

<b>IN RE: PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>&amp; VARIANCE</b>		
NE side of Liberty Road; 130 feet SE of	*	DEPUTY ZONING
Blair Avenue		
2 <sup>nd</sup> Election District	*	COMMISSIONER
4 <sup>th</sup> Councilmanic District		
(Liberty Road @ Anne Hathaway Drive)	*	FOR BALTIMORE COUNTY
<b>Morton J. Macks and Thomas O. Frech</b>	*	
<i>Legal Owners</i>		
	*	
<b>Spirit and Truth Church</b>	*	<b>Case No. 2010-0018-SPHA</b>
<i>Contract Purchaser</i>		

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the legal owners of the subject property, Morton J. Macks and Thomas O. Frech, and the contract purchaser, Spirit and Truth Church. The Special Hearing request was filed in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to determine, pursuant to Section 1B01.1.B.1.g(6) of the B.C.Z.R. that the proposed church is planned in such a way that compliance, to the extent possible with Residential Transition Area (RTA) use requirements, will be maintained and can be expected to be compatible with the character and general welfare of the surrounding residential premises. The Variance request is from Section 1B01.2.C.1.a to permit a front setback of 20 feet in lieu of the 40 feet required. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the requested Special Hearing and Variance petitions was Pastor Roy Pope on behalf of Petitioner Spirit and Truth Church, as well as Thomas L. Stephens, Trustee, Esther Stephens, Associate Pastor, and Frederick Batson, Building

Supervisor. Also appearing in support of the requested relief was Richard E. Matz with Colbert Matz Rosenfelt, Inc., the professional engineer who prepared the site plan. Appearing as an interested citizen was Mae Randolph of 3607 Blair Avenue. There were no Protestants or other interested persons in attendance at the hearing.<sup>1</sup>

Testimony and evidence presented revealed that the subject property is a square-shaped property consisting of approximately 11,325 square feet or 0.26 acre, more or less, zoned R.O., D.R.3.5, and D.R.5.5. The property is located on the north side of Liberty Road, south of Church Lane and west of Old Court Road, in the Randallstown area of Baltimore County. The property is currently unimproved and heavily wooded, situated between a residential area of single-family homes to the north and west and an apartment complex to the east. Photographs of the subject property and surrounding area were marked and accepted into evidence as Petitioner's Exhibits 2A through 2H. Also situated across the street is the Baltimore County Resource Center.

Petitioner is the Spirit and Truth Church. According to Reverend Pope, the church was founded in 2003 and currently rents a church building located at 4600 Parkside Drive on the east side of Baltimore City -- near Gardenville. The church has approximately 30 members, with an expectation of growth during the ensuing years to about 60 members. Presently, the church has one Sunday service. At this juncture, Petitioner desires to purchase the subject property in order

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<sup>1</sup> It should be noted that in the days following the hearing, the undersigned received a number of emails and letters from interested members of the community. These communications universally expressed opposition to the proposed church at the subject location. However, at the outset of the hearing, the undersigned found that the subject property had been properly posted with a sign for 15 days prior to the hearing in order to give neighbors and interested persons or organizations notice of the hearing and an opportunity to attend and express their positions. The sign included the hearing date, time, place, and subject matter. Notice of the hearing was also advertised in *The Jeffersonian* newspaper, as well as posted on the County's Website. The hearing was convened at which time testimony and evidence from the parties in attendance was received. At the conclusion of the hearing, the evidence was closed for consideration of the evidence and preparation of this Order. In light of the above and based on the policy of this Office, it would not be appropriate -- nor would it be fair to the parties in attendance at the hearing -- for the undersigned to consider additional evidence after the hearing was held and the record closed. Nonetheless, the emails were printed and they along with the letters received were placed in the case file.

to construct a new church building for the congregation. As shown on the site plan, the new church would be a one-story building consisting of approximately 1,800 square feet and set back 20 feet from Liberty Road. Access to the property would be via Anne Hathaway Drive, which is the entrance to the adjacent apartment complex from Liberty Road. Parking would be located to the rear of the property with 18 parking spaces, including one handicapped space. The property has access to public water and sewer services.

In support of the requested relief, Mr. Matz, Petitioner's consulting engineer, explained that although a single-family home could be constructed on the subject property, the location is not the most desirable for a residence given its location close to Liberty Road and near the entrance to an apartment complex. He also indicated that the proposed church would fit in well with the adjacent residential communities and would be adequately shielded from view. As shown in the photographs of the adjacent property to the west, which were marked and accepted into evidence as Petitioner's Exhibits 3A through 3H, there is a partial fence on that property as well as trees and shrubbery that would provide screening from the proposed church property and building. Preliminary drawings and floor plan were marked and accepted into evidence collectively as Petitioner's Exhibit 5. These drawings illustrate a one-story building with a pitched roof and windows for natural light. The main entrance into the church would be via the northwest corner of the building facing the parking lot. Finally, Mr. Matz indicated that if the relief were granted, Petitioner would provide a landscape plan that would address the RTA buffering from the adjacent residential property, and would also likely construct a fence to provide screening.

Testifying as an interested citizen was Ms. Randolph, who resides at 3607 Blair Avenue, about 200 feet north of the subject property. Photographs of her home were marked and accepted into evidence as Community Exhibits 2A and 2B. In an email to the undersigned sent prior to the

hearing, Ms. Randolph expressed opposition to a church at the subject location. She cited the close proximity of a church to her residential property, as well as the potential environmental impact to a stream running behind the property in an open space area adjacent to the existing apartment complex. She was also concerned about the addition of another church to the area because there were already four churches within a two block radius, and the impact another church would have on traffic in the area. At the hearing, however, Ms. Randolph's concerns were tempered by Petitioner's presentation and she expressed no opposition in her live testimony.

The Zoning Advisory Committee ("ZAC") comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated August 4, 2009 which indicates that staff visited the site and reviewed materials submitted with the Petitions. The site is located in a Master Plan designated Revitalization District and a Community Conservation Area. A Commercial Corridors Policy in The Master Plan 2010 (page 163) states, "Reduce potential land use conflicts between commercial corridors and nearby residential areas." The proposed 29 foot setback is too close to guarantee continued privacy and enjoyment of the adjacent homeowners' rear yards. The proposed 20 foot front setback will also have negative impacts on the existing character of the adjacent residential community as well. The proposed use and design of the site as a church is too intense. The Planning Office recommends denial of the requested special hearing and variance for the proposed church.

Pursuant to Sections 1B01.1.A.3 and 204.3.A.1 of the B.C.Z.R., churches are a use permitted by right in the D.R. and R.O. Zones. As set forth in Section 1B01.1.B.1 of the B.C.Z.R., the Residential Transition Area (RTA) is a one hundred foot area, including any public road or public right-of-way, extending from a D.R. zoned tract boundary into the site to be developed. That section further states that the purpose of an RTA is to assure that similar housing types are

built adjacent to one another or that adequate buffers and screening are provided between dissimilar housing types. Due to its proximity to a residential zone, the subject property would generally be required to meet the RTA standards, which include a 50 foot RTA setback and a 75 foot RTA buffer from the adjacent residential property to the west. However, as a planned new church for religious worship, Section 1B01.1.B.1.g(6) of the B.C.Z.R. states that a new church or other building for religious worship is excepted from the RTA requirements upon a finding that the proposed improvements are planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises.

Although I am understanding of Petitioner's desire to have a permanent home for their small congregation, I am not persuaded in this instance that the proposed church would be compatible with the character and general welfare of the surrounding residential premises. The subject property is very small -- approximately a quarter acre -- and at this time is heavily wooded. Petitioner's project would require removal of just about every tree and together with the building and parking would overcrowd the land. I am also concerned about the impact of additional traffic and the potential fate of the site in the event the congregation increases to its goal of 60 members or beyond and outgrows the proposed building. It is also important to note the comments from the Office of Planning regarding the policy to "reduce potential land use conflicts between commercial corridors and nearby residential areas." In short, in my view, the subject site does not lend itself to the reduction in RTA buffers and setbacks requested by Petitioner and the proposed church at this location would not be in keeping with the residential character of the area.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and after considering the testimony and evidence offered, I find that Petitioner's Special Hearing and Variance requests should be denied.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 1<sup>st</sup> day of October, 2009 that Petitioner's request for Special Hearing relief filed in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to determine, pursuant to Section 1B01.1.B.1.g(6) of the B.C.Z.R. that the proposed church is planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and can be expected to be compatible with the character and general welfare of the surrounding residential premises be and is hereby DENIED; and

IT IS FURTHER ORDERED that Petitioners' request for Variance from Section 1B01.2.C.1.a to permit a front setback of 20 feet in lieu of the 40 feet required be and is hereby DENIED.

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

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SIGNED  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

THB:pz