

CASE NO. 18CUP1120 - CONDITIONAL USE PERMIT

IN RE: CHABAD OF PROSPECT, INC., Applicant

Private Institutional Use  
6900 Transylvania Avenue

October 1, 2019

**REQUEST FOR RECONSIDERATION**

Comes the Applicant, Chabad of Prospect, Inc. (the "Applicant"), pursuant to the Board of Zoning Adjustment ("BOZA") ByLaws, Public Hearings Policy No. 8.00, and does hereby respectfully request this Board reconsider the denial of its application for a Conditional Use Permit ("CUP") to operate a private institution, specifically a religious institution, on the property located at 6900 Transylvania Avenue, Prospect, Jefferson County, Kentucky 40059 (the "Subject Property").

**PROCEDURAL BACKGROUND**

The public hearing for this CUP was conducted on September 23, 2019. The Applicant was represented by Rabbi Boruch Susman ("Rabbi Susman"), and the undersigned counsel. The property owners opposing the CUP (the "Opposing Parties") were represented by Jon Baker. BOZA heard the Staff Report presentation from Jon Crumbie, Planning & Design Coordinator. Applicant's counsel made an opening statement. BOZA heard testimony from Rabbi Susman and Daniel Grossberg in support of the CUP.

BOZA heard an opening statement, with a Power Point presentation, from the Opposing Parties' counsel. Counsel for the Opposing Parties additionally submitted proposed Findings in Support of Denial and two (2) letters, all of which had not been provided to the Applicant prior to the hearing. BOZA heard testimony from one (1) "neutral witness" and four (4) people in opposition to the CUP. Other Opposing Parties submitted their names for the record, but declined to testify. Daniel Grossberg offered rebuttal testimony in support of the Applicant. Counsel for both parties made summary statements.

After deliberation, three (3) BOZA members voted against the CUP, one (1) member voted in favor of the CUP, one (1) member abstained (without explanation), and one (1) member was absent.

## GROUNDNS FOR RECONSIDERATION

The Applicant respectfully requests reconsideration of BOZA's denial of the CUP on the grounds that BOZA's decision was arbitrary and capricious. Further, the Applicant was denied procedural due process when Opposing Parties' counsel submitted documents to BOZA on the day of the hearing without having provided the documents prior to the hearing as mandated by BOZA's Public Hearing Policies.

### I. **BOZA's Denial of the CUP was Arbitrary and Capricious**

BOZA's Staff Report for the Applicant's CUP contains the following Findings and Recommendations:

1. The proposal meets all applicable policies of the Comprehensive Plan.
2. **When appropriately managed**, the proposed use is compatible with surrounding development and land uses.
3. The subject property is served by existing public utilities and facilities. **Transportation Planning and MSD have reviewed and approved the proposal.** See BOZA Staff Report at p. 2 (emphasis added).

Regarding the specific standards required to obtain the requested CUP in an R-4 Single Family Zoning District, the BOZA Staff Report noted as follows:

- A. Except in the R-R zoning district, all structures, except fencing, and all off-street parking shall be at least 30 feet from any property line adjacent to an existing residential use or residential zoning district. **The Applicant has been informed of this requirement.**
- B. The applicant must demonstrate that the impact of the traffic generated by the use can be mitigated. **The Applicant will discuss the traffic and any mitigation.**
- C. Off-street parking **not located within a driveway** (emphasis supplied) shall be located to the side or rear of the building(s). The number of required off-street parking spaces shall be determined by the Planning Director in consultation with the Director of Public Works based on the standards for the closest comparable use and on the particular parking demand and trip generation characteristics of the proposed use. **The applicant will be asking for relief to allow off-street parking to be located in front of the building. The applicant states that there are sixteen parking spaces along the circular drive.**



- D. All activities shall be in compliance with the Metro Noise Ordinance (LMCO Chapter 99). **The applicant has been informed of this requirement.**
- E. The Board of Zoning Adjustment may set hours of operation for the institutional use in order to minimize potential negative impacts on surrounding residential properties. **The applicant has been informed of this requirement.** See BOZA Staff Report at p. 2-3 (except as otherwise indicated all emphasis is original).

Rabbi Susman testified that the Applicant is not serving large groups of people. He testified that the average number of people attending services is under thirty (30). He additionally testified that the dedicated sanctuary rooms seat twenty-five (25) people. He testified that the Hebrew School has fourteen (14) students, five (5) of which are his own children. He testified that last year, the summer camp, at its largest had nineteen (19) children, four (4) of which were his. He testified that on Friday evenings, the average number of cars is less than ten (10). He testified that on Sunday mornings, there are normally three (3) cars. He testified that due to the limitations set by the Historical Preservation and Conservation Easement on the subject property, the Applicant has no plans to enlarge the structure for a synagogue.

Daniel Grossberg testified on behalf of the Applicant. He explained the concept of a Chabad House is that a Rabbi and his spouse open their own home to congregants. He testified that there are typically only two (2) or three (3) families attending.

A "neutral witness" who works at the Louisville Water Company, Robert Newman, testified that in his capacity as a Wellhead Protection Specialist, his only concern is the capacity of the septic system on the subject property.

BOZA heard the testimony of Jerry Durrett, who resides on River Road. Mr. Durrett testified that he is familiar with septic system design and compared the use on the subject property to use at a lake house. Mr. Durrett did not present credentials demonstrating that he is qualified as an expert on septic systems.

BOZA heard the testimony of several of the Opposing Parties who reside on Transylvania Avenue. Their testimony included allegations that their property values have been negatively impacted and that traffic has increased on the road.

BOZA heard rebuttal testimony from Daniel Grossberg regarding property values, which will be discussed more thoroughly below. BOZA then heard closing statements from the Opposing Parties' counsel and Applicant's counsel.

In deliberations, BOZA sought clarification from Jon Crumbie, the Planning and Design Coordinator. Mr. Crumbie confirmed that the Health Department did receive a

copy of the plan and had no comments regarding the septic field. Mr. Crumbie further clarified that the Health Department does receive a copy of the CUP. Mr. Crumbie explained that both Transportation Planning and the Metropolitan Sewer District ("MSD") have to approve the proposed use. As indicated in the Staff Report, both Transportation Planning and MSD reviewed and approved the proposal. *See* BOZA Staff Report at p. 7, Item Nos. 12 and 17, and p. 8 at No. 3.

Madame Chair, Lula Howard, found that the Applicant did not address Item C of the requirements for a CUP related to parking. Considerations related to parking were addressed by Transportation Planning. Transportation Planning reviewed and approved the proposed use both as to parking and traffic concerns. *See* BOZA Staff Report at p. 7, Item Nos. 12 and 17. Additionally, an email from Beth Stuber, Transportation Engineering Supervisor, to Jon Crumbie, expressly states that there is sufficient parking on the subject property. In the email, Ms. Stuber states:

1. Based on the information submitted by the applicant, there is sufficient parking on the site.
2. Transylvania Ave is a one lane road that is as narrow as 11 feet. Construction of a pull out is encouraged.

*See* Exhibit A, Email from Beth Stuber to Jon Crumbie, dated July 2, 2019.

The decision to deny the CUP on the grounds that the Applicant did not address the parking issue is arbitrary and capricious. It ignores the substantial evidence that was already present in the record through the BOZA Staff Report. The Item C requirement of a CUP expressly states that "Off-Street parking not located within a driveway shall be located to the side or rear of the building(s)." Up to sixteen (16) cars can park in the subject property's driveway. *See* BOZA Staff Report at p. 3. Further, pursuant to the Land Development Code at Chapter 9, Part 1, Motor Vehicle Parking Standards, a religious institution without permanently installed seats is required to have "1 parking space for each 50 sq. ft. of seating area in the sanctuary or primary assembly area." In the subject property, this equates to approximately one (1) parking spot for every three (3) seats. This means that only ten (10) parking spaces are required.

## **II. Applicant was Denied Procedural Due Process**

BOZA's ByLaws provide for the procedural policies for the conduct of public hearings. In relevant part, Policy No. 5.13 states:

All evidence should be presented at the public hearing. No evidence may be received into the record after the conclusion of the public hearing. All public hearing books and other information to be presented to the Board shall be submitted not later than the Tuesday prior to the public hearing.



During the hearing, Opposing Parties' counsel submitted proposed Findings in Support of Denial and two (2) letters that had not been submitted to BOZA or the Applicant by the Tuesday prior to the public hearing. One (1) of the letters was from Terri Bass, a local realtor. Ms. Bass' letter provided her professional opinion regarding the impact of the proposed CUP on the value of other properties on Transylvania Avenue. Ms. Bass stated that the proposed CUP would have a negative impact on the value of those properties.

Applicant's witness, Daniel Grossberg, was present to testify on behalf of the Applicant, as to the nature of activities and the number of people attending services offered by the Applicant at the subject property. Mr. Grossberg is also a realtor, and a licensed appraiser who has attained the Broker Price Opinion Resource ("BPOR") certification.

In rebuttal of Ms. Bass' opinion, Mr. Grossberg testified that Ms. Bass is not qualified or authorized to render an expert opinion as to property values. As a licensed appraiser with a BPOR certification, Mr. Grossberg is qualified to provide a legal opinion on property values. Mr. Grossberg testified that the subject property was abandoned and vacant for a long time prior to the Applicant purchasing it. Mr. Grossberg testified that the neighbors' property values have actually increased since the property is now occupied. Mr. Grossberg additionally testified that having ten (10) or fifteen (15) people to the subject property on the weekends does not negatively impact property values. Finally, Mr. Grossberg testified that one large party per year, comparable to a Derby or Fourth of July party, does not negatively impact property values.

It was by chance that the Applicant had a qualified witness present who could refute the opinion submitted to BOZA through the Terri Bass letter. Applicant's counsel objected to the submission of the proposed Findings in Support of Denial and the two (2) letters by the Opposing Parties' counsel on the grounds that the Applicant did not have the opportunity to review in advance so that he could be prepared to refute them.

### **III. Matters For Reconsideration**

As demonstrated above, contrary to Chairperson Howard's statements, the Applicant had adequately demonstrated that there was sufficient parking in accordance with the BOZA requirements and as stated in the Staff Report, as well as in the communication of Ms. Stuber. Both illustrated that "there is sufficient parking on the site." However, if the Board feels there needs to be other parking, the Applicant can add twenty (20) parking spaces to the subject property on acreage that is not subject to the Historical Preservation Conservation Easement located near the bridge and which would essentially be out of view from the street.

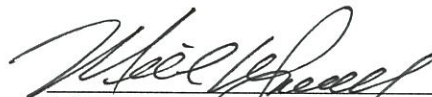
With regard to traffic, the Applicant believes it has properly demonstrated that the minimal traffic to the Subject Property on two days each week during non-high impact times, was not a problem. Nevertheless, the Applicant would be willing to offer to construct an additional pull off along the road utilizing a contractor of his choice; and, he would also be willing to install a "Yield" or "Stop" sign at the intersection of Transylvania Avenue and Mason Boulevard.

The septic system issue raised for the first time by a supposed neutral party should also not be a concern. Essentially, there are, at most, thirty people who attend meetings and services at one time at the Subject Property. If each of them utilize the facilities, they would not impact the septic system adversely. Nevertheless, the Applicant is willing to obtain an evaluation of the system and, if necessary, take whatever steps necessary to expand that system if warranted.

### CONCLUSION

Based on the foregoing, the Applicant respectfully requests BOZA to reconsider the denial of the CUP. BOZA ignored Transportation Planning's approval of the parking for the subject site. By ignoring the substantial evidence in the record regarding the parking requirements, BOZA appears to have acquiesced to the Opposing Parties' mob mentality. In addition to the members of the Opposing Parties who spoke, there were approximately fifteen (15) people who attended in opposition, but did not speak. For the foregoing reasons, the Applicant requests that its Application for a Conditional Use Permit to operate a religious institution at the Subject Property be granted.

Respectfully Submitted,



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MICHAEL R. GOSNELL  
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cc: Mr. Jon Baker  
Attorney For Opposing Parties

Mr. Jon Crumbie  
Planning & Design Coordinator  
(Via E-Mail)

# EXHIBIT A

## Crumbie, Jon

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**From:** Stuber, Elizabeth W.  
**Sent:** Tuesday, July 2, 2019 5:13 PM  
**To:** Crumbie, Jon  
**Subject:** 18CUP1120 Chabad of Prospect

Jon,

1. Based on the information submitted by the applicant, there is sufficient parking on the site.
2. Transylvania Ave is a one lane road that is as narrow as 11 feet. Construction of a pull out is encouraged.

Thanks,  
Beth

Beth Stuber, PE  
Transportation Engineering Supervisor  
Planning & Design Services  
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(502) 574-3875  
<https://louisvilleky.gov/government/planning-design>



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