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VILLAGE OF AIRMONT
ZONING BOARD OF APPEALS
NARRATIVE SUMMARY

223 CHERRY LANE (KINGDOM HALL OF JEHOVAH'S WITNESSES)
SITE PLAN
Tax Lot 56.17-1-13

This is an application for site plan approval of a neighborhood place of worship at 223 Cherry Lane. The parcel contains 157,295 square feet (3.6± acres) of lot area and is currently used for a single family dwelling. The dwelling will be demolished and a new neighborhood place of worship, to be used as a Kingdom Hall of Jehovah's Witnesses, will be erected.

Existing Conditions

The property is in an R-35 zoning district. Neighborhood places of worship are allowed "of right". Zoning Code, § 210-16.A(5). A "neighborhood place of worship" is defined as: "A building or structure on a lot of at least 20,000 square feet that is used exclusively for the conducting of organized religious services." Zoning Code, §210-174. The proposed project conforms to this definition.

The parcel is an existing flag lot. The mast is approximately 100 feet wide at the Cherry Lane DSL, and widens as it moves to the west. The property spreads to its full extent behind two existing homes (approximately 255 feet west of Cherry Lane). The main portion of the lot is approximately 354 feet deep and 360 feet wide. The grade rises westerly from Cherry Lane on a relatively even slope, and continues to rise westerly of the property.

The parcel is bounded on its east and west sides by existing single family residences. Immediately south of the parcel is vacant land that is part of a large residential parcel having frontage on Cherry Lane. Beyond that parcel are electricity transmission lines that traverse the rear yards of additional single family residences. To the north are the athletic fields of Cherry Lane Elementary School, with the school building and parking areas further to the north. Across Cherry Lane to the east is Camp Scuffy, a Town of Ramapo-operated summer day camp.

Along the parcel's southerly lot line, there is an old electricity transmission line and tower owned by the Orange & Rockland Utilities, Inc., subsidiary of Consolidated Edison Company of New York, Inc. ("ORU"). The applicant is advised that this line, while still maintained, is de-energized, and has been replaced by a newer line approximately 150 feet to the south.

The transmission line exists pursuant to unrecorded easement agreements entered into between Rockland Electric Company (a predecessor of ORU) and I.A. Guildersleeve and Maude Guildersleeve (prior property owners) in September 1913 and in December 1914. (Copies of the

agreements, together with a cover letter from ORU's attorney and illustrative maps, are attached.) The agreements call for the transmission wires "to clear all fruit trees in orchard and poles to be not less than forty-five feet in height." Rockland Electric was also granted the right to "trim and cut such trees as shall interfere with the proper maintenance and insure the safe operation of above mentioned line."

Unlike more modern easements for transmission lines, there is no additional right of way granted in connection with the easements, nor are there restrictions on the landowner's use in proximity to the lines. Therefore, there are no property rights held by ORU that would prevent the use proposed by applicant.

Applicant's Proposal

The applicant is the West Spring Valley Congregation of Jehovah's Witnesses, which will own and operate the property. The applicant proposes the erection of a new neighborhood house of worship, which it calls a "Kingdom Hall". The new building will have a single story and contain 11,224 square feet of gross floor area. This is well below the 62,918 sf allowed under the Zoning Code (0.40 FAR).

The Kingdom Hall will include two auditoriums (each having a capacity of about 180 occupants) for worship services, smaller meeting rooms, offices, a small library, and lavatories. Worship services will be held concurrently in the auditoriums. Having two auditoriums allows for greater interaction among attendees, and also allows for simultaneous use by different language groups for services.

No rectory, living quarters, or kitchen facilities are proposed. There will be no bells, chimes, or outdoor music. Jehovah's Witnesses do not use their Kingdom Halls for social events or for fund-raising, nor are the Halls used for schools, day care centers or any other secular use.

136 parking spaces are proposed. The Zoning Code requires one parking space for every 200sf of floor area, or one space for every three seats, whichever is greater. The proposed number of parking spaces will support up to 408 seats.

Approximately 375 parishioners plan to meet at this new Kingdom Hall. Worship services in the auditoriums are scheduled concurrently. Normal weekly services have lower attendance than weekend services. Services usually last for 1 hour and 45 minutes. They are normally scheduled on two evenings during the week and at two different times on Sundays, usually at 10 am and 1pm. There will be some additional special events during the year, with somewhat higher attendance (*i.e.*, funerals, holiday services). This usage is counter to school traffic from Cherry Lane School and Camp Scuffy, and so will not create an additional traffic burden on the area.¹

¹The existing peak hours in the area, as identified in the applicant's traffic study, are between 8:00am and 9:00am and between 4:00pm and 5:00pm during weekdays; and between 11:00am and noon and between 4:00pm and 5:00pm on Sundays.

Vehicles will enter the property at its “mast” connection with Cherry Lane (a county road). A new driveway will wind up the mast and connect to the parking area in the main portion of the parcel. There is sufficient sight distance available where the proposed driveway meets Cherry Lane. The main portion of the parking area will be in front of the proposed building, with smaller additional parking areas on either side of the building. The main parking area will be built with pervious pavement, to increase water infiltration and decrease the volume and rate of surface water runoff.

The building will be butterfly-shaped, with a central section serving two outboard wings. It will have a frontage of approximately 149 feet and a maximum depth of approximately 76 feet. A canopy that will extend from the front of the building to, but not over, the access drive to provide protection during inclement weather.

The building will tie into existing municipal sewer and water service in Cherry Lane. Natural gas and electricity are also available from Cherry Lane.

The applicant has taken a number of steps to reduce the impacts of this project on the natural environment. The building has been reduced from its original size by approximately 16 feet in length. A second story has been rejected because it would increase the overall footprint by adding stair towers, additional building entries and sidewalks.

The applicant will ask the Planning Board for a waiver to allow 38 “compact car” parking spaces. These spaces, at 8.5’x15.5’, are smaller than the standard 9’x17.5’ spaces, resulting in a 1,320sf reduction in impervious coverage. In addition, the two parking areas in front of the building (down gradient), totaling approximately 23,752sf, will be surfaced with porous pavement.

A storm water management plan has been designed to capture surface water flow from the building, parking area, and other impervious surfaces. Generally, surface water will be captured from up-gradient lands to the west and north by a bio-retention swale to be built along the southerly portion of the parking area. The swale will receive discharge from a bio-retention feature to the north as well as sheet flow from the parking area.

The swale will direct surface water to a bio-retention plunge pool near the southeasterly corner of the parking area, and then to an elongated bio-retention basin running northerly toward the entry drive. Run-off will be then be directed via pipes down the access drive to a Cultec water quality treatment structure and then to a level spreader. A catch basin near the bottom shoulder of the entry drive will capture water running down the drive, and a pipe will direct this run-off to the Cultec structure and level spreader.

Rooftop runoff from the building will be directed to the rear of the building, and then overland to a bio-retention feature. This allows treatment prior to discharge through the porous pavement.

A complete landscaping plan will be part of the approved site plan. The applicant is committed to provide appropriate landscaped screening in order to assure the privacy of both itself and its neighbors. Additional internal landscaping will be provided to create an appropriate atmosphere for worship.

A ground lit monument sign is proposed for the north side of the access drive, visible from Cherry Lane. A hot box for United Water New York is proposed near that same location.

Lighting for the entry drive and the parking area will be shielded to prevent light from spilling over the property lines, and also to cut glare from the light source. A photometric scheme has been included in the submission to the Planning Board, and the lighting scheme has been adjusted in response to comments from that Board and its consultants. Lights will also be mounted on the building. Lighting will be placed on automatic timers, to be turned off approximately one-half hour after the last usage at night. Some security lighting may be maintained, especially near the building.

During review by the Planning Board, the applicant studied the project's impact on traffic, storm water drainage, and other environmental concerns. All such impacts were either minimal or mitigated to the satisfaction of the Planning Board.

The Planning Board granted a negative declaration under SEQRA on November 15, 2012, and referred the applicant to this Board for variances.

Two variances are needed:

<u>Dimension</u>	<u>Required</u>	<u>Provided</u>
Street frontage	125	98.98
Lot width	125	104.21

The variances are needed because of the pre-existing lot configuration. The lot is a flag lot, having frontage on Cherry Lane. The main portion of the lot is located well back from the frontage, where it expands to a large rectangle. The existing home is in the "mast" portion of the lot, while the main portion is currently vacant.

The applicant proposes to demolish the existing house and to use the "mast" solely as the access driveway and landscaping. Thus, no buildings or other structures (with the exception of a UWNY-required hot box) will be within the "mast". The church building and parking areas will be located in the main portion of the lot, which is 360 feet wide. If there was no "mast" then these variances would not be required.

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":

No change is proposed that would reduce the street frontage and lot width from its existing condition. These dimensions are regulated to provide for appropriate separation of buildings in accordance with the density allowed in the zoning district.

Here, the building is at the rear of the property, generally hidden from view by topography and landscaping. The only visible portion of the project will be the new access driveway, a sign, and landscaping.

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":

The "mast" area is wide enough to support a public road right of way, which is generally 50 feet. If such a road was placed within the mast, in lieu of the access drive, then these variances would not be needed.

However, it makes little sense to create a new public road that would serve only this property. Doing so imposes burdens on the Village that are inappropriate and unnecessary, such as maintenance and snow plowing. These burdens should be borne by the applicant/owner, which is willing to bear them.

(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, § 29:37.

The street frontage variance is for 26.02 feet. The lot width variance is for 20.79 feet. They both relate to existing conditions, neither of which currently conforms to the bulk requirements for either a residence or a neighborhood place of worship in the R-35 district.

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

As noted above, this project was extensively reviewed by the Planning Board as lead agency under SEQRA. Studies were performed with respect to storm water runoff management, traffic impacts, and lighting. Tests were performed on down-gradient wells to provide baselines for any future impacts on that neighbor's drinking water. A Phase 1 Environmental Assessment Study (EAS) was prepared to study any lingering impact from prior apple tree horticulture, and soil testing was performed to determine if there were pesticides or other soil contaminants that required remediation. All studies revealed that there were either no issues, or that any issues could be adequately mitigated.

In addition, if the variances were not granted, and a public road was installed, the public road would require more impervious surface and would have a greater impact on neighboring properties.

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

To a certain extent, all variance applications arise from difficulties that are “self-created”. The issue is whether the self-created hardship, combined with the previous four considerations, is sufficient to tip the balance one way or the other.

The hardship results from the pre-existing lot shape, which provides less lot width and frontage than is required by the Zoning Code. The existing lot does not meet the lot width requirement for its current residential use, which is 150 feet. The lot width requirement for the proposed neighborhood place of worship is 125 feet. 104.21 feet are provided.

The current use also does not provide the required 100 foot street frontage for a residence. Only 98.98 feet are provided. The requirement is increased to 125 feet for a neighborhood place of worship. As noted above, this portion of the site will not be used for anything but access. The building and parking areas will be at the rear of the site, which is much larger.

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>Provided</u>
Street frontage	125	98.98
Lot width	125	104.21

Dated: November 26, 2012
New City, New York



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