

<b>IN RE: PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
W side of Labyrinth Road; 165 feet N	*	DEPUTY ZONING
of the c/l of Smith Avenue		
3 <sup>rd</sup> Election District	*	COMMISSIONER
2 <sup>nd</sup> Councilmanic District		
(7602 Labyrinth Road)	*	FOR BALTIMORE COUNTY
<b>Netivot Shalom The New Shul of Baltimore, Inc.</b>	*	
<b>By Howard M. Lederman, President</b>		
<i>Petitioner</i>	*	<b>Case No. 2009-0317-SPHA</b>

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the legal owner of the subject property, Netivot Shalom The New Shul of Baltimore, Inc., by Howard M. Lederman, President. Petitioner is requesting Special Hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows:

- To determine pursuant to Section 1B01.1.B.1.g(6) of the Baltimore Zoning Regulations (B.C.Z.R.) 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; and
- To approve a modified parking plan pursuant to Section 409.12.B of the B.C.Z.R.; and
- To approve a modification of landscaping standards pursuant to Section 409.8.A.1 of the B.C.Z.R.

Petitioner is also requesting Variance 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 38 feet in lieu of the 40 feet required; and side non-residential building setbacks in a D.R.5.5 Zone of 8 and 10 feet 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 was Howard M. Lederman, President, on behalf of Petitioner Netivot Shalom The New Shul of Baltimore, Inc. (hereinafter "Petitioner" or "Netivot Shalom"), and Jeffrey Coleman, Treasurer. Also appearing in support of the requested relief was Deborah C. Dopkin, Esquire, attorney for Petitioner, and Kenneth J. Colbert with Colbert Matz Rosenfelt, Inc., the professional engineer who prepared the site plan. The case garnered interest from the surrounding community and a number of neighbors and interested persons attended in support of the requested relief. Their names and addresses are listed on the "Petitioner's Sign-In Sheet" contained within the case file. Also attending were several interested citizens who were opposed to the relief in some respects. They were identified as Charles Walder of 3216 Smith Avenue and Ruth Goldstein of 3226 Midfield Road.

Testimony and evidence presented revealed that the subject property is a rectangular-shaped property consisting of approximately 14,670 square feet or 0.337 acre, more or less, zoned D.R.5.5. The property is located on the west side of Labyrinth Road just north of Smith Avenue, east of Seven Mile Lane and one quarter mile north of the Baltimore City/Baltimore County line. As shown on the aerial photograph that was marked and accepted into evidence as Petitioner's Exhibit 2, the property is situated in a residential area and is also close by a shopping center and several schools, with Pikesville High School located directly across the street on Labyrinth Road. The property is improved with an existing one-story masonry structure with a finished basement and a driveway that runs along the south side of the property to a side porch. The structure

consists of approximately 1,500 square feet and was originally built in 1960 as a single-family dwelling as part of Section 1 of the “Labyrinth” subdivision shown on the subdivision plat that was marked and accepted into evidence as Petitioner’s Exhibit 3.

The structure had been used over the years as a dwelling; however, Petitioner purchased the property in August 2005 and the structure has been used as a synagogue for Petitioner’s membership since that time. In order for that use to continue, Petitioner has requested certain zoning relief to legitimize existing conditions, including special hearing relief to determine that the synagogue is planned in such a way to be compliant, to the extent possible, with Residential Transition Area (RTA) use requirements, and will be maintained and is compatible with the character and general welfare of the surrounding residential premises; to approve a modified parking plan; and to approve modification of landscaping standards. Petitioner has also requested variance relief to permit an existing front non-residential building setback of 38 feet in lieu of the 40 feet required and existing side non-residential building setbacks of 8 and 10 feet in lieu of 20 feet required.

In support of the special hearing and variance requests, Kenneth Colbert, a professional engineer with Colbert Matz Rosenfelt, Inc., was called to testify and was offered and accepted as an expert in land use, zoning, and interpretation of the Baltimore County Zoning Regulations. Mr. Colbert has been a professional engineer for approximately 40 years and testified as to his knowledge of the subject property and his involvement in the preparation of the site plan. He also submitted an exhibit containing photographs of the property and the surrounding areas of Labyrinth Road that was collectively marked and accepted into evidence as Petitioner’s Exhibit 4. These photographs essentially show a residential neighborhood with similar looking structures and

the large parking lot of Pikesville High School directly across the street and in the closest proximity to the subject property.

Particularly as to the special hearing request regarding the Residential Transition Area (RTA) requirements, Mr. Colbert explained that although a synagogue is a permitted use in the D.R.5.5 Zone, its existing location at the subject property makes full compliance with the RTA requirements impossible. The location is an existing, mature neighborhood with well-established structures and setbacks. As shown on the RTA Setback Exhibit that was marked and accepted into evidence as Petitioner's Exhibit 5, due to the size and width of the property, the 75 foot RTA setback requirement would completely overlap both sides of the property, rendering strict compliance with this requirement unattainable. Mr. Colbert also indicated that the present use of the property as a synagogue and the limited number of members, as well as the fact that the property will retain its residential aspect and appearance, make strict compliance impractical and unnecessary. As to the request for a modified parking plan and modification of landscape standards, Mr. Colbert further explained that most members of the synagogue live in close proximity and walk to services. Petitioner also has the consent of the nearby high school to utilize the parking across the street should the need ever arise. In addition, a review of the two photographs of the subject property that were marked and accepted into evidence as Petitioner's Exhibit 6 show the existing landscaping to be more than sufficient to give the property a residential look and in keeping with the rest of the neighborhood. A schematic of the existing landscaping with identification of trees and shrubs was also marked and accepted into evidence as Petitioner's Exhibit 7. Mr. Colbert opined that any additional landscaping or changes to the existing landscaping would not be in character with the neighborhood.

As to the variance request, Mr. Colbert discussed the constraints on the property in its use as a synagogue. Under Section 1B02.3.C.1 of the B.C.Z.R., as a single-family residence, the minimum front yard depth would be 25 feet and the minimum side yard widths would be 10 feet on each side; however, in using the structure as a building for religious worship -- such as a synagogue, which is a use permitted as of right pursuant to Section 1B01.1.A.3 of the B.C.Z.R. -- the non-residential setbacks contained in Section 1B01.2.C.1.a of the B.C.Z.R. are much greater, with minimum front yard setbacks of 40 feet and side yard setbacks on each side of 20 feet. Initially, Mr. Colbert pointed out that the existing 8 foot side yard setback at the northern rear corner of the building would not comply with the setback requirements in any event, whether residential or non-residential. He also indicated that strict compliance with the non-residential setback requirements would force Petitioner to demolish the existing building and construct a much smaller and narrower structure -- one that would definitely not be in keeping with the look and character of the neighborhood. It would also have the practical effect of preventing a permitted and desirable use of the property as a small synagogue, rather than the unkempt residential rental property it was used as previously.

In addition, Mr. Colbert briefly discussed the 502.1 standards set forth in the B.C.Z.R. for special exception uses, which -- although not directly on point in the instant matter -- are instructive to show how slight the impact of the synagogue use is at the subject property. He opined that the use would not be detrimental to the health, safety, or general welfare of the locale and would not have any negative impacts on the other 502.1 criteria. Indeed, the past three to four years bear out that the synagogue has fit in very well with the residential appearance and character of the community, and has benefited members of the community who worship at the synagogue.

Finally, Mr. Colbert also pointed out that the existing sign is in compliance with the sign regulations for the non-residential use as a synagogue.

Also testifying in support of the relief was Jeffrey Coleman of 3111 Hatton Road located approximately three blocks from the subject property on the south side of Smith Avenue. Mr. Coleman is the treasurer of Petitioner's congregation and is a certified public accountant. He indicated that the congregation was started in 2004 and incorporated as a 501(c)(3) non-profit organization under the Internal Revenue Code. Mr. Coleman indicated the property was acquired in August 2005 from an absentee landlord living in Florida who rented the home as a dwelling, but allowed the property to erode into a state of disrepair. After purchasing the property, the members of the congregation used several weekends during the ensuing fall to clean up the property and make improvements. Their efforts were memorialized in a number of photographs that were collectively marked and accepted into evidence as Petitioner's Exhibit 8. A number of "before" photographs showing the interior condition of the building prior to the cleanup and renovations were also collectively marked and accepted into evidence as Petitioner's Exhibit 9.

Mr. Coleman advised that the full membership of the congregation is approximately 40 people and services at the subject property occur mainly on Friday mornings, Saturday mornings and evenings, and Sunday mornings, as well as during high holidays. Photographs showing the areas of worship located in the basement of the building were collectively marked and accepted into evidence as Petitioner's Exhibit 11. There are essentially two areas of worship divided by a curtain that bisects the basement and provides separate areas for men and women of the congregation, as well as a reader's table and area for the scrolls. The bedrooms on the main upstairs level are used for children's programs during services and the living room/dining room areas are used for socializing after services. Mr. Coleman noted that the kitchen is not used for

cooking or food preparation, but rather the running water and refrigerator are used as a convenience to the congregation. Finally, Mr. Coleman stressed that the current congregation is a close-knit community and, while membership may fluctuate slightly from time to time and new members are welcome, there are no plans to physically change or alter or expand the existing configuration or layout of the building. According to Mr. Coleman, the property and the existing building provide the congregation with ample room for their religious activities.

Testifying as an interested citizen was Charles Walder of 3216 Smith Avenue. Mr. Walder's property is just south of the subject property. His rear yard abuts the subject property and his front yard fronts Smith Avenue. He has lived there for almost 20 years. Presently, he is concerned about Petitioner's requested relief because he is apprehensive that this would be the first step toward further expansion of the property and changes in the residential appearance of the property, especially so close to his property. On the one hand, Mr. Walder indicated he is not opposed to the property being used as a place for people to pray, and has no objection to the existing sign in front of the subject property; however, on the other hand, he feels that the property should continue to be a house instead of designated as a "synagogue." His testimony was also summarized in a letter to this Commission dated August 5, 2009, which was marked and accepted into evidence as Protestant's Exhibit 1.

Also testifying as an interested citizen was Ruth Goldstein of 3226 Midfield Road. Ms. Goldstein's property is located approximately one half mile north of the subject property. She is also President of the Greater Midfield Association. Ms. Goldstein presented a letter dated July 29, 2009 from Barry Holt Blank, Vice President of the Pikesville-Greenspring Community Coalition, Inc., indicating his organization voted to oppose a requested sign variance submitted by Netivot Shalom. This letter was marked and accepted into evidence as Protestant's Exhibit 2. Ms.

Goldstein indicated that her organization, Greater Midfield Association, does not have a formal position on the instant matter; however, she also indicated that as a neighbor and interested citizen, her main concern and objection is with the existing sign on the front lawn of the subject property. She believes that because the neighborhood is residential, even though Petitioner is using the property for a permitted non-residential use, the sign should be a size (approximately one foot by one foot) that is permitted for a residential use. In Ms. Goldstein's view, allowing a larger sign for a non-residence only exacerbates the non-residential look of the property and makes it stand out in a negative way.

Finally, a letter dated August 10, 2009 from Ann Halpern of 7606 Labyrinth Road was submitted expressing opposition to a variance that allows the subject property to change its use or future uses and opposition to any sign that needs a variance to permit it. This letter was marked and accepted into evidence as Protestant's Exhibit 3. In response, Petitioner submitted 12 letters from various neighbors in and around the Greater Midfield Association, including adjacent neighbors, that expressed support for the synagogue and the related special hearing and variance requests. These letters were collectively marked and accepted into evidence as Petitioner's Exhibit 12.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated July 6, 2009 which indicates that the Office does not oppose Petitioner's request.

Turning first to the Petition for Special Hearing, I am persuaded to grant the requested relief. As to the Residential Transition Area (RTA) requirements, Section 1B01.1.B.1.g(6) of the B.C.Z.R. states that the RTA restrictions do not apply to a building for religious worship provided the site plan for which has been approved after a public hearing, as well as a finding that proposed

improvements to the property are planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises. In the instant matter, I am easily persuaded that the purposes of the RTA will be fulfilled and that the property and the building will be compatible with the character and general welfare of the community. The property has been used as a synagogue for a number of years with no changes to the building or the overall appearance of the property in that time. In addition, Petitioner's representatives repeatedly testified that there are no plans to significantly increase the number of members in the congregation or make any changes in, or expansion of, the existing building.

As to the request for a modified parking plan and modification of landscaping standards, I am also persuaded to grant these requests. It is clear from the evidence -- and from the experience of the last five years -- that the existing parking situation is more than adequate to meet the needs of the congregation. Most members live in close proximity to the subject property -- within the community "Eruv" -- and walk to services. Moreover, in the unlikely event that more parking is required, there is availability in the parking lot of adjacent Pikesville High School across the street. It is also clear from the evidence that the existing landscaping is in keeping with the residential character of the neighborhood. Based on the photographs in evidence, I believe that any changes to the landscaping -- whether more or less or different landscaping -- would make the subject property stand out and be less similar to the other residential properties.

As to the variance requests, considering all of the testimony and evidence presented, I am convinced that the requests should be granted. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. The use of the property as a place for religious worship is a use permitted by right, yet even though the physical

appearance of the property is unchanged and unaltered from that of a dwelling and fits in with the residential neighborhood, the setback requirements are significantly more demanding for this non-residential use and impacts the subject property disproportionately as compared to other similar properties in the zoning district. Hence, I find the property to be unique in a zoning sense. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty and undue hardship upon Petitioner. Petitioner would be compelled to make significant alterations or demolish the existing structure in order to erect a much smaller and narrower structure that would comply with the non-residential setback requirements.

Lastly, I find that these variance requests can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare.

Pursuant to the advertisement, posting of the property and public hearing held, and after considering the testimony and evidence offered, I find that Petitioner's special hearing and variance requests should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 2<sup>nd</sup> day of September, 2009 that Petitioner's Special Hearing request in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows:

- To determine pursuant to Section 1B01.1.B.1.g(6) of the Baltimore Zoning Regulations (B.C.Z.R.) 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; and
- To approve a modified parking plan pursuant to Section 409.12.B of the B.C.Z.R.; and

- To approve a modification of landscaping standards pursuant to Section 409.8.A.1 of the B.C.Z.R.,

be and are hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's variance requests 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 38 feet in lieu of the 40 feet required; and side non-residential building setbacks in a D.R.5.5 Zone of 8 and 10 feet in lieu of 20 feet required be and are hereby GRANTED, subject to the following:

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. Any additions or changes to the residential appearance or character of the existing property or structure shall require a special hearing to reassess the Residential Transition Area use requirements, and a determination as to whether the proposed improvements to the property are planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises.

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

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SIGNED  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

THB:pz