

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(3009 Northbrook Road)	*	OFFICE OF
3rd Election District		
2 nd Council District	*	ADMINISTRATIVE HEARINGS
Saman Radparvar		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Ahavat Shalom Congregation, Inc.		
Contract Purchaser	*	Case No: 2020-0299-SPHA
Petitioners	*	
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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 Saman Radparvar, legal owner and Ahavat Shalom Congregation, Inc., Contract Purchaser (“Petitioners”). The Special Hearing is requested for a determination that the Residential Transition Area (“RTA”) regulation of the Baltimore County Zoning Regulations (“BCZR”) § 1B01.1.B.1 does not apply to proposed development by virtue of BCZR § 1B01.1.B.1 (f). In the alternative to Special Hearing Request No. 1, approve the site plan for the conversion of an existing single-family dwelling to a new building of religious worship (synagogue) in accordance with the requirements of BCZR § 1B01.1.B.1.g(6), including a finding that the restrictions contained in BCZR § 1B01.1.B.1.a through e do not apply to the proposed project. In the alternative to Special Hearing Request Nos. 1 and 2, a determination pursuant to BCZR § 1B01.1.B.1(C).1 that the RTA Buffer and RTA Setback of 0 ft. for the parking spaces and 10 ft. for the existing building is adequate. A modified parking plan under BCZR § 409.12.B to allow 2 parking spaces as shown on the Plan to Accompany Petition for Zoning Hearing to serve the proposed synagogue on the property which

would otherwise require 20 parking spaces. Such further and other relief as the nature of this case may require

A Variance from the Baltimore County Zoning Regulations (“BCZR”) § 1B01.2.C.1(a) to permit non-residential principal building setbacks for an existing building in the DR 3.5 zone, as follows: (a) Front yard of 30 ft. in lieu of 50 ft. otherwise required. (b) Interior side yard of 10 ft. in one instance and 15 ft. in another instance in lieu of the 20 ft. otherwise required. In the alternative to Special Hearing Requests 1, 2 and 3, above Variances from the Baltimore County Zoning Regulations (“BCZR”) § 1B01.1.B.1.e.3 and e.5 to permit RTA Buffers and RTA Setbacks, as follows: 0 ft. for existing parking spaces, and 10 ft. in one instance, 15 ft. in one instance, 30 ft. in one instance, and 30 ft. in one instance for an existing structure in lieu of the 50 ft. RTA Buffer and the 75 ft. RTA setback otherwise required. In the alternative to Special Hearing Request No. 4, a Variance from BCZR § 409.6 to permit 2 parking spaces in lieu of 20 parking spaces required.

Due to COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted.

Ashkan “Yakov” Attar appeared on behalf of the Petitioner. Dino C. La Fiandra, Esquire represented the Petitioners. There were many protestants in attendance, some of whom were represented by Michael McCann, Esquire. Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”). They did not oppose the requested relief, subject to proposed conditions, some of which will be incorporated into the Order. The County Bureau of Traffic Engineering and Transportation Planning opposes the Petition due to the parking space deficiencies.

Patrick Rihardson, the engineer who prepared and sealed the site plan (Petitioner’s Exhibit 2) testified first and was accepted as an expert in engineering and in the BCZR. He explained the plan in detail. The property is approximately 9.375 square feet and zoned DR 3.5. Mr. Richardson identified Petitioner’s Exhibit 4 as the plat for section 4 of the Green Spring Manor subdivision, which was duly approved by the Baltimore County Planning Commission in 1955, as evidenced by the signature of the Director of the Planning Commission. The subject lot is Block G, Lot 11.¹ Mr. Richardson further testified that in his expert opinion the site plan complies with the RTA regulations “to the extent possible,” and that as a new place of religious worship it is entitled to the exemption from the RTA regulations set forth in BCZR § 1B01.1.B.1.g(6). He further explained that the proposed addition on the rear of the existing structure will simply “square off” the footprint of the structure and will have no substantial adverse impact on the adjacent properties. Finally, he explained that the Congregation has a continuing agreement with the elementary school across the street that will allow them to use the parking lot for overnight parking from 5 p.m. Friday thru 10 p.m. Saturday, i.e. during the hours of the Sabbath. Mr. McCann cross-examined Mr. Richardson on each of these points.

Mr. Attar testified next. He is the President of the Congregation. He explained that the Congregation was founded in 2013 and consists of Sephardic Jews of Iranian heritage. He testified that, as such, they are very much a minority Congregation in the Baltimore metropolitan area, and

¹ At the close of the hearing the undersigned requested legal briefs on the applicability, *vel non*, of BCZR § 1B01.1.B.1 (h) in the instant case. Having considered these opposing arguments I find that this section does not apply in this case. As Protestant’s counsel points out, the record evidence established that no structure was constructed on this lot until the early 1990s. And further, that it is a *residence* that was constructed and which now exists – not a place of worship. As such, no “grandfather” or expectancy rights were created which would allow this new shul use to be entitled to the RTA exemptions conferred by this zoning regulation. In short, the lot was never “used, occupied or improved in accordance with the approved subdivision plan” in a manner which would grandfather a place of worship on this lot. In addition, even if BCZR § 1B01.1.B.1 (h) did apply, the shul would still need to meet the setback requirements of § 1B01.1.2, i.e., Table V of the Comprehensive Manual of Design Policies: 50’ front, 20’ side, and 30’ rear. The site plan shows that only the rear setback is met.

that they do not anticipate significant growth in their Congregation. He testified that they plan to have 80 seats in the shul and that this has been accomplished by removing some of the interior walls. He further testified that although they would like to construct the addition depicted on the site plan that this was not critical to their ability to worship at this site. He further noted that the adjacent property to the west was recently purchased by one of the members of the Congregation and will be used by the Rabbi and his family on weekends and high holidays when the Rabbi is conducting services. He also explained the parking arrangement that they have worked out with the elementary school. Finally, he testified that the vast majority of the Congregation live within walking distance of the shul and because of their religious restrictions they will be walking to Sabbath services. Again, Mr. McCann cross-examined Mr. Attar on each of these points.

SPECIAL HEARING

Based on the evidence presented and the argument of counsel I find that under BCZR § 1B01.1.B.1.g (6) the RTA provisions contained in paragraphs (a) through (e) of BCZR § 1B01.1.B.1 do not apply to the subject property. I specifically find that this existing structure, with the conditions set forth below, complies to the extent possible with the RTA. Because places of worship are permitted by right in the DR zones, I find that the use of this property as a shul has been deemed by the County Council to be a compatible use, even though it will increase pedestrian and vehicular traffic, as well as noise in the immediate vicinity. Because I will not allow any expansion of the structure I also believe that it will remain architecturally compatible with the surrounding residences.

I further find that the special hearing relief under BCZR § 409.12.B should 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. Attar

testified that the shul members all live in the neighborhood and will be primarily walking to the shul. Further, arrangements have been made for the use of the elementary school parking lot across the street. Similar arrangements have been cited to justify special hearing and variance relief in previous cases.

Finally, I find that because BCZR § 1B01.1.B.1.g (6) applies no setback variance relief is needed. I base this finding on the fact that several other subsections of § 1B01.1.B.1.g contain express language maintaining setback and other area restrictions, but subsection g (6) does not. In short, the County Council knows how to maintain setback restrictions when it wants to and chose not to in subsection g (6).

RLUIPA

Finally, Petitioner's right to worship at this location is protected by the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). Mr. Attar testified that Ahavat Shalom 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 (4th 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 by denying the Congregation's requested relief.

THEREFORE, IT IS ORDERED this 5th day of **October, 2021**, by this Administrative

Law Judge that the Petition for Special Hearing relief under BCZR § 500.7, for a finding that the property is exempt from the Residential Transition Area (“RTA”) regulations under BCZR § 1B01.1.B.1.g (6) is hereby **GRANTED**.

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

IT IS FURTHER ORDERED, that all other requested relief is dismissed 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 are 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.
- Petitioner must comply with the DOP ZAC comment, a copy of which is attached hereto and make a part thereof.
- Petitioner shall immediately apply for and obtain a Change of Occupancy permit before any further use of the premises.
- Except for high holidays Petitioners shall not hold services or otherwise occupy or use the premises after 10 p.m.
- No exterior additions or modifications will be permitted, except as approved by the DOP, the County Fire Marshall, and/or the County Landscape Architect.

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/dlm