira explained their students will not be driving, they do not want any distractions so students can concentrate on their studies.

Questions from the Board

Vice Chairman Warker inquired if all students go home for breaks or will some remain at the school.

Rabbi Spira noted some students who are from other countries may have to stay at the school but students will never be left unsupervised, the school or parents would not allow it.

Mr. Mullineaux inquired if there would be school buses at the property.

Rabbi Spira noted there will be no school buses.

Mr. Nehmad discussed parties and visitation at the school. Rabbi Spira noted parents do not visit the school however once a year they do have a PTA meeting.

Mr. Peterson asked if the Hamilton Facility has dormitories.

Rabbi Spira responded yes.

Mr. Peterson asked if an Architect has looked at the inside of the building and is aware of their proposed plan and the magnitude of renovations that are going to be required.

Discussion took place on this and the estimated cost of the project was discussed.

Mr. Nehmad noted the construction code will determine the maximum load for the building.

Mr. McGowan inquired if there is overnight staffing.

Rabbi Spira explained there will be a dormitory counselor on staff and students are never left unattended.

Tiffany Morrisey, Licensed Professional Planner listed her experience as a Professional Planner.

Ms. Morrisey began her testimony describing why this proposed site is considered a inherently beneficial use thus satisfying the positive criteria as a matter of law. Ms. Morrisey explained her analysis using the Sica four-part test.

Mr. Warker want to know if the outside of the building will be changed.

Mr. Nehmad noted the outside of the building will not be changed but it will be power washed and the cross will be removed.

Public Portion: Jenna Cook was present representing Joseph and Stefanie Kuehner (who reside at 459 Chicago Avenue) who had submitted a letter expressing their concerns with this application and were unable to attend the meeting tonight.

Ms. Cook had questions for Ms. Morrisey concerning what negative impacts will exist as a result of this change when determining whether they are substantial or not. Ms. Morrisey considers the

following as impacts of this use not necessarily negative such as 18-21 years old living there overnight, it includes the amount of staff for each shift, the year around use of the facilities and the deliveries. These are the type of activities that would be noticed by the Community that are comparable to other uses or less than other uses in the area but not necessarily negative. Ms. Cook inquired about how many students occupied the school years ago. Ms. Morrissey did not have the number of students who were enrolled at the school many years ago. Ms. Morrissey did note this will be a school year around, other than the breaks and some summer school which would have less students attending.

Ms. Cook inquired about visitors and daily activities at the school.

Rabbi Spira noted that visitors are not encouraged.

Ms. Cook asked if students can leave the campus at any given time.

Rabbi Spira noted students can leave school with permission for doctor appointments emergencies, or weddings. They will not be going on and off the property on a regular basis.

Ms. Cook inquired about the facility in Hamilton and have there been any issues or concerns with students leaving the property, or interacting socially or violating any of the rules.

Rabbi Spira responded no.

Mr. Farrell who resides at 458 Chicago Avenue inquired about the impact on the water and sewer system for Egg Harbor City with the number of students that will occupy the facility.

Mr. Nehmad noted they will work with Mr. McGowan and the Water /Sewer Department to make sure the system is adequate and up to date.

Mr. McGowan noted if updates are needed the Applicant will be required to do so at their expense.

Mr. Peterson addressed Mr. Farrells concerns and he noted the Applicant will be in contact with Building Official to make necessary renovations.

Mr. Nehmad noted they will work with Professionals to make any required improvements.

The City is in negotiations with American Water and the Applicant will work with the City or American water whoever is in charge concerning this matter.

Mr. Keith Adams was present who resides at 520 Boston Avenue in Egg Harbor City and was sworn in by Mr. Manos. Mr. Adams is the Superintendent of Public Works and wanted to advise the Applicant and Board Members that the water supply for the Parsonage and the Church feeds through the school property. There is no direct main for the parsonage and church to feed into. There is no water on St. Louis or 9th Terrace. The school would have to cut ties with those buildings which would be an added expense. Also, last winter public works was there for leaks inside the building which some have been repaired. For the Applicants information that property may be required to have some type of sprinkler system in order to occupy the building. A sprinkler system would require an additional tap with a dedicated fire alarm to the building because the Municipal service would not be adequate.

Mr. Ross a resident of Egg Harbor City was sworn in by Mr. Manos and expressed his concerns on this matter. He believes this proposed use deviates from his understanding of what a school is.

Mr. Ross believes a school has day time hours and is not a living facility and for the Board to think about the impact this could have on the neighborhood.

Albert Jiampetti who resides at 903 Claudius Street in Egg Harbor City, was sworn in by Mr. Manos. Mr. Jiampetti expressed his concerns about this application and wanted to share with the Board articles he obtained from the internet concerning Yeshiva's in other parts of New Jersey and New York.

Mr. Nehmad noted the Board is obligated to make their decision based upon the testimony presented tonight. Mr. Nehmad noted information from the internet is hearsay and is not admissible evidence.

Mr. James Farber who resides at 521 Chicago Avenue, Egg Harbor City was present and was sworn in by Mr. Manos. Mr. Farber submitted a letter but it was not admissible so is present tonight. Mr. Farber noted for years this was a school for children and now they are proposing a school for adults with dormitories. The repairs needed will be very costly and the school is full of asbestos. Mr. Farber requested that the Board take into consideration the impact a school with dormitories will have on the neighborhood, community, property values and taxes.

Kim Hesse resides at 236 New Orleans Avenue, was sworn in by Mr. Manos. Ms. Hesse noted all schools in the City do some type of community service and asked Rabbi Spira if the students at this proposed school would be doing any Community Service. Rabbi noted in the past they have and would work hand in hand with the community.

Rabbi explained to the Board and the Public that their schools are blue ribbon schools and they are built on reputation. The schools that he operates are very expensive and operated very strictly and rules are followed. His neighbors are his biggest supporters and any problems are addressed immediately.

Ms. Hesse asked if there are any problems will there be a direct number to him to get matters resolved.

Rabbi Spira will be operating the school and his contact information will be provided.

George Frick resident of Egg Harbor City was sworn in by Mr. Manos

Mr. Frick inquired if this religious school will be paying taxes.

Mr. Nehmad no they will not pay taxes as a school.

Mr. Frick expressed his opinion on this matter and mentioned this is a residential zone and if homes were built (approximately ten) on this property instead of re-opening the school the City would be able to collect a substantial amount in taxes which now will be lost.

Mr. Nehmad disagreed with Mr. Frick's calculations and noted the amount of money a Developer would have to be spend to prepare the lot for building would be very substantial. The Demolition costs would also be very expensive. This property has been for sale for many years and no Developer has been able to make those numbers work for a reasonable profit.

Mr. Peterson noted several developers have looked into building homes on this property but the costs were too high once the demo expenses were figured in.

Keith Adams still under oath commented if we are transitioning from a school to a school/boarding facility, if this does not work and they sell the property will this then be an acceptable use for an apartment building.

Mr. Nehmad noted the only use that will be authorized is the use that the Board is approving tonight for a religious school. Any alternate use would have to be a separate application to the Land Use Board for variance relief.

Mr. McGowan discussed the interior of the building noting the interior will be designed for this particular type of school. If this use failed and another religious school would like to occupy this facility they would have to match all the criteria of this application.

Mr. McKenna expressed his concerns regarding future applicants for this property.
Mr. Manos noted the resolution will be tailored to this application.

Mr. Garth expressed his concerns about the future for this property if this school fails.

Mr. Peterson noted the Board will be voting on the Interpretation first, whether this proposed use of a school with dormitories fits the definition of a school.

Mr. Peterson understands that many are concerned if the school fails that this could end up being an apartment complex rental.

Mr. Farrell, mentioned Harbor Fields has dormitories.

Gary Weisberg recently purchased his home in this area and remarked how quiet the neighborhood is. His concern is that the tranquility goes away and property values drop. Also, will this school be able to expand if they are successful.

Rabbi Spira responded that this will be a small school. It is to be located in a secluded area with a certain number of students. They will not be expanding in this location.

Mr. McGowan noted there will be limitations on this use. Any expansion proposed they would have to return to this board with a separate application.

Mr. Ross discussed inspections of the facility and who will monitor the number of students in the school.

Mr. McGowan asked if the Department of Education inspects the facility.
Rabbi Spira explained inspections are done twice a year and a Certificate is required from the State.

Mrs. Cook expressed her concerns growing up in this neighborhood as a child. This property was always just a regular school and not a school that housed young men. This area is filled with single family homes where families have lived for many years. This is a substantial change to this Community. The Board should not overlook the change that will take place in this neighborhood.

The Public Portion of the meeting was closed

Mr. Nehmad requested a recess.

The meeting resumed

Comments from the Public:

Francis J. Bernard, Attorney was present who represents Our Lady of Perpetual Help the current owner of the property. Mr. Bernard noted the Parish is in favor of this application and would like the Board to approve this application.

Public portion closed.

Closing comments by Mr. Nehmad;

Change is always a Concern and this is understandable. The issue is the Applicant is here for a use variance and is there a substantial negative impact. The Applicant has demonstrated proofs that there is no substantial negative impact by granting this use variance. A resolution can be crafted that approves this use and only this use. If we can gain a variance the Applicant will work with the Professionals, the Building Department, and the Community. The applicant has the capitalization(funding), the sustainability to carry the plan into effect and will be an asset to the community. Mr. Nehmad thanked the Board for their time and consideration.

Mr. McGowan discussed the SICA Test and how the substantial negative impact is determined

Rabbi Spira spoke to Mr. Jiampetti to address some of his concerns.

Mr. Manos noted there will be two votes tonight first vote will be on the Interpretation that a school with dormitories is a school and is a permitted use in the zone. Mr. Hare and Mr. Dixon will not be voting because they were not present at the August meeting. Mr. Manos explained there will be two votes on the interpretation we need an affirmative motion to grant a favorable interpretation to the Applicant that what they are proposing is a school and is a permitted use in the R-9. A yes vote means this is a school and is a permitted use in the R-9 zone and a use variance is not necessary. A no vote would mean no its not a permitted use and a use variance must be voted on. The motion is to grant a favorable interpretation and this is a permitted use in the R9 zone.

Upon motion made by Mr. Warker, seconded by Mr. Mullineaux

Roll Call: Mr. Peterson no, Mr. Warker no, Mr. Garth no, Mr. Michael McKenna no, Mr. Mullineaux

The motion did not pass this is Not a permitted use and a use Variance is necessary

If approved a rough draft of the Conditions will be done first and Mr. Manos will work with the Board to compose a tailored resolution with the following conditions; no students driving, not to exceed 90 students, 6 staff at one time at the building, utilizing the existing building, Applicant will comply to any representation they made in the course of the meeting, anything noted in Mr. McGowan's report, contact information being on file with the City, any outside approvals required and work with Mr. McGowan to make sure there is adequate water and sewer.

Motion to grant a D1 use Variance to allow the proposed use as outlined tonight at this property
Upon motion made by Mr. Michael McKenna, seconded by Mr. Hare

Roll Call: Mr. Peterson yes, Mr. Warker yes, Mr. Garth no, Mr. McKenna yes, Mr. Mullineaux no, Mr. Dixon yes, Mr. Hare no

The motion did not carry this application was not approved.

Old Business: none

Public Comments: none

Other Comments: none

Adjournment: Upon motion made by Mr. Warker, seconded by Mr. Michael McKenna and carried the meeting was adjourned.

Respectfully Submitted,
Donna Heffley
Land Use Board Secretary