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| IN THE MATTER OF | : | BEFORE THE |
| SUNGAI KIM t/a | : | HOWARD COUNTY |
| BETH SHALOM CONGREGATION | : | HEARING EXAMINER |
| Petitioner | : | BA Case No. 12-029C |

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DECISION AND ORDER

On July 8, 2013, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the conditional use petition of Shalom Miracle Center (Petitioner) for retroactive approval of a Structure Used Primarily for Religious Activities in an R-20 (Residential: Single) zoning district, pursuant to Section 131.N.40.

Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Sungai Kim and Paul Kim testified in support of the petition. Adolb Girgus and Suzan Makarious testified in opposition.

Petitioner introduced into evidence the exhibits as follows.

1. Amended Conditional Use Plan, July 8, 2013
2. Google Map indicating 100-ft. ROW setback from I-70
3. Photographs of vegetation along south property line
4. Elevation of assembly area and dwelling

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, the Hearing Examiner finds the following facts:

1. Property Identification. The 6.27-acre parcel is located in the 1st Election District on the west side of Rogers Avenue, about 2,000 feet north of High Ridge Road. It is referenced as Tax Map 17, Grid 18, Parcel 558 and is also known as 2796 Rogers Avenue (the Property).

2. Property Description. Improvements on the irregularly shaped Property are concentrated in the front section. The principal dwelling sits about 160 feet from Rogers Avenue and is accessed from a gravel driveway on the Property's south side. The driveway loops in front of the principal dwelling, past a parking area in front of the dwelling and continues around the dwelling to a rear parking area. The Technical Staff Report (TSR) states two sheds (10'x10' and 20'x11') are sited in the southern section of the lot, two sheds (14'x14' and 6'x6') in front of the dwelling, a 16'x24' shed in the northeast portion, and three sheds (16'x15', 16'x34' and 20'x26') near the north lot line. The TSR recommends the application be denied because 1) the three northern sheds and portions of the two southern sheds encroach into the 50-foot setback and 2) the total square footage of the encroaching sheds exceed the 100-sq. ft. cumulative area requirement imposed under Section 128.A.1.e.¹

The lot's north, south and west areas are wooded. A stand of large evergreen trees lies between Rogers Avenue and the parking area. The topography is generally level in the front section and drops slightly to the rear property line.

3. The General Plan. The Property is designated "Growth and Revitalization" on the PlanHOWARD2030 Designated Place Types Map. Rogers Avenue is classified as a Minor

¹ Section 128.A.1.E: Side and rear setbacks do not apply if the lot coverage by sheds or playhouses encroaching into setback areas does not exceed a cumulative total of 100 square feet per lot and no animals are sheltered.

Collector on the Functional Road Classification Map.

4. Vicinal Properties. I-70 abuts the Property's north property line. To the south are the R-20 zoned lots of the Robnan Acres subdivision. Each of the four lots is improved with a single-family detached dwelling. The house on Lot 2 is closest to the Property, about 120 feet. To the east, across Rogers Avenue, are an R-ED zoned wooded parcel and the Good Sheppard Cemetery. To the west is the POR zoned Enclave at Ellicott Mills condominium developments, the closest structure lying more than 1,075 feet from the dwelling on the Property.

5. Roads. Rogers Avenue has two travel lanes and a variable pavement width. The posted speed limit is 30 MPH. As of March 2009, the traffic volume on Rogers Lane north of US 40 was 11,017 ADT.

6. The Conditional Use Proposal. Petitioner is seeking retroactive approval to operate a religious facility on the Property for worship and Sunday school. The dwelling would also be the Pastor's residence. As proposed, 15-40 congregants would attend Sunday service from 11:00 a.m.-2:00 p.m., with occasional gatherings on Wednesday and Friday nights for group prayer. The 1,225 sq. ft. assembly area has 48 seats. Sixteen paved parking spaces are depicted on the Conditional Use Plan. These include two areas with 11 spaces on the north side of the entrance drive and five spaces behind the dwelling.

7. Paul Kim testified the 20'x11' shed noted in the TSR is actually a patio and that this area should be subtracted from the 100 sq. ft. cumulative shed area (in setbacks). Once subtracted, the sheds comply with Section 128.A.1.e. He further testified that the northern 50-foot setback depicted on the plan was based on an incorrect setback from I-70. Referring to Petitioner's

Exhibit 1, the Amended Conditional Use Plan, he explained the sheds are actually located almost 100 feet from the ROW and are therefore complying. This distance is depicted on Petitioner's Exhibit 2.

8. Ms. Kim testified that the parking in front is almost 100 feet from the Rogers Avenue right-of-way.

9. Mr. Girgus testified to being the property owner of Robnan Acres subdivision Lot 1, which adjoins the Property on its south property line and abuts Rogers Avenue. He objects to the use because he has safety concerns and fears it would reduce the value of his property. He is worried people who walk to the facility might trespass on his property or compromise his safety. ("Strangers would come in and out.") He does not believe the vegetation along the common property is a sufficient buffer because most of the trees are deciduous and the vegetation is not dense enough to deter people from walking through it onto his property. This vegetation is visible in Petitioner's Exhibit 4.

10. Susan Makarious testified to being the other property owner of Lot 1. She also has safety concerns and is worried about the devaluation of her property.

11. The Hearing Examiner discussed the neighbors' concerns with the Petitioners. After exploring possible options, the parties agreed to address the neighbors' concerns by conditioning the approval on the installation of a fence along the common property line.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Hearing Examiner concludes as follows.

I. General Criteria for Conditional Uses (Section 131.B)

A. Harmony with the General Plan. Section 131.B.1 requires the Hearing Examiner to evaluate whether the proposed conditional use will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district based on in which it is located. In Howard County, the Zoning Regulations provide two policy standards by which to evaluate harmony with the General Plan.

- a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and**
- b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.**

PlanHoward2030 designates the Property as a "Growth and Revitalization" Place Type. General Plan Chapter 10, Community Design, recommends the protection and enhancement of established communities through compatible infill. Religious facilities are compatible uses in established communities if they comply with these general conditional use criteria as well the specific conditional use category criteria, which the proposed use does. The combination and scale of uses is appropriate as it occupies only a limited portion of the Property. The proposed use is a 1,225 sq. ft. assembly area, the parking area, and the Pastor's residence. The use will be accessed from a Minor Collector, which can accommodate the minimum additional traffic. The Property's perimeter is landscaped and the use will meet all setback requirements. As a condition of approval, Petitioner shall install a fence along the common lot line with Robnan Acres subdivision Lot 1, as an additional buffer.

B. Adverse Effect

Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (d) access.

Inherent in the assessment of a proposed conditional use under these criteria is the recognition of potential for adverse impact from virtually every human activity. Zoning recognizes this, and when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before the Hearing Examiner is not whether the proposed use would have adverse effects in an R-20 zoning district. The proper question is whether there are facts and circumstances showing that the particular use proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception (conditional) use irrespective of its location within the zone. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008); *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, and subject to appropriate conditions of approval, the Hearing Examiner concludes the Petitioner has met its burden under Section 131.B.2 of the Zoning Regulations to establish this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a religious facility.

a. Physical Conditions. Whether the impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The use will be conducted indoors. No outdoor play areas are proposed. There is no evidence of inordinate noise, dust, fumes, odors or vibrations.

b. Structures and Landscaping. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

The facility and parking will be buffered by landscaping, distance and a fence along the common property line with the neighbors concerned about the use. Subject to the condition of approval that Petitioner installs a fence along the common lot line, the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

There are 48 seats in the main assembly area. One space is required for every three seats. The 16 spaces proposed meet the minimum parking requirement.

d. Access. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

The existing ingress and egress drives have served the existing religious facility for some years. Sight distance appears to be adequate.

II. Specific Criteria for Structures Used Primarily for Religious Activities (Section 131.N.40)

a. Lot coverage shall not exceed 25 percent of lot area.

The lot coverage is less than the 25 percent maximum coverage, in compliance with Section 131.N.39.a.

b. Structures used primarily for religious activities may be erected to a greater height than permitted in the district in which it is located, provided that the front, side and rear setbacks shall be increased one foot for each foot by which such structure exceeds the height limitation.

Section 131.N.39.c does not apply because the petition does not propose any structure higher than the residential dwelling, which presumably complied with district height requirements. The lower height of assembly use relative to the dwelling is visible on Petitioner's Exhibit 4.

c. The Hearing Authority may approve parking facilities which are accessory to a religious facility, and are located on a separate lot, but do not meet the location requirements of subsection 133.B.4.D of the parking regulations by being separated from the religious facility by a public street, if the Hearing Authority finds that the accessory parking facility complies with the following criteria:

- (1) The accessory parking facility is not separated from the lot containing the principal use by an arterial highway of any category.**
- (2) A pedestrian street crossing connecting the accessory parking facility lot to the principal use lot is provided and is made clearly noticeable to drivers by means of both pavement marking and signs**
- (3) The pedestrian street crossing is safe, based upon such factors as, but not limited to: traffic volume at the times(s) of the use of the accessory parking facility; practical traffic speeds; sight distance; length of the crossing; and adequate markings and signage.**
- (4) The entire pedestrian pathway from the accessory parking facility to the principal religious facility is a durable, paved, no-step path.**

Section 131.N.39.c does not apply because the petition does not propose parking facilities on a lot separated by a public street.

ORDER

Based upon the foregoing, it is this **7th day of August 2013**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Shalom Miracle Center for retroactive approval of an existing structure used primarily for religious activities in an R-20 zoning district is hereby **GRANTED**;

Provided, however, that:

1. The conditional use shall be conducted in conformance with and shall apply only to the uses and structures described in the Amended Conditional Use Plan submitted at the July 2013 hearing and not to any other activities, uses, or structures on the Site.
2. Petitioner shall install a five-foot high open fence adjacent to Lot 1 of the Robnan Acres subdivision (2700 N. Ridge Road) and along the common lot line, ending 10 feet from the Rogers Avenue right-of-way. Section 128.A.9 of the Zoning Regulations defines an open fence as one that does not restrict visibility beyond the fence line. Open fences include wire, chain link, post and rail, paddock, picket, and other fences in which more than 50 percent of the fence area is left open. The fence area is the surface area from the bottom to the top of the fence section, including stringers supporting the section but not the post area above or below the fence section.
3. Petitioner shall comply with all applicable federal, state, and county laws and regulations.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.