

4. Application: ZA-483-07-5
Existing Zoning: R1-6
Location: 7601 North 31st Avenue
Proposal: Request for Formal Interpretation. Appeal of Informal Interpretation letter dated May 16, 2007 by Zoning Administrator regarding conversion of residence to a place of worship (Harvest Christian Fellowship)
Ordinance Sections: 303.B.1.b
Applicant: Mary Bettis/North Glen Neighborhood Association
Representative: Michael Curley/Earl, Curley & Lagarde
Owner: Salman Suzanne
Appealed by: Stella Sheridan for Mike Curley (Opposition)

Mr. Tauber read the application.

Mr. Andy Moore (3101 North Central Avenue), spoke on behalf of the North Glen Neighborhood Association. After a show of hands in support of the neighborhood association, Mr. Moore reviewed their position. He noted that the letter did not address the issue as they viewed it. He stated that the church asked for a letter of interpretation giving the setbacks of a residential property for the current and proposed buildings for a church use. The Zoning Administrator answered with the setbacks. The association appealed because the letter of Interpretation becomes part of the Zoning Ordinance within 30 days and becomes precedence. He maintained that previous letters state that a primary use must be the most identifiable use on the property, further that you may not have two primary uses on one property. It is their belief that this situation is an attempt to have two. They have appealed this Interpretation because they believe that the correct Zoning Administrator's response would have been to provide the setbacks but also state that a church would not be allowed on this property.

Mr. Moore stated for background that this is a residential property in a residential neighborhood and the property was purchased by Mr. Salman's wife as the property owner. Pastor Salman is the one applying for the Letter of Interpretation and is the one who wants to do a church on the property. Soon after buying the property they began holding church services on the property and did send a letter of Interpretation asking what accessory uses could they have on the property. The Zoning Administrator answered that it appeared they were trying to have a church so the applicant needed to come into compliance with the Building Code. They went to Development Services and applied for a building permit for a garage, which they obtained. When Development Services learned that it was not intended for use as a garage but a church, they put a stop work order. Development Services told them that they needed to come in for a site plan because this was a change of use. Eventually, the church sent in the letter asking for setbacks.

Mr. Moore continued that they have no debate with a church as one of the allowable uses in a residential district as per Section 608 of the Zoning Ordinances. He summarized that there are about eight uses listed, however no accessory uses are allowed except as specifically said in the Zoning Ordinance. He interpreted that as not allowing two of these uses on the same lot. For example a government building and a residence may not be on the same lot. If the use is to be a church, the most identifiable primary use must be the church. Per the site plan included in the packet, the residence takes up the entire front of the lot and all that is visible is the house and it's additions. The association has no problem with that, but the church is smaller than the residence and being built behind residence. Mr. Moore ascertained that the church could never be a primary use with the residence as the accessory use by virtual of the size and layout of the lot. A residence, rectory, parsonage can be an accessory use but not in this case. Therefore, they believe that the Zoning Administrator's letter of Interpretation should have given the setbacks but further stated that a church use is not allow because there can be only one primary use on a lot, not two. Therefore, Mr. Moore suggested this language be added onto the letter of Interpretation: "Due to the size and location on the property of both the existing residence and the proposed church building, the Zoning Ordinance requirement for one primary use in a residential district with only the allowed accessory use does not permit the construction of a church building on the property nor does it allow the property to function as a church site."

Mr. Paul stated that the City's position has been articulated in submitted written materials.

Mr. Michael Salman (7601 North 31st Avenue), stated that he is in opposition to the appeal. He stated that he believes that the Zoning Ordinance is very clear that churches or similar places of worship, including parsonage, rectories and convents and dormitories with no more than 10 residences accessory thereto are permitted in each district.

In rebuttal to the appellant's statement that they do not wish to have the Interpretation as part of the Ordinance, Mr. Salman said that the Ordinance already says that a church and parsonage are applicable to the property. Also, he stated that what the church decided to do and then took a different avenue is irrelevant to the case. Next, Mr. Salman did not know that when he wrote the first interpretation letter that he needed to state that the residence was a parsonage. He is the senior pastor and resides within with his wife and kids. We ministers and counsels from his home. As part of his belief system, they are a living church, having church all the time. When he was advised that they could not have two uses, they did not understand the lingo. He contends that it is not a residence but a parsonage with a church use. He also submitted paperwork that shows that the property mortgage and utilities are being paid for by the church since the first purchase of the property and still are. Mr. Salman does not believe

there is an issue with what is the primary or accessory use. The Code already states that the church use is allowed on R1-6 and they did not feel they needed an interpretation for the use so they did not ask for one. They did not hide the fact that they intended since purchase to have a church use. He questioned rhetorically whether there is some part of the Code which states that the chapel must be bigger than the parsonage or the parsonage must be smaller than the chapel. Referring to the appellant's Exhibit M, a letter of Interpretation from St. Xavier College Preparatory campus, Mr. Salman noted that for this religious use, the campus is larger than the church. The answer to the question as to whether Harvest Christian Fellowship can use this property for a religious use is yes.

Mr. Moore, in rebuttal to Mr. Salman's last point, stated that there is no relation between the two because it is really appropriate to have a large school and church use if it is on a large lot with accessible roads. The reason the Exhibit was submitted was to show that the Zoning Administrator sometimes made her determination as to what is appropriate for a letter of Interpretation by referring to other letters of Interpretation. It is part of the precedent which is to look at the Zoning Code and then look at previous letters of Interpretations.

Referring to Exhibit A, a letter of Interpretation written by David Richert, Mr. Moore said that the church or place of worship must be identifiable as the primary use on the site, and the residential component, as an accessory or subordinate use. That statement having not been appealed sets precedent. In the letter of Interpretation which is the subject of this appeal, Mr. Moore said he felt that it is important to add that at this location, the most identifiable primary use would have to be the church, not the residence. Per the site plan, the parsonage takes up the entire front of the property and in the back corner is a 60 x 60 structure labeled sanctuary, which is not seen from the road, not able to be accessed without going past the residence which is clearly a home. While a church is allowed in the neighborhood, not every lot, not every parcel, or every configuration is allowed or appropriate in the neighborhood. Without even getting into issues of intensity, density, times of use, hours of operation, but going back to just the Interpretation, Mr. Moore felt that this use would only be allowed if the most identifiable primary use were the church building not the residence building.

Mr. Paul proposed acknowledging that the letter of Interpretation has merit as written. He additionally suggested using Mr. Richert's language from the March 31, 1989 letter of Interpretation which reads "that the church or place of worship must be identifiable as the primary use on the site and the residential component as an accessory or subordinate use". As well as that, the church has to meet standards of site development.

Mr. Moore agreed that they would be relieved with that addition.

Mr. Paul asked if from Mr. Moore's perspective that this 1989 memo is the latest city thought on the issue.

Mr. Moore replied that it was the most clear. He referenced another letter dated February 12, 1999 letter written by Mr. Bill Allison, which also states that “the primary use would be the sanctuary, classroom, social and office space typically associated with a place of worship. Accessory uses could include a parish house and pocket shelter.” There have been a number of decisions over the years that touch on the same issue but the 1989 Richert letter says clearly what the point is.

Mr. Paul responded that Mr. Moore’s concern was that the possibility exists that as written, the interpretation could be for a permission for two primary uses.

Mr. Parfitt asked for the city point of view on Mr. Richert’s letter and other letters that may possibly exist. She voiced concern with the words “primary use”. She requested clarification from the city staff to ensure that the Board of Adjustment is understanding correctly what the Zoning Ordinance is saying.

Ms. DeMichael stated that the only requirement is to identify the site as a church, whether it includes a residence or not. Churches are permitted to have signs, churches can have an entire campus of different uses that are labeled within the Zoning Ordinance, some of which are dormitories, parsonages, monasteries, schools, etc. as long as they meet the standards of the Zoning Ordinance and building code for parking, lot coverage, and things of that nature. The key is identifying the site as a church, which is not going to be in conflict with any of the interpretations that have been previously made. Ms. DeMichael said that the Zoning Ordinance does not speak to a specific square footage of a primary use versus an accessory use.

Mr. Paul inquired whether the city objected to that clarification as it would be consistent with prior city precedent. The Board of Adjustment would uphold the Informal Interpretation with the caveat that the language from the March 21, 1989 interpretation that the church or place of worship must be identifiable as the primary use on the site and the residential component as an accessory or subordinate use.

Ms. DeMichael stated that staff would have no opposition to that stipulation however, she wished to make sure it was understood that the added language would not eliminate the ability for them to both have the existing parsonage and the church as planned.

Mr. Hamblin added that what the Zoning Administrator is saying is that the primary use and accessory use does not depend on the placement of the buildings on the lot or the size of respective uses. There are other factors that are taken into account.

Mr. Paul acknowledged that and then said that he and the Board members were struggling to give the neighborhood some level of comfort that the worse case

scenarios that Mr. Moore has articulated may not manifest themselves. Whatever the results of this hearing, the property owners are going to have to comply with a number of other building permit and city codes before they can operate as a church.

Ms. Parfitt MOTIONED that on application ZA-483-07-5 the informal interpretation given by the Zoning Administrator on May 16, 2007 stands as written with the addition of the stipulation that the church or place of worship must be identifiable as the primary use on the site and the residential component as the accessory or subordinate use.

Mr. Gaynor SECONDED the motion.

Vote 4-0



City of Phoenix

PLANNING DEPARTMENT

May 16, 2007

Pastor Michael Salman
7601 North 31st Avenue
Phoenix, Arizona 85051

**Re: Informal Interpretation – Conversion of Residence to a Place of
Worship; Harvest Christian Fellowship (Church)**

Dear Pastor Salman:

Thank you for your May 2, 2007 letter requesting a follow-up to the Informal Interpretation I made on December 21, 2006 regarding your desire to utilize the site at 7601 North 31st Avenue as a place of worship. In that determination, I explained that churches were permitted in residential zoning districts subject to compliance with the Zoning Ordinance standards for off-street parking, building setbacks, lot coverage, etc. and to Building Code standards for public assembly uses.

You have provided me with a revised plan showing a church campus and asked for me to review it for compliance with the required parking and building setbacks. The buildings constructed at 7601 North 31st Avenue are required to be set back from the property lines as follows: 30' from the front (31st Avenue frontage), 25' from the rear, and one side yard setback of 10', with the other side yard setback at 3'. Compliance with these standards is addressed below for each structure.

The Parsonage: The plan and your letter indicate that the 3,970 square foot parsonage (existing residence) will be used only to provide housing to yourself and your family while you are the pastor for the Harvest Christian Fellowship. Based upon my review of the plan you submitted, the location of the parsonage is in compliance with the Zoning Ordinance standards for building setbacks. Your letter indicated that the parsonage would not be used for any of the other activities generally associated with and permitted in a parsonage such as church offices, meeting rooms or gathering areas. Only two parking spaces are required for the parsonage because the use will be limited to residential purposes. Any change to the residential use of the parsonage may require a modification to the existing structure to come into compliance with the city's Building Code for nonresidential uses and an increase in the number of required parking spaces.

The Sanctuary: Your plan has been modified and your letter indicates that you wish to have a 3,600 square foot sanctuary that will provide seating for 150 people, a stage, a cry room, public restrooms, an area for audio/visual equipment, and a storage area. Based upon the existing uses on the site, the side yard setback for the sanctuary (north) would not be in compliance with the Zoning Ordinance. The side yard setback would need to be 10'. The required side yard setback for the sanctuary could be reduced to 3' if the existing carport is torn down and the proposed covered parking canopy shown on the opposite side yard (south) is relocated to meet the required 10' setback on that property line. A 25' rear yard setback would be required on the east property line and the plan submitted reflects that the standard can be met.

To convert the structure for use as a sanctuary, modifications may need to be made to come into compliance with the city's Building Code standards for a public assembly use. The Phoenix Zoning Ordinance specifies that 1 parking space is required for every five seats or ninety linear inches of pew space. Based upon the information you have provided, there will be seating for 150 persons within the sanctuary so 30 parking spaces would need to be provided (in addition to the 2 spaces required for the parsonage). Any increase in the number of seats provided within the sanctuary may modify the number of parking spaces that would need to be provided.

Game Room/Storage Building: The plan you have submitted shows that the existing shed will be enlarged. In your letter you state that the structure will be used for a family game room and storage. You will not be using the building as a school and/or bible study area as proposed in your original submittal. The existing side yard setback (south) for the game room/storage building would be consistent with ordinance standards. A 25' rear yard setback would be required on the east property line. The 8'6" setback shown on the plan would not be in compliance with the required 25' setback. You can apply for a variance to the Zoning Ordinance standard or modify the location of the structure. No parking would be required for the use described. A building permit would be required in order to expand and change the use of the structure, which would now be considered an occupiable space according to the city's Building Code.

The change in use of the property from purely residential to the proposed place of worship would require the approval of a site plan by the Development Services Department. The use of the existing residence would be permitted to continue as long as it was used only for residential purposes. All structures, including the existing residence, need to be included on the approved site plan.

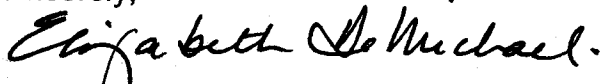
Other than the residence, no structures can be used as shown on the plan prior to the issuance of a Certificate of Occupancy by the Development Services Department. A Certificate of Occupancy will not be released with out the

previously mentioned site plan approval, issuance of building permits and completion of construction.

Any changes in the uses shown on the plan or described above would need to be approved by the Development Services Department. All parking for the church campus must be provided on-site and not on the public right-of-way. Please keep this in mind if you or your design team feels that the actual demand for parking will be greater than what the Zoning Ordinance requires.

I hope that I have addressed all of your questions. If you require any additional information, please contact me at 602-262-7131.

Sincerely,



Elizabeth DeMichael
Zoning Administrator

C: Debra Wilkins Stark, AICP
Sandra Hoffman
Robert Dunn
Zoning Team
File



City of Phoenix

PLANNING DEPARTMENT

~~December 21, 2006~~

Mr. and Mrs. Michael Salman
7601 North 31st Avenue
Phoenix, Arizona 85051

Re: Informal Interpretation – Bible Study as an Accessory Use

Dear Mr. & Mrs. Salman:

Thank you for your letter received December 7, 2006 requesting an Informal Interpretation regarding whether various uses would be considered accessory to the residence at **7601 North 31st Avenue**. After reviewing the Zoning Ordinance, I have determined that the uses you proposed would be permitted only as described below.

You have asked if the following uses are permitted in your home and considered accessory to the primary use of residential living for your family (see definition below):

- Bible Study Sessions for up to 50 people every Thursday and Sunday evenings.
- "Family" food functions for up to 60 people on the first Sunday of each month. In addition to the meals, the group would be playing games, having band practice, and celebrating special events.
- You would also like to provide home schooling to your 1, 3, and 5 year old children daily from 3:00 p.m. to 5:00 p.m.

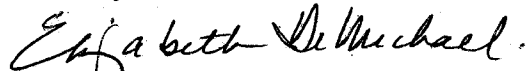
Section 202 of the Phoenix Zoning Ordinance defines a family as: 1) "An individual or two (2) or more persons related by blood, marriage, or adoption, and usual servants, **living together** [emphasis added] as a single housekeeping unit in a dwelling units, or 2) a group of not more than five (5) persons, who need not be related, **living together** [emphasis added] as a single housekeeping unit in a dwelling unit."

The home schooling of your own children would be permitted because it is only for your family. The size and regularity of the other uses you have described, the involvement of non-family members as defined by the Zoning Ordinance, and the site plan you have submitted indicated that the proposed use is more analogous to a church. Churches are permitted on residentially zoned properties subject to compliance with the Zoning Ordinance standards for off-street parking, building setback, lot coverage, etc.

Churches also have different Building Code standards that must be met than a residential unit because of the public assembly aspect of the use. I would suggest you contact the city's Development Services Department (602/262-7844) to obtain information on the building code requirements and permitting process for your proposed facility.

If you need any additional information, please feel free to contact me at (602)262-7132.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth DeMichael".

Elizabeth DeMichael
Zoning Administrator

c: Debra Wilkins Stark, AICP
Zoning Team
Files