

The meeting was opened by **Chairman Ron Palmieri** at 7:30 p.m.

Mr. Palmieri read a statement of compliance with the *New Jersey Open Public Meetings Law* as follows:

This is a regular meeting of the Zoning Board of Adjustment of the Borough of Tinton Falls and is being held in compliance with the New Jersey Open Public Meetings Law. Adequate notice of this meeting has been given by posting on the bulletin board of the Municipal Building and by publishing in the Asbury Park Press and The Coaster.

Mr. Palmieri then led the meeting in a salute to the flag.

Ms. Connolly took roll call.

Present: Mr. Palmieri, Mr. Slazyk, Mr. Battista, Mr. Porzio, Mr. McKinley,
Mr. Brawner

Absent: Ms. Hatami, Mr. Lomangino, Ms. Berk

Also present: Mr. Hirsch, Board Attorney
Mr. Neff, Board Engineer
Mr. Dochney, Board Planner
Ms. Connolly, Board Secretary

Mr. Palmieri read a statement of procedural guidelines.

The meeting minutes of January 7, 2016 were accepted by all those eligible to vote from that respective meeting.
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LMOLO, LLC Porter Avenue – Blk 106.05, Lots 1,2,3 & 4.01

BA 2015-20

Chairman Palmieri has stated that the applicant has requested to carry this matter until March 3, 2016. This matter has already been carried at least twice. Chairman Palmieri asked the Board members of their availability to attend the March 3, 2016 meeting as he knows that he will not be in attendance because of tax season. Mr. Slazyk states that he will not be in attendance as well as Mr. Battista. After discussion among Board members, it is decided that the matter will be put on the Agenda for April 7, 2016 and that the applicant will need to re-notice. The Board Secretary will notify the applicant.
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Katinka Rife
1961 Wayside Rd. – Grace Christian Church

BA 2015-21
Use Variance

A motion to accept service was offered by Mr. Battista and seconded by Mr. Brawner.
All in Favor.

In the matter of Katinka Rife, use variance, John Shiffman, Esq., 34 Sycamore Avenue, Little Silver, NJ is appearing on behalf of the applicant. Mr. Hirsch states that the notice that was published and the Affidavit of Service meet all of the statutory provisions. This is an application for a D-1 use variance in an R-1 zone. It is limited in scope, if you read the application. Ms. Rife would like to offer therapeutic counseling services. She has a job and is not looking for full-time employment. She is looking at this as something she can do maybe ten hours a week. Again, not to replace her job but to supplement her present job. She also, as a volunteer, has done therapy sessions in the past for the church members. She would continue to do that as well as offer discounted rates to people who would seek her services outside of the church. We have an elder from the church, Mr. Armstrong, and Pastor Vincent Rife, if the Board wishes to hear from them. I will call Katinka as my first witness.

Mr. Hirsch swears in Katinka Rife, 53 Charles Drive, Tinton Falls, NJ. Mr. Shiffman asks Mrs. Rife if she has listened to the statements he has made to the Board. Mrs. Rife states yes. Mr. Shiffman asks Ms. Rife if anything he stated was inaccurate. Ms. Rife states no. Mr. Shiffman asks if she wishes to further elaborate on this application. Ms. Rife states that she feels that the people that come to church often need some professional help to overcome various things in their life and that the Church ought to provide those kinds of services. So I went to school and got my LCSW. I am going to open a practice and I feel it is right to do it at the Church building because it matches the mission of the church. I do have a job. I work at Jersey Shore in the crisis unit of the Emergency Room as a social worker part time. This really would be just a few hours a week and I feel that if I had to rent a space, it would be cost prohibitive. I am not looking to have a business that would support that kind of volume. So, to have it at the church allows me to practice and offer services at a discounted rate for people that can't afford them just to make it easier for people to access care.

Mr. Shiffman asks Mrs. Rife to talk about the space for a moment. There is a designated part of the church that you are seeking this variance for? Mrs. Rife states that yes there is one room in the church, it is the library and it is also used as a prayer room. It is in the very center of the building. There are no windows. It is 15' x 16.' It has a couch, it is very comfortable. It really works well for counselling.

Mr. Shiffman asks Mrs. Rife about parking. How many parking spaces are you requesting? Mrs. Rife states that it would just be me and then one person at a time. Two spaces.

Chairman Palmieri asks how many spaces the Church currently has. Mrs. Rife states that it must be about 100. Mr. Shiffman states that he is a member there and it is probably between 70 and 100. Mr. Dochney states that the total is 53. Mr. Shiffman states he thought it was more. Mr. Dochney states that this number is for lined spaces. Mr. Hirsch asks how many are required. Mr. Neff states that one space is required for every 5 seats in the church and then 9 spaces for the daycare/preschool. Chairman Palmieri states that the parking was before us previously and that the parking for the daycare does not overlap the parking for the church operation. Mrs. Rife indicates that her hours of operation will not overlap the hours of operation for the church. Mr. Hirsch asks Mrs. Rife what her anticipated hours of operation would be. Mrs. Rife states that she is looking to do Wednesdays and Thursdays between 10:00 a.m. and 2:00 p.m. Mr. Hirsch asks if it might expand. Mrs. Rife states it might. She states if somebody can't come on a Wednesday or a Thursday, I could see them on a Monday or there are certain days that I work at the hospital, I wouldn't do it on those days. I don't want to do it on the weekends or evenings. Chairman Palmieri states that in the application it states less than twenty hours. If it were to be part of the Resolution saying "hours limited to no more than twenty (20) hours per week, no weekends and no evenings." Mrs. Rife states that would be fine. Mr. Hirsch states that it would be almost impossible to enforce. Mr. Hirsch asks how clients would be seen; on an hourly basis, by the half hour? Mrs. Rife states that the patients are seen for a fifty (50) minute appointment. Mr. Hirsch asks if she has an estimate of how many patients might be seen per day? Mrs. Rife states she would think four people per day, no more than five. Chairman Palmieri asks if there are any other church activities going on at the church. Mrs. Rife states that not for that space, not for that side of the building. The pre-school is going on for that time of the day.

Mr. Battista states to Mrs. Rife that this is a for profit business. Mrs. Rife states that is correct. Mr. Battista states that you would be working at a non-profit facility that pays no taxes on their property. Mrs. Rife states that is correct. Mr. Battista asks if we have any precedent of any other examples happening. Chairman Palmieri states that the American Red Cross, which owns their whole building decided to sub-let out different areas of the building. Chairman Palmieri believes that they have to pay taxes on a certain portion of their building. Mr. Battista asks if that is going to happen here. Mrs. Rife responds that she doesn't believe so. Mr. Hirsch asks if she is paying rent. Mrs. Rife states she is not paying rent. Mr. Shiffman states what Mrs. Rife is willing to do, and has been doing, is counselling members of the church who are requesting counselling. So you could say she is paying in services. Mr. Hirsch asks if she is counselling members of the congregation at no charge? Mrs. Rife states that she has been doing that and will continue to do so. Mrs. Rife states that she will be charging people outside of the congregation but will not charge the congregation. Mrs. Rife then states she would charge some of the outside people if they could afford to pay on a case by case basis

Chairman Palmieri states that with the American Red Cross, there were written documents, written leases, there were terms, there was money. The Red Cross was benefiting directly from receiving funds from these for-profit businesses.

Mr. Battista states that he understands but the precedent that this sets is that any church can decide, okay I do consulting, I can go to my church and say I want 5 hours per week and then if I'm going to do that, then why can't an accountant use some space and why would it be free for some people and not free for others. The point is, I don't take anything away, I think it's a lovely service that you are doing. However, the precedent that this will set for a non-profit entity to come to us and say hey, if they are doing that, why can't we do that. We are setting a bad precedent.

Mr. Hirsch states the question here is a zoning question. It's not about taxes, it's not about tax exemption, it's about any use. Forget this is a church. It could be any kind of use existing on the property and this is another use that is not accessory or related directly to the other use. Mr. Hirsch asks if the office use for counselling is a permitted use. Is the applicant looking for a variance for two principal uses on one lot? Is it two D variances? Mr. Dochney states that technically yes it is. One because a professional office is not permitted in an R-1 and 2) because essentially it would be a third personal use on a single lot because they were granted a variance in 2013 for a nursery school. Mr. Hirsch asks if the nursery school was conditionally permitted. The response was in the affirmative. Chairman Palmieri asks if the prayer room/library is still going to be used as a prayer room/ library? Mrs. Rife states yes; it is used for various prayer groups, bible study groups during the week.

Mr. Hirsch states you might want to hear from other activities on the site from the pastor. You have to stay focused on the zoning issue. It's another use obviously, on a rather small scale, but that is the nature of the variance granted and professional office uses are not permitted uses in a residential zone. So you have a church and conditionally permitted nursery school. The Board must evaluate the intensity and how the site affects the surrounding properties. It is limited by space. You have one professional that is going to be providing services. It is a satellite office. We can certainly put conditions on it but it would be basically unenforceable.

The Board discusses that this is a religious institution in an R-1 zone. It is discussed that there is a certain amount of precedence that if we do something for one group, there is another level of conversation opened up if another group asks a similar request. Mr. Hirsch agrees that it may happen that way. Mr. Hirsch also states that a case would be evaluated on all factors.

Chairman Palmieri goes back to the Red Cross situation and discussion continues regarding the use of that building.

Mr. Brawner indicates that he wishes to address the planner's review letter and the points raised therein.

Mr. Dochney asks for confirmation that there are no site improvements on the site. Mr. Shiffman confirms. Mr. Dochney asks if there are going to be any signs, any advertising, any wall signs? Mrs. Rife states that she was thinking about putting a sign on the wall at the entrance when you drive down the driveway, there's a side entrance

which I would use for the business. Mr. Dochney states that you would need to make sure that you go to the Zoning Officer for that and obtain a permit. Mrs. Rife then says there will be no sign. Mr. Dochney says that wanting a sign does not affect this application, he just wants to make sure that you are aware that you need to go to the Zoning Officer for a request for a sign.

A Board member asks Mrs. Rife about the layout on the inside of the building. Where you are going to be and how it interacts with the daycare. Mrs. Rife states that there is a main entrance at the back of the building where the parking lot is. That main entrance is what the nursery school uses. There is a side entrance on the driveway. My clients would use that side entrance. The prayer room/library is right there. Mr. Dochney asks if the daycare is aware of your proposed use? Mrs. Rife states yes.

A Board member asks about various certain legal proofs that are required to grant a use variance. Mr. Shiffman answers that the counselling that is being offered does go hand-in-hand with what the church does and it's all about helping individuals. Mr. Shiffman states that clearly the community benefits from Mrs. Rife's involvement. Again, Mrs. Rife has not ruled out anybody from outside of the church but evaluating on a case by case basis as far as billing. Mr. Shiffman states that he doesn't know what a negative impact would be. There hasn't been an objection to the application. The two parking places needed are located behind the building.

Mr. Brawner asks what kind of counselling would be provided. Mrs. Rife states it is Christian counselling so it could apply in a number of areas. Mostly relational or people who are struggling with depression and issues of spirituality.

Mr. Brawner asks about Mrs. Rife's credentials. Mrs. Rife states that she attended Monmouth University where she obtained a Masters in Social Work. Then she completed the two years of supervision to get her clinical license this past fall. Mr. Rife explains that she is licensed to practice in New Jersey.

Mr. Porzio asks about the age group of her clients. Mrs. Rife states she is willing to see children as well as adults.

Mr. Shiffman calls Pastor Rife as his next witness.

Mr. Hirsch swears in Vincent Rife, 53 Charles Drive, Tinton Falls, NJ. Mr. Rife states that he is the lead pastor at Grace Christian Church and he has been there a little over twenty years. Mr. Hirsch asks if any counselling services are provided now at the church. Pastor Rife states that he does in his capacity as pastor. Mr. Hirsch asks if there are special programs at the church. For instance, Monday nights could have youth nights scheduled. Tuesday nights could have marriage discussions scheduled and so forth? Pastor Rife states that there are a lot of programs in the church that would utilize the building but not so much for the sake of counselling. For instance, if he were going to perform someone's wedding, he would initiate pre-marital counseling. Pastor Rife states that he does not have the training that his wife does, so there are limitations as to what he

can do. Pastor Rife states that he provides spiritual direction and guidance to people. The church is involved in the community regarding issues of homelessness, poverty and hunger, etc. We do not have formal counselling. We do not have any experience in being able to help people who have serious issues.

A Board member asked how the prayer room/library is used during the course of a week. Pastor Rife states that during the weekdays, the room is never used because primarily when the preschool came in, we gave them the use of the building other than our office space. So all of the activity that would happen in the church other than on the weekends happens during the evenings. That room might be used for small groups, prayer groups. It might be where people go and get books because it is a library.

Mr. Brawner asks if there is a written contract with Mrs. Rife or is it a verbal agreement. Pastor Rife says he has no intentions of writing a formal contract. It is a verbal agreement between the church and Mrs. Rife. Pastor Rife says the prayer room/library is not utilized by the pre-school. Pastor Rife states it is not part of their leased space. Mr. Brawner says it is confusing because it was previously stated that the whole building was given to the pre-school except for the office. Pastor Rife states that what was done was that when the preschool came in, it was determined which of the rooms they would be leasing and which ones they would grow into. The way that our building is laid out, you would come into a main hall and all of the children's classrooms are on one hallway. We have never had any negotiations with the preschool to utilize this room. It wouldn't fit their usage, it wouldn't work for them.

Mr. Neff asks what Kidmo is. Pastor Rife states that Kidmo is a children's program that takes place on Sunday mornings during church hours. It is not part of the pre-school.

It is asked how the church is part of the community. Pastor Rife then gives some examples of how the church is involved in the community

It is asked of Pastor Rife, if the use of this room, as described for this type of counseling service, further the mission of your church? Pastor Rife states that the counselling is in alignment with what the church is trying to do. Pastor Rife states that the church wants to see wholeness, wellness and health come to people.

Chairman Palmieri asks if anyone in the audience wishes to come up and make any comments or make a statement. There is only one person in the audience, which is Mr. Armstrong, and he does not wish to make a statement.

Mr. Shiffman states that he has previously given his summation and wishes the Board to give serious consideration to this request.

Mr. Hirsch then discusses different legal aspects of what may be considered while thinking about this application.

Chairman Palmieri asks if the Pastor had the same education and licenses that Mrs. Rife has, would this hearing be an issue. Mr. Hirsch replies that if was just to provide counselling and not have a separate business, he could provide the counselling.

Mr. Shiffman asks if this use variance is denied tonight, does the counselling that Mrs. Rife provides for members right now, free of charge, would that have to end. Mr. Hirsch answers no. She would still be able to counsel the church members free of charge.

Further discussion ensued regarding various aspects of the application. It is also stated that the use would stay with the building, it does not travel with the person.

Mr. Shiffman also adds that typical counselling sessions usually cost in the neighborhood of \$150.00 per hour. Mrs. Rife would be charging half that or less.

Further discussion ensued regarding various aspects of the application. Discussion also encompassed the R-1 zone and what would be allowed on the property if it was not a church.

Mr. Hirsch states that technically there would be a waiver of site plan also. Mr. Neff asks the applicant if there are any changes to the site plan and Mr. Shiffman responds that there are not.

A motion to close the public portion of the Rife matter by Mr. Slazyk and seconded by Mr. Brawner.

Roll Call

Yes: Mr. Porzio, Mr. Palmieri, Mr. Slazyk, Mr. Battista, Mr. Brawner, Mr. McKinley

No: None

Absent: Mr. Lomangino, Ms. Hatami, Ms. Berk

Discussion ensued among Board members regarding the Rife application.

Mr. Hirsch states that there are only six members of the Board in attendance and five are needed to vote in the affirmative in order for the use variance to pass. Normally there would be seven allowed to vote.

Chairman Palmieri makes a motion to approve based upon testimony that was given, limiting the amount of hours and days and also that the stipulation that the counsellor that uses this room must be a member of the church and if there is no member of the church, then no one else can use it and seconded by Mr. Brawner.

BOROUGH OF TINTON FALLS
ZONING BOARD OF ADJUSTMENT

REGULAR MEETING
February 4, 2016

Roll Call

Yes: Mr. Palmieri; Mr McKinley, Mr. Slazyk, Mr. Browner
No: Mr. Battista, Mr. Porzio
Absent: Mr. Lomangino

Motion does not pass with a 4 – 2 vote.

Mr. Hirsch states that, so we are clear, we could have a motion to deny. Mr. Shiffman states that there is nothing that can be done at this point besides taking an appeal. Mr. Hirsch states that the Board has voted, the public portion is closed so unless the Board wants to re-open to take comments, we do not argue now. There was a 4-2 vote, 5 in the affirmative was needed, motion does not carry. Mr. Shiffman asks for the time frame is for the right to appeal. Mr. Hirsch states that the time frame for appeal would start after the resolution is adopted and notice of the Board's action is published in the paper and from that point, there is 45 days.

Motion made by Mr. McKinley and seconded by Mr. Brawner to adjourn the meeting at 8:30 p.m. All in favor

A motion of adjourn the meeting was offered by Mr. Porzio and seconded unanimously. Time is 8:30 p.m.

Respectfully submitted,

Colleen Connolly
Zoning Board Secretary