

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(14 Aigburth Road)		
9 th Election District	*	OFFICE OF
5 th Council District		
Friends of Lubavitch Inc.	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2015-0223-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of Friends of Lubavitch Inc., legal owner. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to confirm continued use of the subject property as a residential parsonage with an accessory use for religious worship and religious education.

Appearing at the public hearing in support of the requests was Rabbi Manachem Rivken and his wife Sheina. Alan Betten, Esq. represented the Petitioner. Several neighbors objected to the request, and the protestants were represented by J. Carroll Holzer, Esq. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from The Department of Planning (DOP) and the Bureau of Development Plans Review (DPR). While DPR noted a landscape plan was required, the DOP recommended denial of the petition. That agency believed the Petitioner was operating a “community building,” which would require a special exception.

The subject property is 17,000 square feet and is improved with a single family dwelling constructed in 1952. The property is zoned DR 5.5. Rabbi Rivken and his wife moved to the

property in 2008, and they propose to enlarge the home to accommodate their growing family and certain religious activities as noted below.

Several witnesses provided testimony in the case concerning the nature of the use and activities at the subject property. Rabbi Rivken lives at the home with his wife and four (4) children. The Rabbi and his wife also host at their home certain meetings or gatherings throughout the week, where they meet with primarily college-aged students to discuss Jewish social and educational issues. In addition, the Rabbi and his wife host a weekly Sabbath (Shabbat) dinner on Friday evening, which can be attended by 50 or more people. Rabbi Rivken testified that the property is not used as a synagogue or community building, and that he on Saturday morning walks 6+ miles each way to a synagogue on Pimlico Road to attend religious services.

The sole legal issue is whether the property is used as a “parsonage” with accessory religious uses. Based upon the available legal precedent, I do not believe the property at 14 Aigburth Road qualifies as a “parsonage,” and the Petition for Special Hearing will therefore be denied. As a general matter, and as discussed in greater detail below, I believe the Petitioners have it backwards; i.e., a parsonage is in fact an adjunct or accessory structure near or on the same grounds as a church, synagogue or other house of worship. The fundamental problem here is that there is no synagogue to which the parsonage would be appurtenant. The term “parsonage” does not appear in the B.C.Z.R., although it has been defined in Maryland case law.

Petitioner submitted evidence establishing that the property at 14 Aigburth Road has been granted by the State of Maryland an exemption from real property taxes. *See*, Petitioner’s Exhibit 7. Such an exemption is provided for by § 7-204 of the Maryland Tax-Property Code Annotated, which provides as follows:

Property that is owned by a religious group or organization is not subject to property tax if the property is actually used exclusively for:

- (1) public religious worship;
- (2) a parsonage or convent; or
- (3) educational purposes.

The only potentially applicable portion of the statute would be subsection (2), given that the Rabbi and his wife testified that the property is not used exclusively for “educational” or “worship” purposes, which would exclude subsections (1) and (3) from consideration.

In East Coast Conference of Evangelical Covenant Church of America, Inc. v. Prince George’s County, 40 Md. App. 213 (1978), the Court of Special Appeals considered a case involving subsection (2) of the tax exemption statute, and I believe that precedent is dispositive of the issue in this case. The Court noted that there is “no dispute that the subject property is owned by a religious group or organization,” and that is also true in the present matter. Id. at 215. The question “is whether the subject property is a parsonage as used in [§ 7-204(2)].” Id.

After reviewing several definitions provided in well-known dictionaries, the Evangelical Covenant court noted that a parsonage is “in general, a house supplied to a parish minister by the parish congregation or church.” Id. at 216. The court noted that the “disputed point,” which is also the disputed issue in this matter, is “whether or not there must be an existing local church or congregation, to which the parsonage is adjunct.” Id. at 216. Ultimately, the Court of Special Appeals concluded that the property in that case did not qualify as a parsonage, and in support of that conclusion held as follows:

To qualify as a parsonage there must be a minister with an identifiable parish and congregation and, of course, a building furnished to him by the church or congregation for his residence. The record clearly demonstrates that Reverend Njaa, although an ordained minister, accepted a “call” as a nucleus builder for the Washington, D.C. area, not as a traditional minister for an identifiable congregation.

[The Court also noted that the Reverend in that case “did not hold regular services or serve a parish as such”. Id. at 219.] Id. at 218.

In my opinion, the facts in the present case are strikingly similar to those in Evangelical Covenant, and for that reason I do not believe the property at 14 Aigburth Road qualifies as a “parsonage.” While the property is owned by a religious organization, and Rabbi Rivken is clergy, there is missing from the equation a congregation or parish to which the parsonage would be adjunct. It is simply not sufficient that the home be owned by a religious organization and lived in by a clergy member and his family. Rabbi Rivken testified that he attends service on Saturday mornings at a synagogue on Pimlico Road, which is located 6+ miles from the subject property. No evidence was presented to establish that Rabbi Rivken is formally affiliated with or is in charge of that synagogue and congregation. In these circumstances, the property fails to qualify as a parsonage for the same reasons as those articulated by the Court of Special Appeals in Evangelical Covenant. See also, Ballard v. Balto. Co., 269 Md. 397, 406 (1973) (minister’s home qualifies for exemption only if it is a “parsonage for a house of public worship”).

THEREFORE, IT IS ORDERED this 26th day of **June, 2015** by this Administrative Law Judge, that the Petition for Special Hearing pursuant to B.C.Z.R. § 500.7 to confirm continued use of the subject property as a residential parsonage with an accessory use for religious worship and religious education, be and is hereby DENIED.

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

JEB:dlw

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County