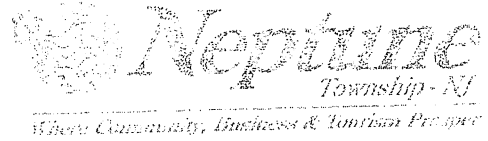


APPLICANT: HOLY INNOCENTS CHURCH
APPLICATION NUMBER: ZB20/15
BLOCK: 3101
LOTS: 2
ADDRESS: 3455 WEST BANGS AVENUE
ATTORNEY FOR APPLICANT: MICHAEL HERBERT, ESQ.
RESOLUTION NUMBER: ZBA#20-17



**RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT
OF THE TOWNSHIP OF NEPTUNE FOR A USE VARIANCE
FOR A SECOND PRINCIPAL USE OF A SCHOOL
ON THE SUBJECT PROPERTY**

WHEREAS, BOARD MEMBER WILLIAM FRANTZ, offered the following Resolution moved and seconded by **BOARD MEMBER JAMES GILLIGAN**:

WHEREAS, HOLY INNOCENTS CHURCH by and through their Attorney, **MICHAEL HERBERT, ESQ.** hereinafter referred to as the "applicant" filed an application with the Zoning Board of Adjustment of the Township of Neptune, (hereinafter referred to as the "Board") seeking the following relief:

The Applicant has applied to the Zoning Board of Adjustment for a use variance pursuant to N.J.S.A. 40:55D-70d for approval of a public, K-8 school on property identified as Block 3101, Lot 2, 3455 W. Bangs Ave., Neptune, N.J. 07753 (the "Property"), which is located in the R-1 Zone.

Pursuant to Section 411.05 of the Township of Neptune Land Development Ordinance (LDO), only one principal building is permitted per lot in the R-1 zone. Currently, the principal use of the Property is a "place of worship." The Applicant seeks a use variance to allow a K-8 public charter school to be a second principal use on the Property. Pursuant to Section 403.01, a "public or private elementary, middle or high school" is a conditional use in the R-1 zone.

There previously existed a private K-8 school on the Property, which was considered a nonconforming elementary school. Applicant intends to use the same structure for the proposed public school. The structure has existed for over 50 years, and there are no proposed physical changes to the structure of the premises.

The Applicant will seek any and all other variances or waivers that the Board may deem necessary upon its review of the Application.

WHEREAS, the application pertains to premises known and designated as Block 3101, Lot 2 on the Tax Map of the Township of Neptune, which premises are located at **3455 WEST BANGS AVENUE**; and

WHEREAS, all notice requirements were satisfied by the applicant and the Board has jurisdiction to hear, consider and determine the application at issue; and

WHEREAS, the Board held a public hearing with regard to the referenced application on the following date, **OCTOBER 7, 2020**;

WHEREAS, the following items were entered as Exhibits as a matter of public record, prior to the hearing and provided to the Zoning Board of Adjustment and posted on the Township Website, (NeptuneTownship.org) for public review, prior to the hearing:

1. Community Impact Statement
2. Boundary Survey
3. Application for Use Variance
4. Traffic Impact Analysis
5. Traffic Bureau Comments
6. Use Variance Plan
7. Fire Prevention Bureau Plan Review
8. Color Rendering
9. Engineer Review

WHEREAS, The Board listened to the Testimony of the following:

1. **WALTER HOPKIN, LICENSED ENGINEER**
2. **JODI McINERNEY, EXECUTIVE DIRECTOR/PRINCIPAL**
3. **JOHN REA, TRAFFIC ENGINEER**
4. **CHRISTINE COFONE, PROFESSIONAL PLANNER**
5. **JOSEPH CAHILL, BUSINESS ADMINISTRATOR, HOLY INNOCENTS**

WHEREAS, The Board took Questions from the following member of the Public as to the witnesses presented:

1. **NONE.** (Note: one member of the public attempted to offer commentary and was asked to defer to final comments).

WHEREAS, The Board took Commentary on the Application upon conclusion of the witness testimony as follows:

1. **LYNNE MOLOUGHNEY** – commented on prior use as a school.

WHEREAS, the Board, having given due consideration to the Exhibits moved into evidence and the Testimony presented at said hearing(s), does make the following Findings of Fact with regard to the contents of the hearing;

1. Applicant is requesting the delineation between the Church and its former accessory use of the school building to become two principal uses on one lot, to wit: a church and a school.
2. There are some proposed improvements to the property which would facilitate the transition to the property.
3. The Board accepts that this is a campus type facility per rendering A-8 on town website. It consists of a Church, Rectory, Spiritual Center a school and a few miscellaneous buildings with the school fronting on West Bangs Avenue

4. There are 278 parking spaces on the lot.
5. Holy Innocents Church has been utilizing pavement rehabilitation and crack filling with striping in the parking lot as an enhancement. There are currently no modifications proposed to school building. Applicant advises and the Board accepts that directional signage will be installed so buses/cars can drop students off to school.
6. The northern driveway will become a two-way driveway as it is currently only one way directional. This will allow buses to circulate to West Bangs Avenue.
7. The Board advises and the applicant agrees that some modifications will be made to the parking area, such as standing signage and striping a walkway so children can walk to the green space for recess, through the parking lot.
8. Board Member Frantz questions whether the driveway is wide enough for buses and cars and is reassured by applicant that it accommodates both easily.
9. Board Planner Beahm indicates that an enclosed dumpster for refuse/recycling is necessary and requests that a masonry with dumpster are be delineated and placed on an amended site plan for approval. **The applicant agrees to construct same as a condition of approval.**
10. The Board questions as to the location, timing and supervision of the K-8 recess to be located in the green space/grass area. Applicant advises they are not proposing structures and are looking to utilize the open field for activities.
11. Board Planner Beahm indicates that there should be some type of recreation or playground, or basketball court. Board Planner Beahm advised the applicant should rethink that position moving forward.
12. The Board discusses the location of fences in the green space for the safety of the children as Attorney Herbert advises there is a potential for up to 600 students with 62 staff members, although that is not the current enrollment.
13. Board Member Bascom indicates this area contains the busiest intersection and she has difficulty believing that buses will be able to function in this area.
14. Board Member Gilligan: Disagrees with Member Bascom and indicates there is plenty of room on the site plan.
15. Board Engineer Shafai indicates that a majority of the asphalt requires repair and Engineer Shafai would like to meet someone from the Applicant's team at the site to discuss proposed repair areas.
16. The Board accepts the testimony that the school can accommodate up to 600 children with 62 staff. Approximately 12 buses will be utilized. With COVID, there will be more parentally drop-offs of children. The Board acknowledges that aftercare is a partnership with Boys and Girls Club from 3:40 p.m. to 6:00 p. m. at the subject property.
17. There are currently 450 enrolled students. Maximum enrollment for this applicant will be limited to 600 per this use at this location.
18. For Recess/Recreation the Board accepts that older children would be in the grass area. There are portable soccer and basketball areas. However, the applicant agrees that as a condition of approval, it will work **with Board Planner Beahm to provide items requested or to satisfy these recreation area/playground concerns.**
19. Board Member Stroud questions and is satisfied that the applicant is prepared to make necessary adjustments for space and better social distance while being in the physical school building. Both of applicant's current school buildings are open and have 1/3 of students in physical locations.

20. Board Engineer Shafai is advised there are no changes proposed to interior/exterior of building.
21. The Board accepts the testimony of the traffic engineer indicating that the driveway will run counterclockwise to discharge directly to the school. This is a virtually empty lot so school buses will not have an issue dropping off children. 80% by bus. The traffic engineer indicates this is a good adaptive reuse and advises West Bangs is under county control and as such, **as a condition of approval, the applicant will require Monmouth County approval with 2 driveways and site triangles provided. Same must be provided to the Municipality prior to receipt of a certificate of occupancy.**
22. **The Board accepts that Rea will work directly with Engineer Shafai to fix the parking lot walkway lanes for children to access the grass area as a condition of approval.**
23. Applicant also advises and the Board accepts, **that they will provide a revised site plan to the Board Engineer and Planner as a condition of approval, with requested amendments and will fence the back area as requested and provide an appropriate recreational area. Applicant acknowledges that Board Engineer and Board Planner will not approve the site plan amendments unless they are satisfied with the issues addressed.**
24. Applicant's Planner testifies, and the Board accepts, that upon grant of the application, if acceptable, there will be two principal uses on one lot. While 12,500 sq. feet required for a use, this lot contains 696,096 sq. feet. It is far in excess of zone.
25. The Board acknowledge and accepts the testimony of the applicant's planner which indicates this may be an inherently beneficial use (school), accepts the testimony that this use also presumptively satisfies the particular suitability use, where all 4 prongs of the SICA test are satisfied.
- Public interest: unique scholars from low income backgrounds. Underserved/deserving population.
 - Identified detrimental effects: None.
 - The Board may impose reasonable conditions on applications to mitigate detrimental effects. (There is play equipment in the area that is appropriate for younger grades. On western portion of area an area can be delineated with more formal recreation conditions and that can be a reasonable condition imposed. Fencing can be provided for this area and there can be things brought out for play. Delineated rec area, more formal program for rec., this is 3rd prong of test, signage, and work on traffic lanes.
 - The Board can weigh and balance all of the things as the 4th prong of the test for acceptance.
26. There is more than one use on this property. It is a campus style. Satisfies its statutory burden of proof and the benefit of the application far outweighs any detriment.
27. The structure can accommodate up to 1300 people but the request for occupancy and Use is only for 600 students and staff.
28. The prior use was a school which was accessory to the church so the imposition of a "second principal use" by allowing an operation not associated with the church does not impact the neighborhood in a negative way as the prior use was the same but characterized under a different umbrella.

29. **Upon discussion , the Applicant agrees, as a condition of approval, that it would extend driveway from entrance of the school to the south driveway.**
30. The Board members acknowledge again that this was a House of Worship with school. There was no significant change to the structure, other than the operator and some items which would enhance the situation for the student body.
31. The Board acknowledges with conditions imposed, and acceptance by the Board Planner and Board Engineer of a revised site plan, this could be an appropriate use.

WHEREAS, In order to prevail on an application for a variance, the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D – 70, requires the applicant to establish that the variance can be granted without substantial detriment to the public good and that the granting of the variance does not substantially impair the intent and purpose of the master plan, zone plan and zoning ordinance.

NOW THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Neptune that it hereby adopts the aforesaid findings of fact and specifically makes the following conclusions:

- a. Based upon the aforesaid findings of fact, the Board concludes that:
 - i. The applicant has demonstrated that the proposed use of the property in question is substantially the same kind of use as that to which the premises were devoted at the time of the passage of the zoning ordinance.
- b. Based upon the aforesaid findings of fact, the Board further concludes that the granting of the approval set forth herein will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the zoning ordinance and the zoning plan of the Township of Neptune.
- c. Special reasons have been demonstrated and the Board accepts the opinion of the Applicant’s planner, with commentary from the Board Planner, as to these reasons as well as the enhanced proofs required.
- d. The Board specifically includes herein by reference, the Transcripts from the hearings, which provide the detailed basis and description of the decision as memorialized in this Resolution and do hereby rely upon same for further reference, as necessary.**

BE IT FURTHER RESOLVED, by the Board of Adjustment of the Township of Neptune that the following be and are hereby GRANTED:

Applicant is granted a Use Variance pursuant to N.J.S.A. 40:55D-70d for approval of a public, K-8 school on property identified as Block 3101, Lot 2, 3455 W. Bangs Ave., Neptune, N.J. 07753 (the “Property”), which is located in the R-1 Zone.

Pursuant to Section 411.05 of the Township of Neptune Land Development Ordinance (LDO), only one principal building is permitted per lot in the R-1 zone. Currently, the principal use of the Property is a “place of worship.” The Applicant is granted a use variance to allow a K-8 public charter school to be a second principal use on the Property *with an occupancy not to exceed 600 students unless further application is made.*

As a Condition of Approval, Applicant agrees to do the following:

1. Applicant will revise the site plan with the following stipulations until it obtains the approval of Board Professionals, Planner Beahm and Engineer Shafai. If no approval is obtained, then this matter will come back before the Board of Adjustment for Final Determination. The Board retains jurisdiction as may be necessary for resolution of any compliance or site plan issues.
 - Board Planner Beahm indicates that an enclosed dumpster for refuse/recycling is necessary and requests that a masonry with dumpster be delineated and placed on an amended site plan for approval. **The applicant agrees to construct same as a condition of approval.**
 - For Recess/Recreation the Board accepts that older children would be in the grass area. There are portable soccer and basketball areas. However, the applicant agrees that as a condition of approval, it will work **with Board Planner Beahm to provide items requested or to satisfy these recreation area/playground concerns.**
 - The Board accepts the testimony of the traffic engineer indicating that the driveway will run counterclockwise to discharge directly to the school. This is a virtually empty lot so school buses will not have an issue dropping off children. 80% by bus. The traffic engineer indicates this is a good adaptive reuse and advises West Bangs is under county control and as such, **as a condition of approval, the applicant will require Monmouth County approval with 2 driveways and site triangles provided. Same must be provided to the Municipality prior to receipt of a certificate of occupancy.**
 - **The Board accepts that Engineer Rea will work directly with Engineer Shafai to fix the parking lot walkway lanes for children to access the grass area as a condition of approval.**
 - Applicant also advises and the Board accepts, **that they will provide a revised site plan to the Board Engineer and Planner as a condition of approval, with requested amendments and will fence the back area as requested and provide an appropriate recreational area. Applicant acknowledges that Board Engineer and Board Planner will not approve the site plan amendments unless they are satisfied with the issues addressed.**
 - Upon discussion , the Applicant agrees, as a condition of approval, that it would extend driveway from entrance of the school to the south driveway.

(if applicable) *****The Granting of these Variances are specifically conditioned upon the presentation and acceptance of a Final Site Plan to be provided to the Board of Adjustment at a later date with any and all other variance requests to be set forth in detail at that time with appropriate Notice, based on the Final Plans as submitted and/or later amended.**

ALL APPROVALS GRANTED HEREIN ARE SUBJECT TO THE FOLLOWING CONDITIONS:

- (1) The applicant shall comply with any requirements established by, and obtain any necessary approvals of the following, IF APPLICABLE, to the proposed construction herein:
 - a. All Plans must be approved by Township Engineer and Code and Construction Departments for the issuance of Permits;
 - b. MONMOUTH COUNTY PLANNING BOARD;
 - c. FIRE MARSHALL;
 - d. BOARD OF HEALTH;
 - e. SOIL CONSERVATION AND SEDIMENT CONTROL APPROVALS AND PERMITS;
 - f. AFFORDABLE HOUSING CONTRIBUTION (ORD. 04-22)
 - g. BOARD OF ADJUSTMENT PLANNER (Per Report dated....)
 - h. BOARD OF ADJUSTMENT ENGINEER (Per Report dated...);
 - i. POSTING OF PERFORMANCE GUARANTEES AND INSPECTION FEES;
 - j. FINAL SITE PLAN DRAWINGS INCORPORATING ALL CHANGES AND/OR AMENDMENTS MADE AT THE HEARING.
 - k. FINAL DESIGN SUBJECT TO APPROVAL OF THE BOARDS'S PROFESSIONALS.
 - l. SUBJECT TO THE APPLICANT COMPLYING WITH ANY AND ALL FEDERAL, STATE, COUNTY AND LOCAL LAWS, RULES AND REGULATIONS AFFECTING AND PERTAINING TO THE DEVELOPMENT OR USE OF THE SITE IN QUESTION.

- (2) SUBJECT TO ALL REPRESENTATIONS AND TESTIMONY OF THE APPLICANT BEING TRUTHFUL AND ACCURATE

ROLL CALL VOTE:
Gilligan

Offered by: William Frantz

Seconded by: James

THOSE IN FAVOR: Barbara Bascom, William Frantz, James Gilligan, Thomas Healy, Frances Keel, and Paul Dunlap

THOSE OPPOSED: Naomi Riley

ABSENT: Dr. James Brown

ABSTAINED: None.

MEMORIALIZATION VOTE: Offered by: William Frantz Seconded by: Frances Keel

THOSE IN FAVOR: Barbara Bascom, William Frantz, and Frances Keel

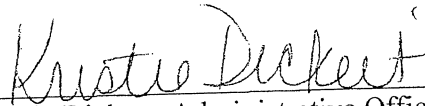
THOSE OPPOSED: None.

ABSENT: James Gilligan, Thomas Healy, and Paul Dunlap

ABSTAINED: None.

I hereby certify that the foregoing is a true copy of the Resolution adopted by the Zoning Board of Adjustment of the Township of Neptune at its meeting on October 7, 2020 and memorialized at the meeting held on November 4, 2020.

Date: November 6, 2020



Kristie Dickert, Administrative Officer of the
Zoning Board of Adjustment
Township of Neptune