

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: June 27, 2017

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **File No. 2012 – 444 West 40th Street – Religious Institution Progress Report**

BACKGROUND

June 28, 2011

The applicant, Congregation Anshei Gezah V'Chasidey Lubavitch, Inc., (aka Bais Menachem), obtained approval for a Conditional Use Permit (see Attached) to operate a religious institution located in the new 40th Street Overlay District, which has been operating there as a nonconforming use for many years.

January 24, 2017

The Board discussed the progress report and continued the Item to a date certain of February 28, 2017.

February 28, 2017

The Board discussed the progress report, made modifications to the CUP, and continued the Item to a date certain of April 25, 2017.

April 25, 2017

The Board discussed the progress report, and continued the Item to a date certain of June 27, 2017.

PROGRESS REPORT

The Religious Institution approved in the CUP was subsequently approved under TCO0916-0055 on September 19, 2016. The applicant is before the Board pursuant to Condition #1 of the CUP as follows:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The applicant shall come back to the Board, at the discretion of the Planning Director, following the issuance of a notice of violation related to this conditional use permit and provide a progress report. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).

A permit (BCO716-1175) for a 5 foot wall issued on August 3, 2016. However per CUP condition # 8:

8. The applicant shall construct a 7 foot concrete wall and get the necessary variances in order to minimize any negative impact to the neighbor to the west at 3771 Royal Palm Avenue.

A site inspection was performed and a recent survey was provided indicating that the top of the wall in question along the property line is at 8.87' and the side walk elevation (Center of the lot) is at 3.94' resulting in a total height of 4.93', which is less than the 7 foot height required by the CUP.

In order to address the concerns of the neighbor, and taking into consideration the height of the wall as constructed, on February 28, 2017 the Board modified condition No. 8 as indicated below:

8. The applicant shall construct a ~~7~~ five (5') foot concrete wall with a two (2') foot solid wood or metal fence on top of the concrete wall, and get the necessary variances in order to minimize any negative impact to the neighbor to the west at 3771 Royal Palm Avenue. Subject to the approval of the property owner located at 3771 Royal Palm Avenue, a hedge, eight (8') feet tall at the time of planting, shall be installed on the 3771 Royal Palm Avenue property, along the portion directly abutting the property line of 444 West 40th Street. A permit application for the fence shall be submitted to the City within 30 days of the February 28th, 2017 meeting. A permit for the acoustic mitigation of the air conditioning equipment shall be submitted within 60 days of the February 28, 2017 meeting, and all such construction shall be completed within 90 days of the February 28, 2017 meeting.

Since the last meeting, the hedge material has been installed as required on the 3771 Royal Palm Avenue property, and staff has been informed that the permit drawings for the fence addition are in process.

The permit for the fence addition was issued on April 21, 2017 (BR1701177) and per photo submitted by the applicant the fence addition has been installed (see below).

The installation of the sound barrier is still pending, and as stated by the applicant, the sound barrier for the mechanical equipment will be installed before the June 27th, 2017 meeting.

STAFF RECOMMENDATION

Staff recommends that the Board discuss the progress report and schedule a follow-up progress report if necessary.

TRM/MB/AG

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**PLANNING BOARD
CITY OF MIAMI BEACH, FLORIDA**

PROPERTY: 444 W. 40 Street

FILE NO. 2012

IN RE: The application by Congregation Anshei Gezah V'Chasidey Lubavitch, Inc., (aka Bais Menachem), requesting Conditional Use approval to operate a religious institution located in the new 40th Street Overlay District, which has been operating there as a nonconforming use for many years.

DESCRIPTION: Lot 14, Block 51, Orchard Subdivision no. 2 and 3, according to the Plat thereof as recorded in Plat Book 8, page 116 of the Public Records of Miami-Dade County, Florida

MEETING DATE: June 28, 2011, February 28, 2017

CONDITIONAL USE PERMIT

The applicant, Congregation Anshei Gezah V'Chasidey Lubavitch, Inc., (aka Bais Menachem), filed an application with the Planning Director for a Conditional Use Permit pursuant to Section 118-193 of the Land Development Regulations of the Code of the City of Miami Beach, Florida. Notice of the request was given as required by law and mailed out to owners of property within a distance of 375 feet of the exterior limits of the property, upon which the application was made.

The Planning Board of the City of Miami Beach makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

That the property in question is located in the RS-4, Single Family Residential zoning district

That the use is consistent with the Comprehensive Plan for the area in which the property is located;

That the intended use or construction will not result in an impact that will exceed the thresholds for the levels of service as set forth in the Comprehensive Plan;

That structures and uses associated with the request are consistent with the Land Development Regulations;

That the public health, safety, morals, and general welfare will not be adversely affected if the applicant complies with the conditions stated herein;

That necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.

IT IS THEREFORE ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which is adopted herein, including the staff recommendation, that the Conditional

Use Permit as requested and set forth above be GRANTED, subject to the conditions below, which have been accepted by the applicants:

On February 28, 2017, as part of a progress report on the subject application, modifications to the conditional use approval were approved by the Board (underline denotes added language and stirkethru denotes stricken language).

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The applicant shall come back to the Board, at the discretion of the Planning Director, following the issuance of a notice of violation related to this conditional use permit and provide a progress report. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
2. This Conditional Use Permit is issued to Congregation Anshei Gezah V'Chasidey Lubavitch, Inc., aka Bais Menachem. Any change of management or ownership shall require review by the Planning Board as a modification to this Conditional Use Permit. Subsequent owners and managers shall be required to appear before the Board within 90 days of the change of ownership or operator to affirm their understanding of the conditions listed herein.
3. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns.
4. Plans for the proposed renovation and expansion shall be submitted to staff for design review and approval.
5. Any business identification signs shall be submitted to staff for review and approval before installation.
6. All outdoor activities shall cease by no later than 12:00 midnight.
7. At no time shall outdoor speakers or amplified music be permitted outdoors.
8. The applicant shall construct a ~~7~~ five (5') foot concrete wall with a two (2') foot solid wood or metal fence on top of the concrete wall, and get the necessary variances in order to minimize any negative impact to the neighbor to the west at 3771 Royal Palm Avenue. Subject to the approval of the property owner located at 3771 Royal Palm Avenue, a hedge, eight (8') feet tall at the time of planting, shall be installed on the 3771 Royal Palm Avenue property, along the portion directly abutting the property line of 444 West 40th Street. A permit application for the fence shall be submitted to the City within 30 days of the February 28th, 2017 meeting. A permit for the acoustic mitigation of the air conditioning equipment shall be submitted within 60 days of the February 28, 2017 meeting, and all such construction shall be completed within 90 days of the February 28, 2017 meeting.
9. The applicant shall be responsible for maintaining the areas surrounding the facility, such as the entrance and areas of the street adjacent to the property on 40th Street and all around the perimeter of the property.
10. The applicant shall satisfy outstanding liens and past due City bills, if any, to the satisfaction of the City prior to the issuance of a Certificate of Use/Business Tax Receipt.

11. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
12. Within a reasonable time after receipt of this Conditional Use Permit, as signed and issued by the Planning Director, the applicant shall record it in the Public Records of Miami-Dade County at the expense of the applicant and return it to the Planning Department. No building permit, certificate of use, certificate of occupancy, certificate of completion or business tax receipt shall be issued until this requirement has been satisfied.
13. The establishment and operation of this Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the Code of the City of Miami Beach, Florida, and shall be subject to enforcement procedures set forth in Section 114-8 of said Code and such enforcement procedures as are otherwise available. Any failure by the applicant to comply with the conditions of this Order shall also constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use.
14. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

Dated this _____ day of _____, 2017

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA
BY: _____
Michael Belush, AICP
Chief of Planning and Zoning
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, by Michael Belush, Planning and Zoning Manager of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

[NOTARIAL SEAL OR STAMP

Notary:
Print Name:
Notary Public, State of Florida
My Commission Expires:
Commission Number:

Approved As To Form:
Legal Department ()

Filed with the Clerk of the Board on _____ ()

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