

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(6615 Baythorne Road) *	OFFICE OF
3 rd Election District	
2 nd Council District *	ADMINISTRATIVE HEARINGS
Havkim, LLC, <i>Legal Owner</i>	
	FOR BALTIMORE COUNTY
Petitioner *	Case No. 2019-0485-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 Havkim, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 1B01.1.B.1g(6) of the Baltimore County Zoning Regulations (“BCZR”) to permit a building for religious practice with a finding that the proposed improvements are planned in such a way that compliance, to the extent possible with Residential Transition Area (“RTA”) use requirements, will be maintained and that the plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises. In addition, a Petition for Variance was filed pursuant to §§ 409.6, 1B01.2.C.1, 1B01.1.B.1.e(3) and 1B01.1.B.1.e(5) as follows: (1) to permit 2 parking spaces in lieu of the required 3 spaces; (2) to permit a front setback of 35 ft. front yard in lieu of the required 50 ft. for a non-residential building, and a street corner side yard of 34 ft. in lieu of the required 35 ft.; (3) to permit an RTA undisturbed buffer of 0 ft. in lieu of the required 50 ft.; and (4) to permit an RTA structure or parking lot setback of a minimum of 34 ft. in lieu of the required 75 ft. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Shlomo Rosenbaum appeared in support of the requests. Herbert Burgunder, III, Esq. represented Petitioner. A letter of opposition from James J. Buchwalter, who resides at 6603

Baythorne Road, was submitted in advance of the hearing. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”). Two protestants, Barbara Gruber, and Paul Abrams attended the hearing.

SPECIAL HEARING

Mr. Rosenbaum testified that the proposed mikvah will serve the surrounding community and will particularly benefit those who are in closer proximity to this location than the main mikvah on Clark’s Lane in Pikesville. He explained that the exterior of the structure will remain the same, except for the one story addition enclosing the existing patio on the rear of the structure. He stressed that there will be no signage identifying the mikvah and that it will continue to look just like a residence and blend in to the existing neighborhood. He further explained that no vehicular traffic will be generated by this use, other than cleaning and maintenance crews because the users are required by their faith to walk to the mikvah. As such, the proposed mikvah will not exacerbate the traffic or parking conditions in the neighborhood. He testified that they currently have no vehicular traffic associated with the main mikvah. Finally, he testified that this proposed mikvah will be open only on Fridays after sunset, and on approximately ten religious holidays a year. Rosenbaum estimates that they will serve 8 to 10 persons on those Friday evenings.

The protestants, Ms. Gruber and Mr. Abrams, voiced skepticism regarding Mr. Rosenbaum’s testimony that the mikvah would not generate any further traffic in the area. They both described traffic from out of the area and from out of state that is generated by the existence of synagogues and ancillary religious buildings in the County. They testified that the traffic conditions on Smith Avenue in particular are already particularly dangerous, and they described several recent incidents where pedestrians have been hit by cars. Mr. Rosenbaum stated that he is ready and

willing to work in good faith with the relevant County agencies to install any and all appropriate traffic calming devices in the area as he is also concerned for the safety of those walking to the mikvah.

Based on the record evidence I am satisfied that the use of this property as a mikvah, as depicted in the site plan and described by Mr. Rosenbaum complies to the extent possible with the RTA requirements. I further find that this non-intensive use will be compatible with the character and general welfare of the surrounding residential premises. I do not believe that the proposed mikvah will exacerbate the existing parking or traffic conditions, which were the only concerns raised by the protestants.

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).

The lot in question is a somewhat irregularly shaped lot. Further, the residential structure is sited to the right of center on the lot, presumably so as to be set back farther from Smith Avenue which borders it on the north. As such the property is unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because there is not sufficient space on the lot to create a third parking place or to construct the mikvah. In fact, I believe the mikvah, which will be open less than seventy days a year (Friday evenings and approximately ten Jewish holidays), will likely generate less traffic, noise, congestion, and parking issues than an average residence would. Finally, I find that the variance can be granted in harmony with the spirit and

intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare. This is demonstrated by the lack of County opposition.

THEREFORE, IT IS ORDERED this 13th day of **December, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing to permit a building for religious practice with a finding that the proposed improvements are planned in such a way that compliance, to the extent possible with Residential Transition Area (“RTA”) use requirements, will be maintained and the plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit 2 parking spaces in lieu of the required 3 spaces; (2) to permit a front setback of 35 ft. front yard in lieu of the required 50 ft. for a non-residential building, and a street corner side yard of 34 ft. in lieu of the required 35 ft.; (3) to permit an RTA undisturbed buffer of 0 ft. in lieu of the required 50 ft.; and (4) to permit an RTA structure or parking lot setback of a minimum of 34 ft. in lieu of the required 75 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to 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 his 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 ZAC comment submitted by the DOP, a copy of which is attached hereto and made a part hereof.
3. The mikvah shall operate only on Fridays after sundown and on Jewish holidays.

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

Signed _____
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:slh