GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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APR 13 2000

D. Michael Lyles
Cooper & Associates, PC
1050 17th Street, N.W., Suite 400
Washington, DC 20036

Re: Proposed Draft Order -- BZA Application No. 16472, Holy Christian Missionary Baptist Church for all People

Dear Mr. Lyles:

The Board of Zoning Adjustment's proposed order in the above-referenced application is being sent to you pursuant to D.C. Code Section 1-1509(d). A majority of Board members presently sitting on the BZA neither personally heard the evidence in this case nor decided the case. Therefore, the BZA is required to provide you an opportunity to review the proposed order and file exceptions.

You are to file your exceptions and arguments no later than the close of business (4:45 p.m.) on **May 5, 2000.** Exceptions filed after that time will not be considered by the BZA and will be returned to you. You must serve all other parties to this case at the time you file your exceptions

Please note that you **are not** to re-argue the case. Exceptions have to do with whether the BZA's proposed order reflects the Board's decision in the case. Once the order is issued, you still have the opportunity to file a motion for reconsideration or rehearing.

If you decide to file exceptions in this case, you must do so in writing, setting forth your argument(s) in detail, and specifying the item(s) in the proposed order to which you take exception. If you are requesting to present oral argument to the BZA in this case, you must specifically state that request and indicate why your arguments cannot be addressed adequately in writing. Your request for oral argument is due at the same time as your written exceptions.

Parties may respond to the submissions of other parties, but must do so no later that the close of business (4:45 p.m.) on **May 19, 2000.** Extensions **will not** be granted.

The BZA will consider the proposed order, any exceptions, requests and responses regarding this case at one of its regular monthly public meetings following the expiration of the time for all filings. All filings in this case are to be directed to the **Board of Zoning Adjustment, 441 4th Street, NW, Suite 210, Washington, D.C. 20001.** Please identify the application by number on all filings.

BZA
Case No. 16472
Exhibit No. 24

Board of Zoning Adjustment
District of Columbia
CASE NO.16472
EXHIBIT NO.24

If you require additional information, you may contact Sheri Pruitt on (202) 727-3780.

Sincerely,

JERRILY R. KRESS, FAIA
Director

BAB/4-10-00

DRAFT

Application No. 16472 of the Holy Christian Missionary Baptist Church for all People, pursuant to 11 DCMR 3107.2 (new 3103.2), for a variance from the rear yard setback requirements of Subsection 774.7, and a variance from the number of parking space requirements of Section 2101.1, for the proposed new construction of a 812[1] seat church in a C-3-A District at premises 4000 Benning Road, N.E. (Square 5081, Lot 52).

HEARING DATE: July 21, 1999
DECISION DATE: July 21, 1999

PROPOSED ORDER

PRELIMINARY MATTER:

The Applicant requested that the Board waive the 15-day requirement for posting of the property, as required by Subsection 3317.4 (new 3113.14) of the Zoning Regulations. The property was posted for 13 days. The Board approved the Applicant's request.

The U.S. Department of the Interior, National Park Service, requested and received party status.

SUMMARY OF EVIDENCE:

The site is located in the Northeast quadrant of the District, in Ward 7, in Square 5081, on Lot 52, at premises 4000 Benning Road, N.E. Square 5081 is bordered by Benning Road to the south, Minnesota Avenue to the west, 42nd Street to the east, and Fort Mahan Park to the north.

Surrounding the site are: the National Park Service (NPS) property to the east and north; a single-family residential dwelling unit to the west; and, a funeral home, a Police Boys and Girls Club and a shopping center to the south, across the street. The Minnesota Avenue Metrorail Station is located to the northwest (within walking distance) of the site.

The site is vacant and contains a lot area of 25,000 square feet. It has a frontage of 250 feet along Benning Road. A 16-foot wide, undeveloped, public alley abuts the site to the east and north. The site slopes significantly downward toward Benning Road (north to south). Because of the site's steep topography, mitigating measures (such as a retaining wall) would be needed.

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[1] The Applicant sought to construct a building that would be used to house a church with 812 seats. At the public hearing, the Applicant stated that the first phase of the project would contain 670 seats, with a future expansion of 142 seats. The computations used in this report are based on a seating capacity of 812.

The site is zoned C-3-A. The C-3-A District permits development to a height of 65 feet, a maximum floor area ratio (FAR) of 4.0 for residential and 2.5 for other permitted uses, and a maximum lot occupancy of 75 percent for residential uses. In the C-3-A District, one parking space is required for 10 seats of occupancy in the main sanctuary.

The project involved the construction of a two-story church building. The building would contain approximately 13,000 square feet on each floor, with a gross floor area of approximately 29,000 square feet. The first floor of the building would contain the sanctuary, lobby, administrative office space, and public bathrooms. The fellowship hall, future day care facility and senior center would be located on the basement level. The sanctuary would contain 560 seats, with seating in the choir of 100 and four in the pulpit. The main entrance into the church would be from the parking lot, which would be located on the east side of the church. There would be a secondary entrance off Benning Road on the basement level.

The church would be used during the weekdays to provide services such as before and after-school care, senior citizen's care, counseling services and a feeding program.

The Zoning Administrator determined that a 12-foot 8-inch rear yard would be required for the proposed building (Exhibit No. 5). The Applicant proposed to provide a 12-foot rear yard, thus requiring zoning relief of 8 inches. The Zoning Administrator has the authority to waive the 8-inch rear yard setback requirement (Section 407 of the Zoning Regulations - Minor Flexibility Rule).

Eighty-two on-site parking spaces were required for the proposed development. As proposed, the site could accommodate 16 spaces. The Applicant requested variance relief from the on-site parking requirement for 66 spaces (75 percent).

On-site parking would be located on the east side of the property adjacent to the public alley. The parking spaces would be constructed so that they are terraced into the hilly site, thereby blending with the topography. The Applicant testified that based on conversations with city officials, if two entrances were constructed to the site from Benning Road, the number of on-site parking spaces might be increased to 20 or 26. (The record does not contain any additional documentation in this regard.)

The Applicant indicated the site is located in close proximity to the Minnesota Avenue Metrorail station; therefore, parking at the site may be reduced by 25 percent. (The site is approximately 900 feet from the entrance to the Metrorail station.) The Zoning Regulations (Subsection 2104.1) states that the number of parking spaces required for a nonresidential building or structure located within a radius of 800 feet of a Metrorail station entrance may be reduced by up to 25 percent; provided:

a) The building or structure is located in a nonresidential district and is at least 800 feet from any R-1, R-2, R-3, or R-4 district; and,

b) The Metrorail station is currently in operation, or a contract has been awarded.

The Applicant stated that a practical difficulty exists at the site and that the application should be approved for the following reasons:

- The site is hilly; it slopes significantly from north to south. The building would be constructed into a hill that rises from approximately 78-feet above sea level at the sidewalk and road, up to 102 feet. The site's topography is an impediment for providing on-site parking.

- Diligent efforts would be made to protect the ecological sensitive site.

- Parking at the site can be reduced by 25 percent because the site is located in close proximity to the Minnesota Avenue Metrorail Station.

- Most of the area surrounding the site is commercially zoned. Ample parking is available on Sundays at the shopping center that is located across the street from the site, when the majority of vehicular traffic would use the site.

- The site is accessible by Metrobus. A bus stop is located on Benning Road, in front of the property.

- Approximately 50 percent of the church's parishioners would arrive by bicycle, motorcycle and bus.

- Upon completion of the building, a shuttle bus system would be established to take parishioners between the church and the Minnesota Avenue Metro station.

- The church was in the process of investigating the possibility of purchasing (leasing) property close to site to be used as an accessory parking lot, at the time of the hearing.

National Park Service

The site abuts parkland, which is property under the jurisdiction of the NPS. By correspondence (Exhibit No. 21) and through testimony at the public hearing, the NPS recommended denial of the application. The NPS, through its representatives, indicated that the site adjoins Fort Mahan, a property on the National Register of Historic Places, and should be denied for the following reasons:

- Review of plans for the site indicates that the proposed 812-seat facility would be quite massive, and far out of keeping with the adjoining parkland and historic properties.

- The need for the requested zoning variances is directly correlated with the excessive mass of the proposed building for the difficult site. The slopes are steep and the land is highly erosive.

- The Applicant has not demonstrated due regard for the adjacent properties of either the NPS or the District of Columbia. The Applicant initiated tree clearing without benefit of a proper survey, resulting in trespass on park land and the illegal cutting of a number of park trees and District of Columbia trees, which were essential in screening the Fort Circle Trail segment which accesses the historic Fort Mahan earthworks.

- The Applicant's only communication with the NPS has been to request written permission for the church to utilize park land for their private parking needs. The NPS is not able to commit public land for private purposes, but requested that the Applicant work closely with the federal government on its plans.

The NPS indicated that it does not oppose the construction of houses of worship on private property. However, any proposed development should meet a minimum standard for compatibility with its neighboring properties. In addition, any variance from zoning requirements should be justifiable in terms of a greater good being served. The NPS was of the opinion that the proposed construction does not meet the minimum standard for zoning relief, and the variances proposed would not serve a greater good, but would result in significant permanent harm to the adjoining park land.

Community Comments

The site is located in Advisory Neighborhood Commission (ANC) 7D. The ANC submitted a report dated July 13, 1999 to the Board recommending denial of the application (Exhibit No. 19) for the following reasons:

- **The Applicant should be required to conduct full impact studies.**

  The studies should address the potential impact the construction would have on small plants and tree displacement; soil erosion and other ecological and environmental changes to the area; parking considerations; safety and traffic patterns; and, the property values of the homes in the immediate area of the proposed church.

- **Increase in traffic**

  The community could not cope with the increase of vehicular and pedestrian traffic to the neighborhood.

- **Tax exempt status of the church**

  The tax-exempt status of the church would be an imposition to economic growth of the community.

- **Topography Concerns**

  The stability of land around the site may become threatened by major changes to the soil on the hill that could eventually affect the surrounding neighborhoods.

The report of the ANC stated that the Commission did not have a quorum when it voted on the application. Therefore, the Board could not give "great weight" to the ANC report; however, the Board carefully considered the ANC's views.

Members of the Fort Dupont Civic Association, by correspondence dated July 19, 1999, indicated that they are in opposition to the application (Exhibit No. 22). The correspondence stated that there are three other churches between 42nd and 44th streets on Benning Road, NE, and that traffic is very heavy in the vicinity of the site. Additional vehicles would greatly impact the existing traffic.

Additional testimony was received from neighborhood residents in opposition to the application. The residents indicated that if adequate on-site parking is not available, people would double park on Benning Road. The residents stated that Benning Road is a heavily traveled and congested roadway; that adequate on-site parking would be needed since the facility would be used throughout the week; and, that there are parking restrictions on Benning Road limiting all-day parking.

CONCLUSIONS OF LAW AND OPINION:

The Applicant is seeking variance relief from the rear yard setback requirement and from the number of required on-site parking spaces for the construction of a building to house a church that would contain 812 seats.

The granting of such variance relief requires showing that there exists an exceptional or extraordinary situation or condition related to the property which creates a practical difficulty for the owner in complying with the Zoning Regulations. In addition, the Applicant must demonstrate that the application can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

The Board concluded that the applicable sections of the Zoning Regulations, 11 DCMR, that pertain to this application are Subsections 774.7, 2101.1, and 3107.2 (new 3103.2).

Based on the testimony and evidence of record, the Board concluded that the Applicant has not met its burden of proof.

The Board determined that the proposed building would be excessive in size for the site; thus, the Applicant is not able to meet the parking requirement. The number of parking spaces required for the proposed building would be 82; however, the site can only accommodate 16 spaces. The Applicant requested zoning relief for 66 off-street parking spaces. If parking credit were given for the close location of a Metrorail station to the site, the Applicant would still be required to provide 45 parking spaces, instead of 66. As such, the Applicant has a self-imposed practical difficulty.

The Board determined that if only half of the members of the congregation drove to the site, 40 on-site spaces would be required. The property would still be too small to accommodate the church's parking needs.

The Board determined that if the parking variance were granted, the project could have a negative impact on the surrounding community because of the large number of parking spaces required. Specific problems that could result if sufficient parking is not provided are spillover parking onto the surrounding streets, snarled traffic, double parking and disruptive noise.

The Applicant did not provide any documentation, which would indicate that leased parking could be provided close to the site. In addition, although the Applicant intended to purchase property to be used for parking across the street from the site, those plans had not come to fruition at the time of the public hearing.

The site is bordered by parkland on two sides. The National Park Service has expressed grave concern about the ecological sensitivity of the site. The Applicant did not provide expert testimony or evidence to demonstrate that the ecological concerns would be satisfactorily addressed.

The Board is of the opinion that the Applicant's practical difficulties arise from the design-size of the proposed facility, not the conditions of the property. The application cannot be granted without substantial detriment to the public good and without substantially impairing the zone plan as embodied in the Zoning Regulations, as related to the rear yard setback and parking requirements.

In light of the foregoing, the Board concluded that the application does not meet the tests for approval; therefore, it is hereby **ORDERED** that the application be **DENIED**.

VOTE: 3-0 (John Parsons, Betty King, and Sheila Cross Reid to deny.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

EACH CONCURRING MEMBER HAS APPROVED THE ISSUANCE OF THIS DECISION AND ORDER AND AUTHORIZED THE UNDERSIGNED TO EXECUTE THIS DECISION AND ORDER ON HIS OR HER BEHALF.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: _____

BAB/2.2.00

BZA APPLICATION NO. 16472

As Director of the Office of Zoning, I hereby certify and attest that on _____ a copy of the order entered on that date in this matter before the Board of Zoning Adjustment was mailed first class, postage prepaid, to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

D. Michael Lyles
Cooper & Associates, PC
1050 17th Street, N.W., Suite 400
Washington, DC 20036

Rev. Stephen E. Young, Pastor
Holy Christian Missionary
Baptist Church
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William E. Wright, Chairperson
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5140 Nannie Helen Borroughs Ave., 3rd Floor
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Michael Johnson, Zoning Administrator
Building & Land Regulation Administration
Dept. of Consumer and Regulatory Affairs
941 North Capitol Street, NE, Suite 2000
Washington, DC 20009

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director