

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b> *	BEFORE THE
<b>AND VARIANCE</b>	
(2429 Lightfoot Drive) *	OFFICE OF
3 <sup>rd</sup> Election District	
2 <sup>nd</sup> Council District *	ADMINISTRATIVE HEARINGS
2429 Lightfoot, LLC	
<i>Legal Owner</i> *	FOR BALTIMORE COUNTY

**Petitioner**

**Case No. 2020-0309-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 2429 Lightfoot, LLC Legal Owner (“Petitioner”). The Special Hearing was filed pursuant to Sec. 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to find that under § 1B01.1.B.1.h, that the Residential Transition Area (“RTA”) provisions contained in Paragraphs (a) through (e) of BCZR § 1B01.1.B.1 shall not apply to the property as an existing development (part of a residential subdivision approved by the Baltimore County Planning Board) as described in BCZR § 1B02.3.A.1. If necessary, to permit a synagogue (church), including parking areas and driveways, on the property as exempt from the RTA requirements pursuant to BCZR § 1B01.1.B.1.g (6). If necessary, to allow an RTA buffer of 0 ft. and a tract boundary setback of 8.5 ft. in lieu of the required 50 ft. and 75 ft. respectively pursuant to BCZR § 1B01.1B.1.e(5). To permit a modified parking plan pursuant to BCZR § 409.12 to allow one parking space as shown on the site plan. To approve the location and configuration of the lot and existing site improvement thereon as more particularly shown on the site plan; for such other and further relief as may be required by the Administrative Law Judge (“ALJ”) for Baltimore County.

A Variance from BCZR § 1B01.2.C.1.a to permit a non-residential building side yard setback of 9 ft. and a rear yard setback of 17 ft. in lieu of the required 20 ft. and 30 ft. respectively.

If necessary, from BCZR § 409.6.A.4 to permit one (1) off-street parking space in lieu of the required 20 spaces. From BCZR § 400.1 to permit an existing accessory structure (shed) with a side yard setback of 18 in. in lieu of the required 30 in. From BCZR § 400.1 to permit an existing accessory structure (shed) with a side yard setback of 0 in. in lieu of the required 30 in. and 30 in. respectively. If necessary, from BCZR § 1B01.1.B.1.e(5), to allow an RTA buffer of 0 ft. and a tract boundary setback of 8.5 ft. in lieu of the required 50 ft. and 75 ft. respectively. For such other and further relief as may be required by the Administrative Law Judge (“ALJ”) for Baltimore County.

Due to the COVID-19 pandemic, 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”), the Department of Public Works (“DPR”), and the office of Development Plans Review (“DPR”). These agencies do not recommend approval of the requested relief, primarily because of concerns about the lack of parking.

Yakov Shafronovich, of the Ohr Hatorah Congregation, appeared in support of the requested relief on behalf of the Petitioner, 2429 Lightfoot, LLC. Zachary Wilkins, Esq. and Lawrence E. Schmidt Esq., appeared and represented the Petitioner. Patrick (“Rick) Richardson, P.E., the engineer who prepared and sealed the site plan, also appeared. Numerous members of the synagogue attended in support of the petition, and numerous members of the community attended to oppose the requested relief. The protestants were represented by Gordon Levenson, Esq.

The site plan was marked and accepted into evidence as Petitioners’ Exhibit 1. The property is approximately a quarter acre and is zoned DR 5.5. Buildings for religious worship are permitted by right, subject to their compliance with the provisions of the BCZR. As a

preliminary matter, Mr. Wilkins explained that he believes the site is exempt from the RTA regulations because it fits within the parameters of BCZR § 1B01.1.B.1.h, in that it is part of the Summit Park development that was approved by the Baltimore County Planning Board in 1955. (Petitioner's Exhibit 6).

Mr. Richardson was Petitioner's first witness. He was accepted as an expert in engineering, land use, and the BCZR. He explained the site plan and the requested relief in detail. He testified that no exterior changes will be made to the existing residential structure. The interior will be modified as necessary to accommodate the proposed religious uses of the structure. There will be no signage or industrial lighting. He testified that the shape and topography of the site make it unique.

Yakov Shafronovich, a member of the Ohr Ha Torah congregation, testified next. He testified that there are approximately 50 member families in the congregation and that they all live within walking distance of the proposed shul. They are orthodox Jews. He explained that the kitchen will be removed and the floor plan opened up to accommodate their religious services. He further explained that the members of the shul will almost all walk to the shul, and that shul members who live in the immediate vicinity will allow members who need to drive to park in their driveways. He also explained that they are in the process of securing permission to park at the nearby Summit Park elementary school. He explained that he was a member of the shul's building committee that conducted the search for a suitable synagogue. He testified that the committee believed that the zoning approvals would be granted because there are several other shuls in the community that are housed in former residences like this one.

On cross-examination Mr. Shafronovich acknowledged that there are 24 significant Jewish holidays each year. He also acknowledged that as orthodox Jews the men are required to

meet for prayer 3 times each day. In sum, he acknowledged that there would be a lot of pedestrian traffic and inevitably some vehicular traffic generated by the shul.

The protestants submitted a Petition opposing the requested variance and special hearing relief which was admitted as Protestants' Exhibit 1. Numerous neighbors testified in opposition, including Paul Margolis, the son of the adjacent property owners. He testified that his elderly parents will be significantly impacted by the proposed shul in terms of traffic and noise. Numerous other neighbors voiced these same concerns. They noted that Lightfoot Drive is only 30 feet wide and that when cars are parked on both sides of the road only one car at a time can get through. They testified that traffic is already a severe problem and that it will only get worse because Summit Hill Elementary is undergoing an expansion that will double its student capacity. These are the same concerns raised by DOP and DPW.

#### SPECIAL HEARING

Based on the evidence presented and the argument of counsel I find that under BCZR § 1B01.1.B.1.h the RTA provisions contained in paragraphs (a) through (e) of BCZR § 1B01.1.B.1 do not apply to the subject property because it is part of a residential subdivision that was approved by the Baltimore County Planning Board in 1955. (Petitioner's Exhibit 6). I further find that the special hearing relief under BCZR § 409.12.B must also be granted. In short, the shul would not be able to operate at this location without the requested parking modification. I understand the neighbors' concerns about the lack of parking; however, Mr. Shafronovich testified that the shul members all live in the neighborhood and will be primarily walking to the shul. Further, arrangements have been made with shul members in the immediate vicinity for fellow congregants to use their driveways to park if needed. Finally, arrangements have also been made for the use of the elementary school parking lot. Similar arrangements have been

cited to justify special hearing and variance relief in previous cases. *See*, Petitioner’s Exhibits 9A and 9B.

### 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).

This is a close question but I find that the property is unique within the legal meaning of the word under *Cromwell* and its progeny. It is somewhat irregularly shaped and the lot does slope significantly. Further, the Petitioner would suffer hardship and practical difficulty if the variances were denied because the existing residence and accessory structures would have to be modified or removed.

### RLUIPA

Finally, Petitioner’s right to worship at this location is protected by the Religious Land Use and Institutionalized Persons Act (“RLUIPA”). Mr. Shafronovich testified that the Ohr Ha Torah congregation purchased this property with the expectation that they would be granted the zoning relief at issue because other residential to shul conversions in the community had previously been approved. This was a reasonable expectation, especially since, as explained above, the subject property is exempt from the onerous RTA regulations. *See, Jesus Christ is the Answer Ministries, Inc. v. Baltimore County*, 915 F.3d 256, 260-61 (4<sup>th</sup> Cir. 2019). I understand the neighborhood opposition and empathize with their concerns about parking, traffic, and noise. However, this federal statute has been interpreted broadly by the United States District Court for the District of

Maryland, and by the Fourth Circuit Court of Appeals, and the county is subject to substantial financial liability if these courts find that the county has violated RLUIPA.

THEREFORE, IT IS ORDERED this 30<sup>th</sup> day of **March 2021**, by this Administrative Law Judge that the Petition for Special Hearing the Baltimore County Zoning Regulations (“BCZR”) § 1B01.1.B.1.h, to find that the Residential Transition Area (“RTA”) provisions contained in Paragraphs a through e of BCZR § 1B01.1.B.1 shall not apply to the property as an existing development (part of a residential subdivision approved by the Baltimore County Planning Board) as described in BCZR § 1B02.3.A.1 is hereby **GRANTED**.

IT IS FURTHER ORDERED that the special hearing to permit a modified parking plan pursuant to BCZR § 409.12 to allow one parking space as shown on the site plan is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Variance pursuant to BCZR § 1B01.2.C.1.a to permit a non-residential building side yard setback of 9 ft. and a rear yard setback of 17 ft. in lieu of the required 20 ft. and 30 ft. respectively. If necessary, from BCZR § 409.6.A.4 to permit one (1) off-street parking space in lieu of the required 20 spaces. From BCZR § 400.1 to permit an existing accessory structure (shed) with a side yard setback of 18 in. in lieu of the required 30 in. From BCZR § 400.1 to permit an existing accessory structure (shed) with a side yard setback of 0 in. in lieu of the required 30 in. and 30 in. respectively is hereby **GRANTED**.

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 their 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.
- No school or day care services shall be provided at the subject property.
- Only residential style lighting and fixtures shall be permitted on the exterior

- of the subject property.
- Petitioner shall submit for approval by Baltimore County landscape and lighting plans for the site that will ensure, to the maximum extent possible, vegetative visual and noise buffers along the entire perimeter of the subject property.
  - All signage must be located on the building and must comply with BCZR § 450.
  - No temporary or freestanding signs shall be permitted on the subject property.
  - Petitioner shall obtain a Change of Occupancy permit.

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



PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County

PMM/dlm