

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(2808 Smith Avenue)	*	OFFICE OF
3 rd Election District		
2 nd Council District	*	ADMINISTRATIVE HEARINGS
Congregation Ohel Moshe		
<i>Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner		
	*	Case No. 2017-0181-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of Congregation Ohel Moshe, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R) as follows: (1) To determine that the addition to the existing synagogue is planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and can be expected to be compatible with the character and general welfare of the surrounding residential premises; (2) To approve a modified parking plan; (3) To approve a modification of landscaping standards; and (4) To affirm the relief granted in Zoning Case No. 2009-0154-SPHA and amend the plan approved in that case.

In addition, a Petition for Variance seeks the following: (1) To permit a front non-residential principal building setback in a D.R. 5.5 zone of 23 ft. in lieu of 40 ft. required; (2) To permit a side non-residential principal building setback in a D.R. 5.5 zone of 12 ft. in lieu of the 20 ft. required; and (3) To permit a rear non-residential principal building setback in a D.R. 5.5 zone of 6 ft. in lieu of the 30 ft. required. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the requests was architect Stuart Macklin, professional engineer Richard Matz, Azi Rosenblum (president of the Congregation), and many

members of the synagogue. Timothy M. Kotroco, Esq. represented Petitioner. Several neighbors opposed the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations.

A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP). The DOP had no objection to the requests, and that agency made a specific finding under B.C.C. §32-4-402 (“Compatibility”) that the proposed synagogue, though larger than the single-family dwellings in the area, was significantly smaller than other non-residential structures in the neighborhood. That agency also noted the synagogue would be well below both the 50 ft. height limitation, as well as the 200 ft. non-residential building length limitation.

The subject property known as 2810 Smith Ave. is approximately 9,226 square feet in size and is zoned DR 5.5. The property is improved with a single-family dwelling which fronts on Smith Avenue, a heavily traveled thoroughfare. The adjacent property at 2808 Smith Ave. originally contained a single-family dwelling as well, although Petitioner obtained approval in 2009 to operate a synagogue at that location. At present, Petitioner proposes to enlarge the synagogue by razing the dwelling at 2810 Smith Ave. and constructing an addition across the lot boundary which would connect to the existing synagogue next door.

SPECIAL HEARING

The petition for special hearing seeks a determination the property satisfies the “church” exemption found in the residential transition area (RTA) regulations. Approval of a modified parking plan is also sought in the petition.

With regard to the parking, Petitioner obtained special hearing relief to approve a modified parking plan for the existing synagogue in Case No. 2009-0154-SPHA. That order permitted parking (a maximum of 30 spaces) to be located in the Greenspring Shopping Center across Smith Avenue,

pursuant to a lease agreement with the owner. Petitioner's Ex. 2. Petitioner presented a revised agreement with the shopping center owner, increasing the number of spaces which may be used by the synagogue (a maximum of 62 spaces), to account for the proposed expansion of the facility. Petitioner's Ex. 3. Mr. Rosenblum explained members of the orthodox synagogue walk to services, and he testified that there has never been a shortage of parking for services or other events at the synagogue.

In that 2009 Order, the zoning commissioner also determined Petitioner satisfied the requirements for the "new church" exemption under the RTA regulations. B.C.Z.R. §1B01.1.B.1.g.(6). The showing required to construct a new church in a D.R. zone is more onerous than that required when a church seeks to expand or enlarge. Even though a "compatibility" analysis is not (strictly speaking) required in the latter scenario, the DOP and both of Petitioner's experts (an architect and professional engineer) opined the synagogue addition would be designed in such a way so that it is compatible with the community. Mr. Macklin provided elevation drawings (Pet. Ex. 4 & 5) and explained the sloped roof proposed would match that found on dwellings in the neighborhood. He testified he relied upon his many years of experience as an architect to make this project compatible with the community. Though several neighbors disagreed and believed the structure would be too big and imposing, I do not believe that testimony can rebut the expert opinions expressed by Messrs. Matz and Macklin. *Anderson v. Sawyer*, 23 Md. App. 612, 622 (1974).

VARIANCE

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

Petitioner has met this test. The site is small and is located within a residential neighborhood, which constrains the development potential of the property. Petitioner would experience practical difficulty if the regulations were strictly interpreted because it would be unable to construct the proposed addition. Finally, I do not believe granting the requests would have a detrimental impact upon the community. Churches and other buildings for religious worship are permitted by right in the D.R. zones, and this project will be designed and constructed by professionals whose goal will be to create an attractive and functional structure that will serve and enhance the community.

THEREFORE, IT IS ORDERED this 13th day of **March, 2017**, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R): (1) To determine that the addition to the existing synagogue is planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and can be expected to be compatible with the character and general welfare of the surrounding residential premises; (2) To approve a modified parking plan; (3) To approve a modification of landscaping standards; and (4) To affirm the relief granted in Zoning Case No. 2009-0154-SPHA and amend the plan approved in that case, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the petition for variance: (1) To permit a front non-residential principal building setback in a D.R. 5.5 zone of 23 ft. in lieu of 40 ft. required; (2) To permit a side non-residential principal building setback in a D.R. 5.5 zone of 12 ft. in lieu of the 20 ft. required; and (3) To permit a rear non-residential principal building setback in a D.R. 5.5 zone of 6 ft. in lieu of the 30 ft. required, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Petitioner must comply with the three “bullet point” conditions noted on the first page of the DOP’s ZAC comment dated March 1, 2017, a copy of which is attached hereto.

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

JEB/sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County