

March 31, 2023

**VIA E-MAIL**

Alice Beirne, Esq.  
Law Office of Alice Beirne, Esq.  
111 Northfield Avenue  
Suite 202  
West Orange, New Jersey 07052

**Re: ZB 21-21 – Daughters of Israel**  
**1155 Pleasant Valley Way, West Orange, New Jersey**

Dear Ms. Beirne:

I write on behalf of the applicant, Daughters of Israel (“Daughters”), to address a procedural issue in connection with Daughters’ application before the Zoning Board of Adjustment (the “Board”).

At the conclusion of the last hearing, on March 23, 2023, the applicant concluded its direct case, and objector Loren Svetvilas, through counsel Richard Webster, Esq., expressed an intent to call a planning witness when the opposition presents its case at the next meeting on April 20, 2023. It was merely by happenstance that the applicant’s case concluded shortly before 11:00 p.m.; had it concluded earlier, the opposition planner could have been called to testify on March 23, 2023. Yet, the opposition planner did not submit a written report prior to that meeting. And to date, such a report still has not been submitted. The Board’s Rules of Procedure, however, require that such a report be submitted.

Specifically, the “Rules of Procedure of the Zoning Board of Adjustment of the Township of West Orange, New Jersey,” adopted October 22, 1991, last amended on August 16, 2018 (the “Rules”), require that a planning report *shall* be submitted before the Board will entertain planning testimony. Rule 4.02.b. provides:

- b. Where an applicant or any interested party proposes to offer the testimony of a licensed professional planner, then that professional planner shall submit to the Secretary, not less than ten (10) calendar days before the hearing date at which that witness will be called to testify, the original plus fourteen copies of a written report setting forth, among other things, the planners’ opinions, the facts upon which they are based and the sources for all references relied upon by that planner. Such references to court decisions, statutes, administrative regulations, ordinances and the like shall be in proper citation form. In the event a professional planner fails to file such a report then the Chairperson may either foreclose the witness from testifying or, in the case of the applicant, require an adjournment to allow the Board sufficient time to study the report. Interested parties may not use the failure to submit a report as a means to delay a final decision in any matter.

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Given the explicit requirement under the Rules that a written report be submitted by any licensed professional planner at least 10 days before the hearing date, Daughters intends to object to the presentation of any opposition planning testimony, and to seek its preclusion, unless Mr. Svetvilas's planner (or any other proposed planning testimony from any other interested party) submits a written report in compliance with Rule 4.02.b.

Rule 4.02.b. is intended to help the Board understand the testimony and the legal basis supporting the planner's opinion. This rule is not new; it has been in place for some time. Moreover, unlike many municipalities, in which rules and regulations governing land use proceedings are not readily available, West Orange posts its Rules on the Township website for easy access by anyone who takes the time to seek them out. Thus, there is no basis for objectors – particularly those represented by counsel – to claim surprise or ignorance.

The operation of Rule 4.02.b. was on vivid display at the February 16, 2023 meeting of the Board, when the applicant ahead of Daughters on the agenda sought to present a planner, and was not permitted to do so because no report had been submitted. In that instance, the matter was adjourned so that the applicant's planner could submit a report in advance of his testimony. The requirement to submit a planning report should therefore have been obvious to any objectors in the *Daughters* matter.

Moreover, here, the objector was given ample notice as to when Daughters would be concluding its case. I informed Mr. Svetvilas's counsel, Mr. Webster, on March 7, 2023 (16 days prior to the last hearing) that I expected to present planning testimony on March 16, 2023 and March 23, 2023, and that I expected to complete the applicant's case on March 23, 2023 "probably with time remaining." I did that so he would have plenty of advance notice of when the applicant's case would conclude, allowing for objectors to plan accordingly. Mr. Webster responded on March 9, 2023, by e-mail, that he would be calling a planner and said "I will let you know later if they will be submitting a report." A copy of this e-mail exchange is attached for your reference.

Mr. Svetvilas and his counsel, Mr. Webster, have therefore had sufficient notice as to when Daughters' direct case would be ending. And they now have plenty of time to submit a written report from their planner before the April 20, 2023 meeting. If they fail to submit a written report, then the planner should be foreclosed from testifying under Rule 4.02.b.

To the extent that Mr. Webster seeks an adjournment of the April 20, 2023 hearing to provide for additional time for his planner to submit a written report, Daughters objects to any such adjournment. First, Rule 4.02.b gives the Chairperson discretion to grant an adjournment for the submission of a planning report only in "the case of the applicant." There is no right under the Rules to grant an adjournment due to any other party's failure to submit a report.

The reason why is clear. It can be found in the final sentence of Rule 4.02.b., which reads: "Interested parties may not use the failure to submit a report as a means to delay a final decision in any matter."

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An adjournment would have exactly that effect in this case. Objectors have had every opportunity to submit a planning report, and still have a remaining opportunity to do so with respect to the April 20, 2023 hearing. Daughters therefore objects to an adjournment both because it is not authorized by the Rules, and also because an adjournment would prejudice Daughters given the long period of time this application has been under review. Indeed, the public hearing in this matter commenced on September 15, 2022, and has continued over a total of nine sessions, and an additional session had to be adjourned due to technical issues. Much of the time spent at these hearings has been for the public, including Mr. Webster, to ask questions of the various witnesses. Now that Daughters has completed its direct case, any objector certainly has the right to present a case in opposition – but any such opposition must be presented in accordance with the Rules.

For the foregoing reasons, it is Daughters' position, after having alerted the Board and Objector Svetvilas (through copying his attorney Mr. Webster on this letter) of this issue at a time when it can still be cured, that any proposed planner by any party should be precluded from testifying unless a planning report has been timely submitted in accordance with the Rules.

Daughters is hopeful that its application will be completed and decided at the upcoming April 20, 2023 hearing, and we thank the Board for its attention to this important matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Howard D. Geneslaw", written in a cursive style.

Howard D. Geneslaw  
Director

HDG

Attachment

cc: Richard Webster, Esq. (via e-mail)

## Geneslaw, Howard D.

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**From:** Richard Webster <rwebster463@gmail.com>  
**Sent:** Thursday, March 9, 2023 11:17 AM  
**To:** Geneslaw, Howard D.  
**Subject:** Re: ZB 21-21 - Daughters of Israel

Howard:

Thanks for your email. We do expect to call a planner. I will let you know later if they will be submitting a report.

Glad we are able to work this one in a civil manner.

Regards

Richard

On Mar 7, 2023, at 9:42 PM, Geneslaw, Howard D. <[HGeneslaw@gibbonslaw.com](mailto:HGeneslaw@gibbonslaw.com)> wrote:

Richard,

For the 3-16-2023 meeting, there is only one other application listed on the agenda, so hopefully we will have a significant block of time.

I plan to call David Fowles (architect) to testify to his revised plans. I will next be calling Frank Banisch (planner), either on 3-16-2023 (time permitting) or at the special meeting on 3-23-2023. I expect to conclude the applicant's direct case on 3-23-2023, probably with time remaining.

Do you plan to call any witnesses, and if so, in what disciplines? Will they be submitting anything? Thank you.

**HOWARD D. GENESLAW, ESQ., AICP, P.P.** | Director

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