

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
N/Side of Smith Avenue, 157' E of	*	ZONING COMMISSIONER
Sanzo Road		
(2808 Smith Avenue)	*	OF
3 rd Election District	*	BALTIMORE COUNTY
2 nd Council District		
	*	
Congregation Ohel Moshe		Case No. 2009-0154-SPHA
<i>Petitioner</i>	*	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the legal owner of the subject property, Congregation Ohel Moshe, by its President, Azi Rosenblum, through its attorney, Deborah C. Dopkin, Esquire. Petitioner requests special hearing relief, in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to determine, pursuant to Section 1B01.1.B.1.g(6), that the proposed synagogue is planned in such a way that compliance, to the extent possible with Residential Transition Area (RTA) use requirements, will be maintained and can be expected to be compatible with the character and general welfare of the surrounding residential premises; to approve a modified parking plan pursuant to Section 409.12.B; to approve a modification of landscaping standards pursuant to Section 409.8.A.1, and to affirm the relief granted in zoning Case No. 5652-SPH. Petitioner is also requesting variance relief from Section 1B01.2.C.1.a to permit a front non-residential building setback in a D.R.5.5 zone of 30 feet in lieu of 40 feet required, and from Section 1B01.2.C.1.a to permit side non-residential building setbacks in a D.R.5.5 zone of 8 (west side) and 12 feet (east side) in lieu of 20 feet required. The subject

property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the requested relief were Azi Rosenblum, President of Congregation Ohel Moshe, property owner; Kenneth S. Colbert, P.E., with Colbert Matz and Rosenfelt, Inc., the engineering consultants who prepared the site plan for this property, and Deborah C. Dopkin, Esquire, attorney for the Petitioner. Also appearing were Ethan Schuchman and Jeremy Schnittman, members of the congregation. Appearing as an interested citizen was Adam Caine (also a member of the congregation), whose residence adjoins the subject property. In addition, Rabbi Howard Teichman appeared at the hearing. There were no Protestants or other interested persons who appeared; however, it is to be noted that letters (Petitioner's Exhibit 9) were received from all surrounding property owners who support the proposal, including from the neighbor immediately behind the site, noting the synagogue's agreement to provide additional landscaping on that property.

Testimony and evidence offered revealed that the subject property is a rectangular shaped parcel located on Smith Avenue in Pikesville. The property contains 0.19 acres in area (8,274 square feet), more or less, zoned D.R.5.5, and is improved with a single-family dwelling. The dwelling fronts on Smith Avenue and access thereto is by way of a driveway that enters the property from that road. The Petitioner is desirous of adding to the house and utilizing the property for a synagogue. In this regard, testimony revealed that the Congregation is an orthodox Jewish congregation, and is used for religious services and studies. A series of photographs were submitted at the hearing as Petitioner's Exhibits 5A through 5F, depicting existing conditions on the subject property and in the surrounding neighborhood. Opposite the property on Smith Avenue are a community shopping center, multi-family garden apartments

and the Wellwood Elementary School. The nearby corner of Sanzo Road and Smith Avenue is controlled by a traffic signal. The property adjoins other residences on three (3) sides (north, west and east).

As noted above, the subject property is zoned D.R.5.5, which is a residential zoning classification. It is to be noted that in addition to single-family dwellings, the D.R.5.5 zone permits by right, churches or other buildings for religious worship (*See* Section 1B01.1.A.1.3 of the B.C.Z.R.). Thus, the proposed use is expressly permitted on the subject property under these regulations.

Mr. Colbert appeared and testified. He described the nature of the congregation in detail and indicated that this is an orthodox Jewish congregation that was begun approximately two (2) years ago. Specifically, there are approximately 15–20 members who meet each morning, afternoon and evening for daily services, after sunset on Fridays and on the Sabbath. There are also occasional study classes held during the week. The families that are members of the congregation live in the immediate area because of the prohibition of driving on the Sabbath. Thus, most of the people live in the neighborhood and walk to the facility. Finally, it is to be noted that there is no children's school or day care provided. Moreover, there will be no public rental of the facility. No signs are proposed other than a conforming identification sign. The property is well maintained by the congregants.

In addition to the conversion of the existing dwelling to a synagogue, the Petitioner also proposes a two-story addition to the side and rear of the structure. The proposed addition will add approximately 12 feet to the rear and 8 feet on one side of the house. Finally, it is to be noted that the Petitioner has arranged for the lease of parking spaces from the Greenspring Shopping Center, located directly opposite on Smith Avenue. A copy of that lease agreement

was submitted into evidence as Petitioner's Exhibit 10. Zoning Case No. 5652-SPH approved parking on the shopping center property, which is in a D.R. zone, and according to Mr. Colbert, is so zoned to impose limitations on development of that site.¹ More than sufficient excess parking now exists on the shopping center lots. The off-site parking is considered a modification to a conventional parking plan, since it is not on the synagogue site.

Mr. Colbert presented schematic architectural drawings (Petitioner's Exhibit 8) as well as a photographic image of the proposed improvements in relation to adjoining residences (Exhibit 5D). He presented photographs of a number of residences in the immediate area which have been enlarged by additions, in order to demonstrate that the size, style and materials proposed are in keeping with the character of the neighborhood.

A landscape plan was also entered. Mr. Colbert indicated that Avery Harden had reviewed the plan prior to the hearing. Specific treatments are proposed (both on-site and on an adjoining property) to provide buffers and fencing to protect adjoining properties since strict compliance with the Baltimore County Landscape Manual cannot be achieved. Mr. Colbert asserted, and I agree, that the unique location and difficulty involved if the existing improvements had to be replaced for a permitted use, distinguish this property from others in the area, and render strict conformance impracticable. Mr. Colbert also explained how the proposed use would not adversely impact the locality, addressing each of the criteria set forth in Section 502.1 of the B.C.Z.R.

Following Mr. Colbert's testimony, Mrs. Dopkin proffered testimony on behalf of Mr. Rosenblum. Mrs. Dopkin entered into evidence letters of support from adjoining property owners and from the two (2) community associations near the property's location.

¹ Mr. Colbert testified based on his personal knowledge of the center because his office is located there and he is familiar with the zoning of the site and the availability of parking.

Special hearing relief is requested as it relates to the RTA requirements. The RTA requirements are found within the D.R. zoning regulations and are designed to insure that land uses of a different character (i.e., dwellings v. churches/institutional uses) are compatible. Additionally, variance relief is requested from certain of the RTA setback requirements and to permit no dedicated parking on the subject site. Although there will be a handicap parking space on the parking pad/driveway area, no specific spaces are delineated thereon and all other parking is to be off-site at the shopping center.

With proper restrictions, I believe that relief should be granted. It is clear that this property's small size and location within a residential neighborhood limits the extent of development on the site. The proposed addition appears to be designed in such a manner so as to be architecturally compatible with the residential character of the neighborhood. The building elevation drawings that were submitted as Petitioner's Exhibit 8 indicate that the proposed addition has been designed in such a way so as to be architecturally and aesthetically compatible with the existing dwelling and other residences in the area.

However, it is to be noted that the Office of Planning recommended certain restrictions be imposed upon any approval. These include the requirement that a landscape plan be submitted to Avery Harden, the County's Landscape Architect, for review and approval prior to the issuance of any permits. In addition, they request that elevation drawings of the proposed building be submitted for their review and approval prior to the issuance of any permits. I will incorporate these suggestions as conditions to the approval granted.

Pursuant to the advertisement posting of the property and public hearing on these Petitions held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 4th day of May 2009 that the Petition for Special Hearing seeking approval, in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to determine, pursuant to Section 1B01.1.B.1.g(6), that the proposed synagogue is planned in such a way that compliance, to the extent possible with Residential Transition Area (RTA) use requirements, will be maintained and can be expected to be compatible with the character and general welfare of the surrounding residential premises; to approve a modified parking plan pursuant to Section 409.12.B; to approve a modification of landscaping standards pursuant to Section 409.8.A.1, and to affirm the relief granted in zoning Case No. 5652-SPH, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 1B01.2.C.1.a of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a front non-residential building setback in a D.R.5.5 zone of 30 feet in lieu of 40 feet required; and from Section 1B01.2.C.1.a of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit side non-residential building setback in a D.R.5.5 zone of 8 (west side) and 12 (east side) in lieu of 20 feet required, be and are hereby GRANTED, subject to the following restrictions:

1. Petitioner is advised that it may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until the 30-day appeal period from the date of this Order has expired. If for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. The Petitioner shall submit a landscape plan to Avery Harden, the County's Landscape Architect, and building elevation drawings of the existing dwelling and proposed addition to the Office of Planning for review and approval prior to the issuance of any permits.
3. When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw