

IN RE: PETITIONS FOR SPECIAL HEARING * SPECIAL EXCEPTION & VARIANCE * (7504-7514 Seven Mile Lane) * 3rd Election District * 2nd Council District * Suburban Orthodox Congregation * <i>Legal Owner</i> *	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY Case No. 2020-0304-SPHXA
Petitioner	
* * * * * * * * *	

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing, Special Exception and Variance filed on behalf of Suburban Orthodox Congregation, legal owner (“Petitioner”).

The Special Hearing was filed as follows pursuant to the Baltimore County Zoning Regulations (“BCZR”) § 500.7 seeking approval as follows:

- (1) An amendment to the previously approved site plan in zoning Case No. 1985-0196-A.
- (2) The site plan for a new building of religious worship (synagogue) in accordance with the requirements of BCZR § 1B01.1.B.1.a through e. do not apply to the proposed project.
- (3) A building length of 210 ft. with the favorable recommendation of the Director of Planning in lieu of the 200 ft. maximum otherwise permitted under the Comprehensive Manual of Development Policies (“CMDP”), Residential Standards, page 35, "Other requirement", and BCZR § 504.2.
- (4) The proposed 1-story volunteer ambulance building (and use therefor) as a separate non-residential principal building and use, and a determination as to whether such use is permitted by right or special exception in DR 2 zone in which it is proposed.
- (5) Such further and other relief as the nature of this case may require.

If pursuant to Special Hearing Request No. 4, the Zoning Commissioner determines that a special exception is required for the proposed 1-story volunteer ambulance building (and use thereof), then a special exception for the same under BCZR § 1B01.1.C.

A Variance was also filed as follows:

(1) From BCZR § 1B01.2.C.1(a) to permit non-resident principal building setback as follows: Interior side yard 10 ft. in lieu of the required 20 ft. in DR 5.5 zone and the required 30 ft. in the DR 2 zone. Street-side yard of 18 ft. in lieu of the required 35 ft. in the DR 5.5 zone. Rear yard of 6 ft. in lieu of the required 40 ft. in the DR 2 zone. Building-to-building setback (front of synagogue to rear of ambulance building) of 32 ft. in lieu of 100 ft. required in the DR 2 zone.

(2) In the alternative to Special Hearing Request No 2 above, a Variance from BCZR § 1B01.1.B.1.e.(3) to permit a Residential Transition Area (“RTA”) buffer of zero (0) ft. in lieu of the 50 ft. required. In the alternative to Special Hearing Request No. 2 above, a Variance from BCZR § 1B01.1.B.1.e.(5) to permit a RTA setback 6 ft. in lieu of the 75 ft. required. In the alternative to the Special Hearing request No 3 above, a Variance from BCZR § 504.2 and CMDP, Residential Standards, page 35, "Other Requirements" for a total building length of 210 ft. in lieu of a maximum of 200 ft. allowed.

Due to the ongoing COVID-19 restrictions a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”). They did not oppose the requested relief, subject to proposed conditions. Rabbi Shmuel Silber appeared in support of the Petition on behalf of the Suburban Orthodox Congregation. Gary Aiken, the Vice President of the Executive Committee of Co-Petitioner Baltimore Hebrew Association also appeared in support. Steve Warfield of Matis Warfield Engineering also appeared and was accepted as an expert in engineering, land use planning, and the BCZR. The site plan that he prepared and sealed was admitted as Petitioner’s Exhibit 3. Mitch Kellman of Daft-McCune-Walker also appeared and was accepted as an expert in land use, planning, and the BCZR. Finally, Christina Long, AIA, also appeared and was accepted as an

expert in architecture and planning. The architectural renderings and floor plan she prepared were admitted as Petitioner's Exhibits 8 and 12, respectively.

RECORD EVIDENCE

Mr. LaFiandra gave an overview of the case. He explained that there is an existing synagogue (shul) on the site that has been home to the Suburban Orthodox congregation since the 1960s. That facility, which includes classrooms and a social hall, has become aged and obsolete. The congregation wishes to construct a modern shul and supporting facilities on this site but also needs to preserve the existing shul during construction in order to continue to serve the congregation. This reality necessitates the site location of the new facilities and in turn necessitates some of the special hearing and variance relief that is requested.

Steve Warfield was Petitioners' first witness. He explained the site plan in some detail. The site is approximately three acres and is split-zoned DR 2 and DR 5.5, with approximately a third of the site DR 2 and the rest DR 5.5. He also noted that a small portion of the site is owned by the Baltimore Hebrew Congregation, which is why they are a co-petitioner. In addition, that congregation owns the entire property to the south and west of this site, where their synagogue and other facilities are located, including a ball field adjoining the northwest portion of the subject site. Mr. Warfield further explained that the subject site previously housed five dwellings that fronted Seven Mile Road, but that these dwellings were recently razed in order to make room for the proposed shul. Warfield noted that the existing shul has 318 seats in the sanctuary and 57 existing parking spaces. It also has a social hall that seats 250 and has five separate classrooms. The proposed shul will have 387 seats but will have 99 parking spaces, which exceeds the requirements of the BCZR (1 space for every 4 seats). The plan also proposes a 4,672 sq. ft. social hall, separate libraries/schools for men and women, and six classrooms. The entire structure will be 33,480 sq.

ft., including a 3,100 sq. ft. open air courtyard in the center. Mr. Warfield testified that residential transition areas (“RTA”) are generated on the north and east sides of the site. On the east by dwellings along Seven Mile Road, and on the north by a dwelling and by one of the parcels owned by the Baltimore Hebrew Congregation because the parcel is less than two acres with sufficient buildable space. He testified that in his expert opinion the proposed site plan meets the requirements of BCZR § 1B01.1.B.1.g (6) because the new shul design complies with the RTA regulations to the extent possible and the shul will be compatible with the surrounding dwellings. On this point both he and Mr. Kellman explained that the neighbors have lived next to the existing shul for over fifty years so that it has become part of the fabric of the neighborhood. Furthermore, they explained that there will be extensive landscaping to provide visual and sound buffers. Finally, they noted that a good portion of the site is bordered by the Jewish Hebrew Congregation ball field and their other facilities and that this fellow congregation supports the requested relief. Mr. Warfield identified Petitioner’s Exhibit 5 as the DOP Director’s building length waiver, and Petitioner’s Exhibit 6 as the waiver request that he prepared and submitted. The waiver recommends allowing the proposed 210’ long building in lieu of the maximum 200’ limit in the DR zones. Warfield explained that in order to obtain this waiver the site plan must satisfy the compatibility requirements of BCC § 32-4-402, and that the proposed plan does. Petitioners’ Exhibit 6 contains substantial detail concerning the design specifications of the proposed shul and its compatibility with other uses in the neighborhood. At its tallest point the shul will be only 28 feet, and despite its size the architectural design keeps it in scale with other uses in the community.

Regarding the requested variance relief, both Warfield and Kellman explained that the site is unique because of its split-zoning and irregular shape, and because it is adjacent to another synagogue. They explained that the steps taken to meet the RTA to the extent possible caused

much of the need for the requested variance relief. They also noted that the non-residential setbacks are met in many respects, and that extensive landscaping will mitigate impacts. Finally, they explained that the need to keep the existing shul open during construction also impacted the siting of the proposed shul, which in turn triggered the variance requests.

Regarding the proposed garage structure, Mr. Warfield explained that it will be used solely as a storage space for ambulances from the Hatzala Ambulance Service. It is 834 sq. ft. There will be no actual ambulance operations conducted there; i.e., no sirens or other related disturbances, and no ambulance personnel will be on the premises, nor will any automotive service work be done there. David Hayman, a Hatzala official explained that this is a worldwide Jewish volunteer organization that primarily serves Jewish communities, but that their services are offered to all. Hatzala means “save” in Hebrew. He explained that they are currently operating in Baltimore City and that this would be their first expansion into the County. They have a roster of volunteers on call and on off-site call center dispatches volunteers according to their proximity to the person in need. The only activity that is proposed to take place at this site is that the dispatched volunteer would drive in and park next to the garage and pick up one of the ambulances in the garage and proceed to the emergency. The volunteers are trained not to use lights and sirens unless and until there is the need to do so. He explained that such an exigency normally doesn’t occur until the ambulances are out on primary roads and it would be very rare that they would ever use their emergency equipment while in this neighborhood. In sum, the proposed garage structure will be used strictly as a storage facility for the Hatzala ambulances.

Rabbi Silber testified next. He described the history of the Suburban Orthodox Congregation and the daily activities there. He explained that it is imperative for the existing synagogue to remain open during construction of the new synagogue because there are no viable

alternative locations for the congregation to worship. In sum, Rabbi Silber stated that if they were unable to remain in the existing facilities during construction of the new shul it would be an “existential threat” to them. He further testified that he doesn’t anticipate any significant growth in membership but that the additional seats in the sanctuary will simply provide a little more room for life cycle ceremonies. He further testified that there will rarely be activities held simultaneously in both the sanctuary and social hall. Finally, he explained that the current synagogue and facilities are outdated and fail to meet the needs of the congregation, whereas the proposed new facilities will.

The architect, Christina Long, AIA, testified next. She explained the architectural design in detail. Of note, she explained that by placing the open air courtyard in the center of the synagogue structure that it will buffer the audio and visual impact of the congregation’s activities. This in turn will serve the purposes of the RTA regulations. The undersigned questioned Ms. Long about the DOP ZAC comments concerning the garage building and she explained that the garage door will be on the south side of the building facing the private Traymore Road and the other synagogue property. She further explained that they will plant vegetative screening to mitigate the visual impacts on Seven Mile Road to the east. Finally, Ms. Long described in length how the synagogue design is compatible with the variety of existing uses in the neighborhood.

SPECIAL HEARING

BCZR § 500.7 gives the Administrative Law Judge the authority to interpret a petitioner’s rights under the BCZR and to issue an Order in the nature of a declaratory judgment under Md. Code Ann, Cts. & Jud. Proc. § 3-409. Based on the extensive and persuasive testimony and evidence in this case I find that the special hearing relief should be granted. First, I believe the building length waiver was properly granted by the DOP Director based on the exhaustive

application submitted by the Petitioners. (Petitioners' Exhibit 6). Next, I find that the evidence supports a finding that, in accordance with BCZR § 1B01.1.B.1.g(6), the site plan complies “to the extent possible with RTA use requirements,” and that it is “compatible with the character and general welfare of the surrounding residential premises.” As the witnesses explained, the non-residential setback regulations will be met in many instances. Further, the extensive landscaping will provide excellent sound and visual buffering. In addition, the location of the courtyard in the center of the synagogue will also provide these benefits. And, the site is adjacent to the Baltimore Hebrew Congregation on the south and west sides of the site, and they are a co-petitioner which supports the requested relief. Other adjacent home owners have also submitted letters in support of the Petition. In addition, as Mr. Kellman observed, the new synagogue will replace an existing synagogue that has been at this location for sixty years and has become “part of the fabric of the neighborhood.” Finally, the site plan provides sufficient parking spaces under the BCZR and will therefore not negatively impact the surrounding residential streets. In the final analysis, this congregation has a “reasonable expectation” that this special hearing relief will be granted. *See, Jesus Christ is the Answer Ministries, Inc. v. Baltimore County*, 915 F.3d 256, 260-61 (4th Cir. 2019).

Next, I find that the proposed garage should be approved as a separate non-residential principal building and use based on the conditions which will be placed on this use. According to all the witnesses this building will be used strictly for the storage of the Hatzala Ambulance Service vehicles. I do not believe this use will have any substantial impacts on the neighborhood and it can be permitted within the spirit and intent of the BCZR.

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).

As described above, this site is unique in a number of ways: it is split-zoned; it is irregularly shaped; it is adjoined on two sides by another synagogue property; and it is presently occupied by an existing synagogue that needs to remain operational during construction of the proposed synagogue. This reality primarily necessitates the requested variances. As also detailed above, the Suburban Orthodox Congregation will suffer practical difficulty and hardship if the variance relief is denied because they would be unable to construct the new synagogue, which is essential to the continuing viability of their Congregation. I find that the proposed variances can be granted within the spirit and intent of the BCZR and without injuring the public health, safety, or welfare. Indeed, I believe this beautiful, modern structure will enhance the feel of the neighborhood and the value of the surrounding residences, and that this relief will enable the Congregation to continue to be part of the fabric of the neighborhood for generations to come.

ORDER

THEREFORE, IT IS ORDERED this 30th day of **April, 2021**, by this Administrative Law Judge, the Special Hearing requests:

- (1) To amend the previously approved site plan in zoning Case No. 1985-0196-A be and hereby is, **GRANTED**;
- (2) That in accordance with BCZR § 1B01.1.B.1.g(6), the site plan for a new building of religious worship (synagogue) is exempted from the requirements of BCZR § 1B01.1.B.1.a through e. is hereby **GRANTED**;
- (3) A building length of 210 ft. with the favorable recommendation of the Director of Planning in lieu of the 200 ft. maximum otherwise permitted under the

Comprehensive Manual of Development Policies (“CMDP”), Residential Standards, page 35, "Other requirement", and BCZR § 504.2 is hereby **GRANTED**;

- (4) The proposed 1-story vehicle storage garage as a separate non-residential principal building and use permitted in the DR 2 zone is hereby **GRANTED**;

IT IS FURTHER ORDERED that in light of the Special Hearing relief granted above, the Petition for Special Exception, is dismissed, without prejudice, as **MOOT**;

IT IS FURTHER ORDERED, that Variance relief which requests:

(1) From BCZR § 1B01.2.C.1(a) to permit non-resident principal building setbacks as follows: Interior side yard 10 ft. in lieu of the required 20 ft. in DR 5.5 zone and the required 30 ft. in the DR 2 zone. Street-side yard of 18 ft. in lieu of the required 35 ft. in the DR 5.5 zone. Rear yard of 6 ft. in lieu of the required 40 ft. in the DR 2 zone. Building-to-building setback (front of synagogue to rear of vehicle storage building) of 32 ft. in lieu of 100 ft. required in the DR 2 zone is hereby **GRANTED**;

(2) In light of the Special Hearing relief granted above, the alternative to Special Hearing Request No 2 above, a Variance from BCZR § 1B01.1.B.1.e.(3) to permit a Residential Transition Area (“RTA”) buffer of zero (0) ft. in lieu of the 50 ft. required. In the alternative to Special Hearing Request No. 2 above, a Variance from BCZR § 1B01.1.B.1.e.(5) to permit a RTA setback 6 ft. in lieu of the 75 ft. required. In the alternative to the Special Hearing request No 3 above, a Variance from BCZR § 504.2 and CMDP, Residential Standards, page 35, "Other Requirements" for a total building length of 210 ft. in lieu of a maximum of 200 ft. allowed is hereby dismissed, without prejudice, as **MOOT**.

The relief granted herein shall be subject to the following:

- 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.
- The garage building shall be used solely for the passive storage of vehicles, and there shall be no emergency lights or sirens or any other such ambulance operations conducted on this site; nor shall any persons be present within the building except for the purpose of driving the vehicles in and out of the building.

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

A handwritten signature in black ink, appearing to read "Paul M. Mayhew". The signature is written in a cursive, flowing style.

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:dlm