IN RE: PETITION FOR SPECIAL HEARING NW of Lightfoot Drive, 78' SW of the c/line of Rohr Road 3rd Election District 2nd Council District **(2422 Lightfoot Drive)** Moshe Y. and Malka Markowitz Petitioners	* * ** * * 	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **CASE NO. 2012-0274-SPH**

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ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Special Hearing filed by the legal owners of the subject property, Moshe Y. and Malka Markowitz. Petitioners are requesting Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to determine whether or not the Administrative Law Judge should approve after school religious and cultural study in a residence (zoned DR 5.5) for as many as 12 elementary school students at any one time, as a permitted accessory use. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the public hearing held for this case were Moshe Y. and Malka Markowitz and Deborah C. Dopkin, Esquire, attorney for Petitioner. Also appearing in support of the requested relief was Richard Matz, professional engineer with Colbert Matz Rosenfelt, Inc., the firm that prepared the site plan, Carla Ryan and Mayer Freedman. Appearing in opposition to the Petitioners' request were many residents of the surrounding neighborhood. These individuals are too numerous to identify herein. However, all have signed in on the Citizen Sign-In Sheets. There were no ZAC comments received from any of the County reviewing agencies.

Testimony and evidence revealed that the subject property is 0.21 acres and is zoned DR 5.5. The property is improved with a single family dwelling, and is located in a neighborhood (Summit Park) with similar homes. Petitioners own the subject property, but it is not their principal residence. They lease the house to a married couple with two children.

Petitioners propose to conduct in the home an after school program for as many as 12 children, providing religious and cultural instruction for the children. Mr. Markowitz (a Rabbi) indicated that his tenant would play a role in the proposed after school program, and he indicated all of the children would be students at Summit Park Elementary School. Mr. Markowitz indicated the mission of the program would be to provide the young children with a "Jewish identity."

Petitioners' engineer Richard Matz explained the site plan, and testified that the children would be picked up at Summit Park Elementary School at about 3:30 p.m., and would be returned by 5:30 p.m. The program would operate Monday-Friday, and Mr. Matz explained that a staff member would bring the children to and from the school via a walking path that connects to the subject property. Mr. Matz opined that the proposed program would qualify as an "accessory use," and he testified that the Petitioners satisfied the factors set forth in B.C.Z.R. § 502 (special exception regulations).

Several community residents testified, and they all indicated they opposed the relief. In addition, the Protestants submitted a petition (Protestants' Exhibit 2) containing more than 50 signatures of nearby residents opposed to the variance relief. While the testimony of the community members differed in some respects, the main themes echoed throughout were concerns with traffic, a commercial enterprise in a quiet neighborhood, noise and overcrowding of the small lot, and setting a precedent for future requests of a similar nature, which could undermine the stability of the community.

Having reviewed the exhibits and testimony, I do not believe the program would qualify as an "accessory use" of this residential single family dwelling. Under the B.C.Z.R., an accessory use is one which:

> (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served;

In the case at hand, the proposed after school program cannot be said to be "customarily incident" to the principal use, which is a single family dwelling.

Although the B.C.Z.R. does provide a list of accessory uses permitted in residential zones, the regulation states that it is a non-exhaustive list. B.C.Z.R. § 1B01.1.A.18. And while there are some Maryland cases discussing "accessory buildings," there is a "paucity of Maryland cases defining accessory uses, and their ***relationship*** with legal primary uses." Carroll County v. Zent, 86 Md. App. 745, 759 (1991) (italics in original). In Zent, Judge Cathell discussed in detail cases from other jurisdictions, which he categorized depending on whether the purported accessory use arose in a residential, manufacturing, etc., setting. Id. at 760.

In Zent (Id. at 763-64), the Court discussed the case of Markley v. Carlisle, a 1987 case from Pennsylvania. In Markley, a non-conforming apartment building was being used to house psychiatric patients. The clinic operator proposed to provide separate apartments in the same building for staff member offices. Though the appellate court did not answer the question, it remanded the matter back to the trial court to determine (among other things) whether these staff unit offices are "customarily found in connection with an apartment building." Id. at 764.

Returning to the present case, I believe there was simply a lack of specific factual support for the proposition that an after school religious program of this nature was "customarily" carried

on within a single family dwelling. Indeed, there was no testimony or evidence of any other similar programs within Baltimore County. The Petitioners' engineer analogized the proposed use to a "card club" or boy scout meetings which often take place in single family dwellings. While that may be the case, I do not believe the analogy is an apt one.

The use proposed in this case would occur five days a week, and would involve 12 children (and their escorts) coming and going between 3:30 and 5:30 every week day. This is simply a much more intense use than a card club or scout gathering, which would probably meet no more frequently than one or two times a month, most often in the evening hours.

Mr. Markowitz testified he conducts his program (known as Inspiration Express) in several area schools, and letters were submitted to that effect. Petitioners' Exhibits 3 and 4. Few would doubt that such a program is a proper accessory use of a school, church or other religious building or a community hall. But it seems equally clear that such a use is not "customarily" seen in single family dwellings, and for that reason I do not believe the program described by Mr. Markowitz would qualify as an "accessory use" of a residence.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the relief requested shall be denied.

THEREFORE, IT IS ORDERED, this **25** day of June, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve after school religious and cultural study in a residence for as many as 12 elementary school students at any one time, as a permitted accessory use, be and is hereby DENIED.

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

_____Signed_____
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:pz