




**Interoffice Memorandum**

**DATE:** July 24, 2023

**TO:** Jennifer Lara-Klimetz, Deputy Clerk  
Board of County Commissioners

**THROUGH:** Agenda Development BCC

**FROM:** Jennifer Moreau, AICP   
Manager, Zoning Division

**CONTACT PERSON:** **Ted Kozak, AICP**  
**Chief Planner, Zoning Division**  
**(407) 836-5537 or [Ted.Kozak@ocfl.net](mailto:Ted.Kozak@ocfl.net)**

**SUBJECT:** Request for Public Hearing to consider an appeal of the July 6, 2023 Board of Zoning Adjustment Recommendation for Special Exemption SE-22-11-118, Nathan Milch for Temple on Hempel, located at 2198 Hempel Avenue, Gotha, Florida, 34734, Parcel ID # 33-22-28-3100-13-300 District 1

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**APPLICANT/ APPELLANT:** Nathan Milch, Kimley-Horn

**CASE INFORMATION:** Case # SE-22-11-118 – July 6, 2023

**TYPE OF HEARING:** Board of Zoning Adjustment Appeal

**HEARING REQUIRED BY FL STATUTE OR CODE:** Chapter 30, Orange County Code

**ADVERTISING REQUIREMENTS:** Publish once in a newspaper of general circulation in Orange County at least (15) fifteen days prior to public hearing.

**ADVERTISING TIMEFRAMES:** At least fifteen (15) days prior to the BCC public hearing date, publish an advertisement in the legal notice section of The Orlando Sentinel describing the particular request, the general location of the subject property, and the date, time, and place when the BCC public hearing will be held;

**ADVERTISING** Special Exception in the A-1 zoning district to allow for the construction of an 800 seat 45,000 sq. ft. religious institution.

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<b>NOTIFICATION REQUIREMENTS:</b>	At least 10 days before the BCC hearing date, send notices of the public hearing by U.S. mail to owners of property within 3,000 feet of the property.
<b>ESTIMATED TIME REQUIRED:</b>	Five (5) minutes
<b>MUNICIPALITY OR OTHER PUBLIC AGENCY TO BE NOTIFIED:</b>	N/A
<b>HEARING CONTROVERSIAL:</b>	Yes
<b>DISTRICT #:</b>	1

The following materials will be submitted as backup for this public hearing request:

1. Names and known addresses of property owners within 3,000 feet of the property (via email from Fiscal and Operational Support Division); and
2. Location map (to be mailed to property owners).

**SPECIAL INSTRUCTIONS TO CLERK:**

1. Notify abutters of the public hearing at least two (2) weeks prior to the hearing and copy staff.
2. Public hearing should be scheduled within 45 days after the filing of the notice of appeal received on July 12, 2023, or as soon thereafter, as the BCC's calendar reasonably permits.

Attachment (Location map)

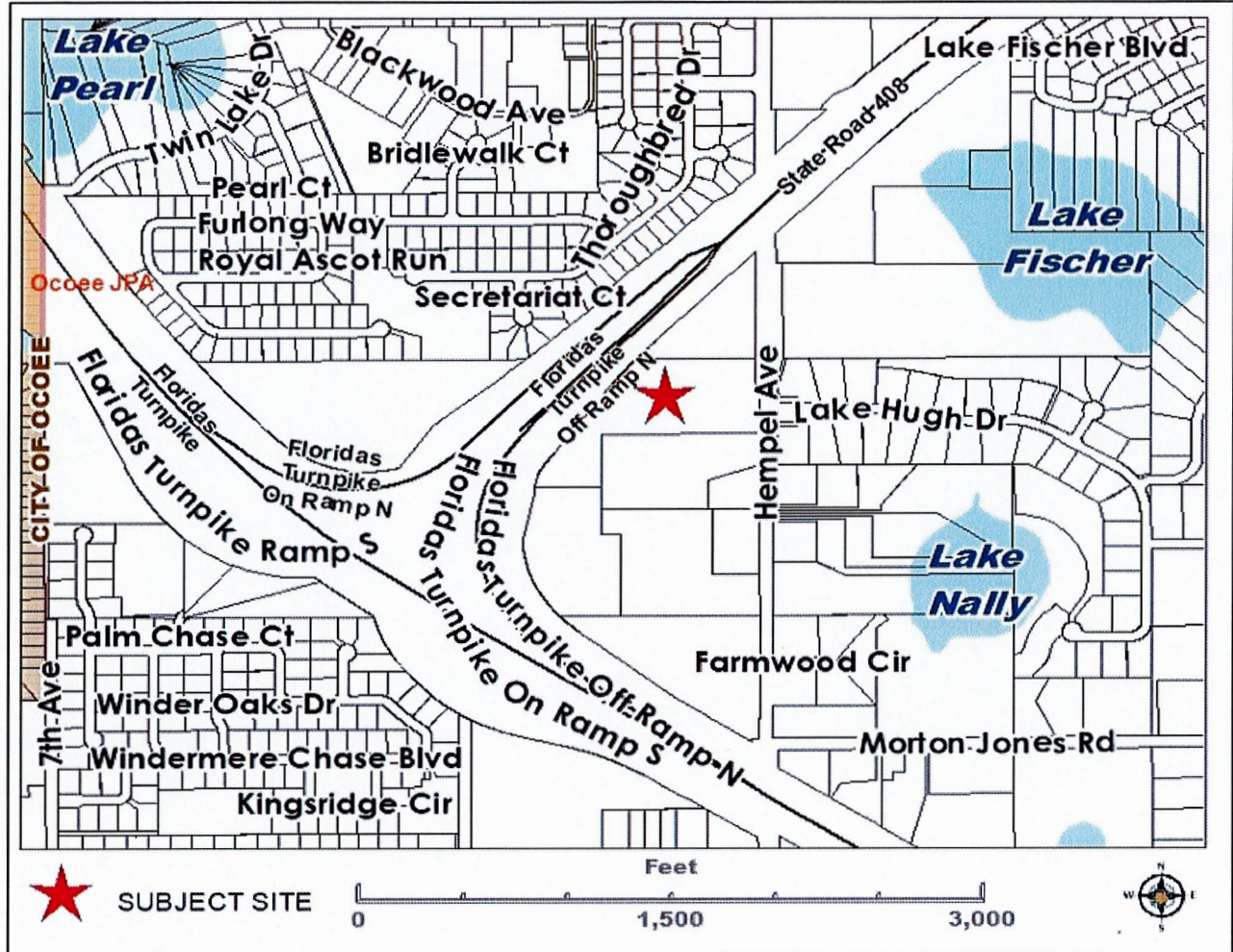
cc via email: Jon Weiss, P.E., Deputy County Administrator  
Andres Salcedo, P.E., Acting Director, Planning, Environmental, and  
Development Services Department

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### Location Map



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JAMES G. WILLARD  
PARTNER  
Shutts & Bowen LLP  
300 South Orange Avenue  
Suite 1600  
Orlando, Florida 32801  
DIRECT (407) 835-6909  
FAX (407) 849-7209  
EMAIL jwillard@shutts.com

July 12, 2023

**VIA HAND DELIVERY**

Nick Balevich  
Orange County Zoning Division  
201 S. Rosalind Avenue – 1<sup>st</sup> Floor  
Orlando, Florida 32801

**Re: Appeal of BZA Matter SE-22-11-118**

Dear Nick:

On behalf of the Owner, Katherine E. Ross Groves, Inc., I am filing the enclosed Appeal to the BZA decision of July 6, 2023 denying the Special Exception request.

Enclosed please find:

1. Executed BZA Appeal Application.
2. BZA Appeal Justification.
3. My law firm check to the Board of County Commissioners in the amount of \$691.00 for the application fee.

Please advise if you require any further information.

Further, please note that I will be unavailable on Tuesday, September 12 and therefore request that the BCC hearing date for this appeal not be scheduled on that date. Any other BCC hearing date should work.

Very truly yours,

A handwritten signature in blue ink, appearing to read "J. Willard", written over the typed name.

James G. Willard

JGW/smw  
Enclosures

cc: Brenda Smith (via email)  
Bobby Patel (via email)  
Nathan Milch (via email)

ORLDOCS 20706958 |

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ORANGE COUNTY ZONING DIVISION  
201 South Rosalind Avenue, 1<sup>st</sup> Floor, Orlando, Florida 32801  
Phone: (407) 836-3111 Email: [Zoning@ocfl.net](mailto:Zoning@ocfl.net)  
[www.orangecountyfl.net](http://www.orangecountyfl.net)

**Board of Zoning Adjustment (BZA) Appeal Application**

**Appellant Information**

Name: James G. Willard

Address: 300 S. Orange Avenue, Suite 1600, Orlando, Florida 32801

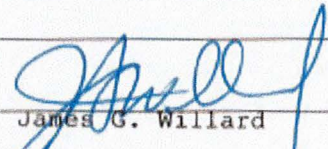
Email: jwillard@shutts.com Phone #: 407/423-3200

BZA Case # and Applicant: SE-22-11-118 Mason Milch for Temple on Hempel

Date of BZA Hearing: July 6, 2023

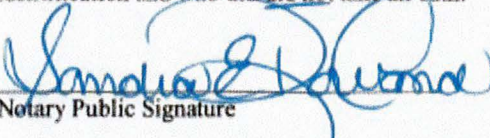
Reason for the Appeal (provide a brief summary or attach additional pages of necessary):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Appellant:  Date: 7/12/23

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 12th day of July, 2023, by James G. Willard who is personally known to me or who has produced \_\_\_\_\_ as identification and who did/did not take an oath.

  
Notary Public Signature

Notary Stamp:  SANDRAE. ROWLAND  
Commission # HH 143179  
Expires July 7, 2025  
Bouded Thou Budget Notary Services

**NOTICE: Per Orange County Code Section 30-45, this form must be submitted within 15 days after the Board of Zoning Adjustment meeting that the application decision was made.**

Fee: \$691.00 (payable to the Orange County Board of County Commissioners)

Note: Orange County will notify you of the hearing date of the appeal. If you have any questions, please contact the Zoning Division at (407) 836-3111.

**See Page 2 of application for the Appeal Submittal Process.**

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**SPECIAL EXCEPTION CASE NO. SE-22-11-118**

**BZA APPEAL JUSTIFICATION**

The BZA erred in not finding that the Applicant met all the Special Exception Criteria entitling its religious use to be allowed on the subject property.

While many issues regarding the impacts of the proposed Hindu Temple were discussed at the BZA hearing, including transportation, stormwater drainage and site design, all were addressed and determined within acceptable service levels and standards required by the County.

The stated rationale for denial by BZA members was that the project did not fit the character of the Gotha Rural Settlement and that the proposed temple building was too large.

The Board relied on the staff report which found compliance with 4 of the 6 elements of the Special Exception Criteria. However, staff did cite the following concerns with 2 other criteria:

1. SIMILAR AND COMPATIBLE WITH THE SURROUNDING AREA. Staff's determination of the project's incompatibility compared the proposed religious use only to the existing residential uses within the Gotha Rural Settlement. Staff and BZA failed to give proper weight to:

(i) The location of this site adjacent to the SR 408 Expressway at the intersection with the Florida turnpike (both 8-lane highways); and

(ii) This parcel's adjacency to an existing Jehovah Witness church on the north and a landscape nursery on the south (which happens to be the sole remaining agricultural use within the Gotha Rural Settlement).

Given the actual adjoining uses of expressways, landscape nursery and another church, Applicant maintains that its proposed use is, indeed, compatible with the surrounding area and that reference to "surrounding area" should not be defined as the entire Gotha Rural Settlement – especially since the two-story temple on the western end of the subject parcel will not be visible from ANY location within the entire Gotha Rural Settlement with the exception of the immediately adjacent nonresidential uses.

The staff report also mistakenly stated that "...the majority of the adjacent properties contain single family residential homes..." when, in fact, none of the adjacent properties are single family homes.

Furthermore, FLU 8.2.11 specifically provides that numerous other factors may be considered in determining compatibility and that it does not need to be identical to uses surrounding it. Factors such as design, urban form, physical integration of the project, etc. must all be considered – as Applicant did in its Site Plan submittal for this Special Exception.

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2. SHALL NOT ACT AS A DETRIMENTAL INTRUSION INTO A SURROUNDING AREA. The staff report similarly concluded that the Applicant failed to satisfy this criteria by stating:

**"The size, scale and intensity of the proposal will be a detrimental intrusion to the surrounding area. The Gotha Rural Settlement is intended to preserve the rural historic character."**

For the reasons below, the first sentence above is inaccurate and the second sentence is misleading.

The first sentence ignores the extensive site design and presentation by the Applicant addressing why the size and intensity of the Temple WILL NOT constitute a detrimental intrusion to the surrounding area:

- The temple building is not visible from Hempel Avenue (over 500 foot setback).
- No onsite primary or secondary education.
- No rental of facilities to third parties.
- No commercial daycare.
- No outdoor sports facilities.
- Off peak usage on Saturdays producing minimal transportation impacts.
- Sporadic but minimal usage 6 days per week with only 5 major festivals per year.

The sum total of the foregoing characteristics clearly will reduce, if not completely eliminate, detrimental intrusions to the surrounding area. Staff did not adequately consider these design characteristics when evaluating the impacts of the project, especially when compared to alternative permitted development, including residential, which would actually have greater adverse impacts.

The second sentence suggests that the proposed Hindu Temple does NOT "preserve the rural historic character" of the Gotha Rural Settlement. If "preserving the rural historic character" is the defining criteria, what development of any kind, including residential, "preserves the rural historic character"? It is an illusory and unattainable standard that cannot be relied upon as the basis for denial of this Special Exception.

"Historic" is not a standard. It is simply an adjective. Gotha Middle School is not historic. All the new, large and modern residences constructed in the Gotha Rural Settlement are not historic. It is true that every parcel of land has a history but new construction does not create historic buildings.

"Rural" is at least a term more amenable to definition (although the County Code fails to do so). It suggests farming, ranching and large open spaces. When the current Owner purchased this parcel in 1956 it was truly rural with an active citrus grove that was maintained until back-to-back freezes in the late 1980s. There have been no active citrus groves in Gotha for 20 years. The last one was converted to a PD for single family homes on half acre lots directly across Hempel Avenue in the Braemer subdivision. What has occurred in Gotha over the last 20 years is multiple suburban residential developments and the construction of Gotha Middle School accommodating over 1,200 students from areas far beyond the limits of the Gotha Rural Settlement. The expansive residential development has in large part been aided by the extension of County water service throughout Gotha notwithstanding it being outside the County's Urban Service Area.

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Conclusion. The subject parcel was unquestionably rural, if not necessarily historic, when the Owner purchased it in 1956 as an orange grove. It is no longer rural and the same can be said for the majority of land within the Gotha Rural Settlement. "Residential" is not the equivalent of "Rural". As orange groves within Gotha have given way to housing, so it is appropriate for this parcel to be put to a more productive use. The Owner maintains that its proximity to the Expressway does not make it appropriate for residential use. However, the proposed Hindu Temple is both appropriate and a use that will minimally impact the surrounding area. For these reasons the County Commission should approve this requested Special Exception.

Attached as Exhibit "A" are Conditions of Approval that will insure Applicant's compliance with its representations regarding the project and insure its positive impact on the Gotha community.