

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
South side of Liberty Road at corner of		
east side of Live Oak Road	*	DEPUTY ZONING
2 <sup>nd</sup> Election District		
4 <sup>th</sup> Councilmanic District	*	COMMISSIONER
(9601 Liberty Road)		
	*	FOR BALTIMORE COUNTY
<b>Abiodun and Omobolarinwa Somide</b>		
<i>Petitioners</i>	*	<b>CASE NO. 2011-0138-A</b>

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owners of the subject property, Abiodun and Omobolarinwa Somide. Petitioners are requesting Variance relief as follows:

- From Section 1B01.1.B.1(e)(3) of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an RTA buffer of 10 feet in lieu of the required 50 feet buffer; and
- From Section 1B01.1.B.1(e)(5) of the B.C.Z.R. to permit a parking lot to be constructed at a distance of 10 feet from the property line in lieu of the required 75 feet; and
- From Section 1B01.1.B.1(e)(5) of the B.C.Z.R. to permit a structure to be constructed at a distance of 19 feet from the property line in lieu of the required 75 feet; and
- From Section 1B01.2.C.1.a of the B.C.Z.R. to permit a front yard setback of 48 feet in lieu of the required 50 feet; and
- From Section 1B01.2.C.1.a of the B.C.Z.R. to permit a side street setback of 19 feet in lieu of the required 35 feet; and
- From Section 450.4.1(a) of the B.C.Z.R. to permit a changeable copy sign (for a church) with an area/face of 32 square feet in lieu of the maximum permitted 25 feet, and a height of 7.5 feet in lieu of the maximum permitted 6 feet.

The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the variance requests were Petitioner Abiodun Somide and Rick Richardson of Richardson Engineering, LLC, the

professional engineer who prepared the site plan. Also appearing as an interest citizen from the community was Linda Forsyth of 3522 Sea Pines Circle.

Testimony and evidence offered revealed that the subject property is irregular shaped and contains approximately 1 acre, more or less, zoned D.R.3.5. The property is located at the southern corner of the intersection of Liberty Road and Live Oak Road, west of Offutt Road and east of Marriottsville Road, in the Randallstown area of Baltimore County. It is improved with an existing 2½-story single-family dwelling with a footprint of 1,667 square feet built in 1939. As shown on the record plat that was marked and accepted into evidence as Petitioner's Exhibit 2, the adjacent subdivision "Drew Homes" was recorded in 1964 and consists of 12 properties with single-family homes on Live Oak Road. An aerial photograph that was marked and accepted into evidence as Petitioner's Exhibit 3 delineates the various zoning classifications and uses along Liberty Road, including apartments, offices, warehouses, and residential neighborhoods. There are also, as indicated by Mr. Richardson, several other churches including the Colonial Baptist Church next door to the east and a Catholic Church less than a mile further east on Liberty Road.

Petitioners have owned the property for approximately three years and currently utilize the building for church services. The church is the Redeemed Christian Church of God and it is a worldwide church that was founded in 1952 in Nigeria. This local congregation is known as the "Chapel of Blessings." The congregation consists of approximately 40-50 people, with activities on Sunday morning starting with a workers' meeting at 9:30 AM, Sunday School at 10:00 AM, and services from 11:00 AM to 1:00 PM. There is also a "Digging Deep" Bible Study class on Tuesday nights from 7:00 PM to 9:00 PM. According to Petitioner, the church continues to grow and is expanding beyond the size of the dwelling on the subject property. As such, Petitioners desire to construct a large 6,105 square foot one-story addition to the dwelling. As depicted on the

site plan, the proposal would also include a new entrance to the site on Live Oak Road, as well as 34 parking spaces to the rear of the site.

Mr. Richardson explained that a church is a permitted use at the site by right; however, in order to make the necessary improvements, variance relief is needed from the Residential Transition Area (“RTA”) requirements. These areas are delineated on the site plan, showing the 100 foot RTA, the 75 foot RTA setback for any buildings, and the 50 foot RTA buffer. Mr. Richardson indicated that without variance relief, the requested improvements cannot be accomplished. Variance relief is also necessary for the proposed sign and parking. In support of the relief, Mr. Richardson offered his expert opinion that the requested relief would meet the relevant criteria set forth in Section 502.1 of the B.C.Z.R. and would be within the spirit and intent of the Regulations and the property’s zoning classification.

Testifying as an interested citizen was Linda Forsyth. Ms. Forsyth resides in a neighborhood off Marriottsville Road just south of the subject property known as “Kings Point.” She expressed concern over the plan to enlarge the structure on the property to the degree proposed and does not believe such improvements would be beneficial to the community. She understands that Petitioners can utilize the property as it exists for church services, but believes the relief that is requested is a significant departure from what is required by the Regulations. Essentially, it is not so much the use that concerns Ms. Forsyth as it is the substantial lengths that would be required to deviate from the Zoning Regulations in order to make the project work.

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 November 3, 2010 which indicates the property is located in a Master Plan designated community conservation area. An existing single-family residence is being converted to a church. The site is located in an

established neighborhood with lots similar to the size of the proposed church. The proposed variances could have negative impacts on the adjacent residential property. Privacy currently enjoyed by owners on 3721 Live Oak Road could be compromised and the volume of cars entering and exiting the parking lot on Live Oak Road could cause traffic problems for this residential street. To that end the Planning Office recommends the requested variances be denied. Comments were received from the Department of Environmental Protection and Resource Management dated December 1, 2010 which indicates that development of the property must comply with the Forest Conservation Regulations. As per Section 33-6-103(a)(1) of the Baltimore County Code, a person making application for a development, subdivision, building, grading, or erosion and sediment control approval on areas of land 40,000 square feet or greater must comply with the Forest Conservation Law.

The Zoning Commissioner's authority to grant variance relief from the requirements of the Regulations is established in Section 32-3-301 of the Baltimore County Code (B.C.C.). Section 307 of the B.C.Z.R. contains the standards for the grant of variance relief. This section has been interpreted by the Appellate Courts of this State, most notably in *Cromwell v. Ward*, 102 Md. App. 691 (1995). *Cromwell* essentially requires a two-prong examination of the variance request. First, the petitioner must demonstrate that the property at issue has features or characteristics that render it unique. If a Petitioner can meet the uniqueness threshold, only then is weight given to the second consideration -- whether the uniqueness of the property results in a practical difficulty or undue hardship upon Petitioner if strict compliance with the Regulations is required. In addition, the Petitioner must demonstrate that the variance, if granted, would be within the spirit and intent of the Regulations and would not cause adverse impact to the public health, safety and general welfare, including detrimental impact to adjacent properties.

After considering all of the testimony and evidence presented at the hearing, I am not persuaded that Petitioner has met this burden and must deny the variance requests. Although there are some unique features to the property that were indicated by Mr. Richardson, Petitioners' engineering expert, including that property basically "stands alone" and is not part of the adjacent subdivision, and that it is relatively larger than the residential properties nearby, in my judgment, these factors do not weigh in favor of granting the considerable relief sought by Petitioners. Specifically as to the Residential Transition Area, the 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. As set forth in Section 1B01.1.B.1.b of the B.C.Z.R., an RTA is generated if the property to be developed is zoned D.R. and lies adjacent to land zoned D.R.1, D.R.2, D.R.3.5, D.R.5.5 or R.C. which (1) contains a single-family detached, semi-detached or duplex dwelling within 150 feet of the tract boundary; or (2) is vacant, less than two acres in size, and contains a buildable area at least 20 feet by 30 feet on which a dwelling meeting all required setbacks can be erected. As shown on the site plan with black dotted lines, most of the site is affected by the RTA. Indeed, it appears that no improvements of the sort proposed by Petitioners could be accomplished without variance relief. That section also 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.* (emphasis added).

Although I am understanding of Petitioners' desire to expand and enlarge the church on the property and was impressed by Mr. Richardson's efforts in the case, in my judgment, the failure to address the RTA requirements in any appreciable way, as well as the location of the parking in such proximity to residences, are fatal to Petitioners' plans for the property and places the proposal at odds with spirit and intent of the Zoning Regulations. I also find the proposal and the variances

that are necessary would not be in the interest of the surrounding community. Put simply, certain uses, though perhaps permitted by the Regulations, are just not appropriate for certain properties. As it is currently laid out and configured, the subject site works as a church site for a relatively small congregation, even though the dwelling was built as a single-family dwelling and not a church building; however, to expand the building so extensively and place a large parking area to the rear of the property abutting residential properties is, in my judgment, attempting to “place a square peg in a round hole” and will overcrowd the land and not be in keeping with the aesthetics and character of the surrounding residential neighborhood. I also find that the proposed signage in front on Liberty Road would not be appropriate under the circumstances.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered, I find that Petitioners’ variance requests should be denied.

THEREFORE, IT IS ORDERED this 10<sup>th</sup> day of December, 2010 by this Deputy Zoning Commissioner that Petitioners’ Variance request as follows:

- From Section 1B01.1.B.1(e)(3) of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an RTA buffer of 10 feet in lieu of the required 50 feet buffer; and
- From Section 1B01.1.B.1(e)(5) of the B.C.Z.R. to permit a parking lot to be constructed at a distance of 10 feet from the property line in lieu of the required 75 feet; and
- From Section 1B01.1.B.1(e)(5) of the B.C.Z.R. to permit a structure to be constructed at a distance of 19 feet from the property line in lieu of the required 75 feet; and
- From Section 1B01.2.C.1.a of the B.C.Z.R. to permit a front yard setback of 48 feet in lieu of the required 50 feet; and
- From Section 1B01.2.C.1.a of the B.C.Z.R. to permit a side street setback of 19 feet in lieu of the required 35 feet; and
- From Section 450.4.1(a)\_\_\_\_\_ of the B.C.Z.R. to permit a changeable copy sign (for a church) with an area/face of 32 square feet in lieu of the maximum permitted 25 feet, and a height of 7.5 feet in lieu of the maximum permitted 6 feet,

be and are hereby **DENIED**, subject to the following:

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

      SIGNED        
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

THB:pz