

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17609 of First Baptist Church, Inc., pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy provisions under section 403, and a variance from the nonconforming structure provisions under subsection 2001.3,¹ to allow the construction of an addition to an existing church in the R-4 District at premises 710 Randolph Street, N.W. (Square 3131, Lots 41 & 823).

HEARING DATE: May 15, 2007
DECISION DATE: July 3, 2007

DECISION AND ORDER

First Baptist Church, Inc. (the applicant or the Church), the owner of the subject property, filed this application for variance relief on January 8, 2007. Following a public hearing on May 15, 2007, the Board of Zoning Adjustment (the Board) voted to approve the requested relief.

PRELIMINARY MATTERS

Self-Certification

The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3113.2 (Exhibit 5).

Notice of Public Hearing Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the applicant, all owners of property within 200 feet of the subject site, Advisory Neighborhood Commission (ANC) 4C, and the District of Columbia Office of Planning (OP). The applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect (Exhibit 19).

ANC 4C The subject site is located within the jurisdiction of ANC 4C, which is

¹ Initially, the applicant also sought relief from the limitation on the number of stories under § 400, and a variance from the court requirements under § 406. However, the request for relief under these sections was withdrawn after the applicant determined this relief was not required (Exhibit 27).

BZA APPLICATION NO. 17609
PAGE NO. 2

automatically a party to this application. In its report dated May 14, 2007, ANC 4C indicated that at a regularly scheduled monthly meeting with a quorum present, it voted to oppose the application. The ANC cited the following concerns about the project: “increased parking problems, environmental concerns, the potential for vermin (rodent) infestation stemming from construction threats to the architectural integrity of the block and the potential for structural damage to adjacent property” The ANC also submitted the minutes from its May, 2007 meeting (Exhibit 32). ANC Commissioner Timothy Jones appeared on behalf of the ANC at the public hearing.

Requests for Party Status There were no requests for party status.

Persons in Support The adjacent property owner, Mae Frances Phillips (Ms. Phillips), testified in support of the application. She stated that the applicant had made changes to the project at her request, and she was satisfied that she would not be adversely impacted if the application were granted.

Persons in Opposition The Board received letters in opposition from three neighboring property owners (Exhibits 28, 29 and 30), and a fourth letter requesting that the Board review specific issues such as the project’s architectural impact, impacts on traffic patterns and parking requirements, and impacts on noise levels (Exhibit 22).

Government Reports

OP Report OP reviewed the variance application and prepared a report recommending denial of the variance request (Exhibit 25). OP concluded that the property did not meet the test for a variance because, although the shape of the lot could be viewed as an exceptional condition, this factor does not result in any practical difficulty to the Church. OP’s representative, Steven Mordfin, testified at the public hearing, adding that the Church is able to use the property without the expansion, and the density created by the project would negatively impact the zone plan.

Closing of the Record Pursuant to § 3117.12, the Board closed the record at the end of the public hearing, except to allow copies of minutes from the ANC meeting, and submissions concerning the project’s impact on the retaining wall at the adjacent property.

Post-Hearing Submissions After finding good cause and no prejudice to any party², the Board accepted an additional filing from the applicant, a letter to the adjacent property

² Section 3100.5 of the Regulations allows the Board to waive a provision of the Regulations for good cause shown if the waiver will not prejudice the rights of any party.

BZA APPLICATION NO. 17609

PAGE NO. 3

owner, Ms. Phillips (Exhibit 34). The letter stated that the Church would: (a) replace the retaining wall on Ms. Phillips' property, (b) repair any damage to her home relating to construction activity, and (c) compensate Ms. Phillips for her inconvenience by landscaping her rear yard and providing new patio furniture. However, the impacts of construction are irrelevant to the Board's consideration of a variance.

FINDINGS OF FACT

The Site and Surrounding Area

1. The property consists of two adjacent lots at Square 3131, Lot 823 and Lot 41. Both lots are zoned R-4.
2. The existing church building is located on Lot 823. It is a structure built in 1926 and is non-conforming, in that its lot occupancy is greater than the 60% now permitted in the R-4 zone. *See*, § 403.2. (Exhibits 24, 25).
3. An end unit row dwelling is located on Lot 41. The row dwelling was constructed in 1913, is owned by the First Baptist Church, and is used for church related activities. (Applicant's Statement, Exhibit 24, and OP Report, Exhibit 25)
4. A fifteen to twenty foot wide public alley dead-ends within the square and provides rear service to the site.
5. All surrounding properties are located within the R-4 zone district.
6. To the east and southwest of the property are two and one-half story row dwellings. To the north, across Randolph Street, is a single family detached dwelling. To the northwest, and also across the street, is a building owned by the Church that is operated as the First Baptist Church Senior Citizens Center. The building houses a senior citizens center and some religious education classes for the Church. To the west, across New Hampshire Avenue, is a public park. (Exhibit 25)

The Church Programs

7. The property is owned by First Baptist Church, Inc., a religious institution incorporated under the laws of the District of Columbia. The Church has been in existence for 143 years and has 900 members. In addition to worship services and religious education, the Church conducts various social service programs such as a child development program, a senior citizens daycare program, financial planning seminars,

BZA APPLICATION NO. 17609
PAGE NO. 4

health and wellness seminars, legal aid workshops for seniors, AA meetings, computer training classes, HIV – AIDS awareness programs, and a scouting program. With the exception of the senior citizens daycare and some religious school classes, these programs are conducted at the site. (Exhibits 4, 24)

8. The Church needs additional space to maintain its current level of activity, which has grown over the years. The Church building activities are carried out in cramped quarters or in multi-use areas. Also, there is inadequate space at the Church building for children's religious education classes. These classes are now held at the building across the street, requiring children to cross a busy thoroughfare. Finally, there is no means for persons with disabilities to access the sanctuary, administrative offices, or classes. (Exhibits 24, 25). All of these problems can be resolved by the expansion of the Church building as described below.

The Project

9. The proposal is to expand the Church to the lot next door, consolidating the two existing lots into one lot. The Church proposes to demolish the adjacent row dwelling and replace it with a three-story addition to the Church. The addition would house church offices, storage and mechanical rooms, bathrooms, classrooms and multi-purpose rooms, and would enable the religious school classes across the street to be brought into the main Church structure. The addition would also house an elevator to provide access for persons with disabilities. (Exhibit 24)

10. The Church filed similar applications with the Board in BZA Case No. 15164 in 1989, and BZA Case No. 17150 in 2004. In the first case, the Board granted a special exception and variance. However, the project was not built due to financial reasons. In the second case, the application was withdrawn on January 27, 2005 because of significant opposition and Board concerns. As a result of this past opposition, the massing of the current project was scaled back. (Exhibit 24)

The Zoning Relief

11. The church building, when expanded, will cover 78% of the new consolidated lot. Because the maximum lot occupancy in the R-4 zone is 60%³, the Church requires a variance from the lot occupancy requirements under § 403.2 of the Regulations.

12. A building smaller than the one proposed would be inadequate to meet the Church's current needs. Given the existing operation of its public service programs, the Board

³ See, 11 DCMR 403.2

BZA APPLICATION NO. 17609
PAGE NO. 5

finds that the proposed addition is no larger than what is needed to relieve the overcrowding at the building. As noted by the Church's architect, "[the building is] as large as it has to be to accommodate the program and it's not the most efficient building in the world..." (T. p. 247).

13. Because the Church proposes to enlarge the existing non-conforming building in a manner that will result in a lot occupancy which exceeds the maximum permitted in the zone, the Church also requires a variance under § 2001.3 of the Regulations.

The Impact of the Proposed Addition

14. The Board finds that the proposed addition will not adversely affect the traffic or parking conditions in the neighborhood. No new programmatic activities will take place in the expanded facility; the additional space or rooms will merely allow the Church to more efficiently and effectively accommodate the activities they are currently housing within the two existing lots. (See, for example, Applicant's Statement, Exhibit 24, and testimony of Reverend Tucker, T. p. 215) The single largest use of the property will remain the sanctuary. As no increase in capacity is proposed for the sanctuary, there should not be an increase in traffic or parking problems following construction. (See, testimony of OP representative, Steven Mordfin, T. p. 271) Moreover, there is no requirement for additional parking since the sanctuary is not being expanded. *See*, § 2101 of the Regulations. Nonetheless, the Church represents that it will continue to work with the community and the DC Department of Transportation to devise appropriate programs and improvements to further lessen any traffic or parking impact from church activities. (Exhibit 24)

15. The Board finds that the proposed addition will not deprive neighboring property owners of light and air. The addition was designed to minimize the loss of light for neighboring residential properties to the east. The upper floor was redesigned -- nearly one third of the floor was removed -- so that the addition would not appreciably block more light than the existing row dwelling does. (Exhibit 24)

16. The Board finds that the privacy of neighbors will not be unduly compromised as a result of the project. The addition will have only a few windows. The windows will be placed above eye level, so as to allow light in the Church but prevent anyone in the Church from looking into the neighbors' rear yards. (Exhibit 24)

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799), as amended; D.C. Official Code § 6-641.07(g)(3)(2001), to grant

BZA APPLICATION NO. 17609
PAGE NO. 6

variances from the strict application of the Zoning Regulations. As stated above, the applicant here seeks relief from the lot occupancy requirements under § 403 and the non-conforming structure provisions under § 2001.3 to allow an addition to an existing church building.

Under the three-prong test for area variances set out in 11 DCMR § 3103.2, an applicant must demonstrate that (1) the property has an exceptional size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the applicant will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) the requested variances will not result in substantial detriment to the public good or the zone plan. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). In order to prove “practical difficulties,” an applicant must demonstrate first, that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. *Id* at 1170.

As to the first prong, the Board finds that the Church’s programmatic needs and its historical commitment to remain at the site, constitute an exceptional condition at the property. As set forth above, the Church has remained on this site for 143 years, but finds that it can no longer effectively carry out its religious and social programs without the expansion requested.

Finding an exceptional condition in the Church’s programmatic needs is consistent with decisional law. In *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091 (1979), the Court of Appeals upheld use and area variances needed to allow the expansion of the Capitol Hill offices of the Republican National Committee. Among other things, the *Monaco* decision held that the needs of a non-profit group to expand its facilities may constitute the extraordinary and exceptional situation needed to satisfy the first prong. The Court specifically held that:

when a public service has inadequate facilities and applies for a variance to expand into an adjacent area in common ownership which has long been regarded as part of the same area of the same site, then the Board of Zoning Adjustment does not err in considering the needs of the organization as possible “other extraordinary and exceptional situation or condition of a particular piece of property.

Id., at 1100.

BZA APPLICATION NO. 17609
PAGE NO. 7

A little more than a decade later, the Court of Appeals applied this principle in *Draude v. District of Columbia Bd. of Zoning Adjustment*, 582 A.2d 949 (1990), which affirmed, following a remand,⁴ the BZA's grant of a variance to the George Washington University to permit the expansion of a medical office building to an adjacent property. The expansion was needed to eliminate over crowding in the original building and to consolidate various ambulatory care services that existed in other University building scattered throughout the District.

Applying these principles here, the Church public service programs have outgrown the capacity of its current space. In addition, an increasing number of the Church's membership have disabilities and cannot access the church facilities. The proposed expansion is the only means by which such accessibility can be accomplished. In addition, the property on which the addition is to be built is already used by the Church to carry out several of its functions. Thus, as in *Monaco* and *Draude*, the Church's proven need to expand its facilities onto property already utilized by it for Church purposes constitutes an exceptional condition and therefore satisfies the first prong of the test.

As to practical difficulty, the Court of Appeals explained how the test may be applied to a non-profit, such as the Church.

The need to expand does not, however, automatically exempt a public service organization from all zoning requirements. Where a public service organization applies for an area variance in accordance with *Monaco*, it must show (1) that the specific design it wants to build constitutes an institutional necessity, not merely the most desired of various options, and (2) precisely how the needed design features require the specific variance sought.

Draude v. District of Columbia Bd. of Zoning Adjustment, 527 A.2d 1242, 1256 (DC 1979)

Such a showing was made here, *see*, Finding of Fact 12. While the property has been put to use without the addition, the facilities have been overcrowded. Furthermore, under *Monaco* the Board may be more flexible when it assesses a non-profit organization than when it assesses a business enterprise. 407 A.2d at 1098. The Church asserts that it cannot expand as necessary to fulfill its mission and still comply with the Regulations. The Board has no cause to second-guess this assertion and finds that the second prong of the variance test has been satisfied.

⁴ The Court of Appeals remanded the case because the Board initially failed to explain how this exceptional circumstance resulted in a practical difficulty to the applicant. *Draude v. District of Columbia Bd. of Zoning Adjustment*, 527 A.2d 1242 (D.C. 1987)

BZA APPLICATION NO. 17609
PAGE NO. 8

Turning to the third prong of the variance test, the Board concludes that the expansion will not result in substantial detriment to the public good. The scaled back design allows more light and air for the residential neighbors, and the window placement is configured to protect the privacy of neighboring property owners. Because no new programs will be added, the expansion should not result in any increase in traffic or parking. Nor will the expansion substantially impair the intent, purpose, and integrity of the zone plan. As explained above, the design of the addition has been scaled back and addresses the Board's previous concerns with massing.

The Board is required under D.C. Official Code § 1-309.10(d)(3)(A)(2001) to give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. As noted, the ANC opposed the application, stating it was concerned about "increased parking problems, environmental concerns, the potential for vermin (rodent) infestation stemming from construction threats to the architectural integrity of the block and the potential for structural damage to adjacent property"

Regarding the first concern, the Board does not agree that the proposed addition will affect parking in the neighborhood. As explained above, because no new programs are planned, no increase in traffic or parking is likely. What is more, no additional parking will be required as a result of the expansion of the church because its parking requirement is based upon the seating capacity of its main sanctuary, which will not be increasing. Nor will the expansion substantially impair the intent, purpose, and integrity of the zone plan. The design of the addition has been scaled back and addresses the Board's previous concerns with massing. Also, the proposed addition will in no way expand the sanctuary or increase church membership. The addition is only to accommodate existing church programs. Finally, as also noted above, the Church represents that it will work with the appropriate District agencies should any parking or traffic problems arise.

The ANC's other concerns relate to construction and are not entitled to great weight. The DC Court of Appeals has held that the written recommendations of the ANC are entitled to "great weight" only to the extent that they address issues and concerns that are legally relevant. *Bakers Local Union No. 118 v. DC BZA*, 437 A.2d 176 (D.C. 1981). In other words, the "ANC concerns must 'relate to...the statutory criteria for granting [the zoning relief requested]'" (quoting *Friendship Neighborhood Coalition v. DC BZA*, 403 A.2d 291 (D.C. 1979)). Nothing in the Zoning Regulations relates to construction safeguards. Nonetheless, the Church did address the ANC's concerns in this regard. The Church made a commitment to protect neighboring property owners during the construction process (Ex. 27), and also addressed concerns relating to the adjacent neighbor's retaining wall. (Exhibit 34).

In reviewing a variance application, the Board is also required under D.C. Official Code § 6-623.04 (2001) to give "great weight" to OP recommendations. However, the Board does not find OP's advice to be persuasive. OP asserts there is nothing exceptional about the property other than the shape of its lot, from which no practical difficulties arise. However, as explained above, the "exceptional" circumstance in this case is not found in the shape or size of the land, but in the Church's need to expand in order fulfill its mission, an exceptional condition which drives the need to exceed lot occupancy requirements, even after the two lots are combined into one.

Nor does the Board agree with OP's assessment that the addition will do substantial detriment to the public good and substantially impair the intent, purpose, and integrity of the zone plan for the same reasons as indicated in the Board's ANC great weight discussion. OP states that the addition will not be consistent with the preservation of row house neighborhoods in the R-4 zone. For the reasons stated in the Board's discussion of the third prong the variance test, the Board does not agree that the scaled back version of the addition will appear to be massive, or that it will result in "substantial detriment" to the public good.

Therefore, for the reasons stated above, it is hereby **ORDERED** that the application is hereby **GRANTED** to allow zoning relief from the requirements under § 403 and § 2001.3 pertaining to lot occupancy and non-conforming structures to allow the construction of the proposed addition.

VOTE: **4-0-1** (Ruthanne G. Miller, Marc D. Loud and John A. Mann II
to grant, Curtis L. Etherly, Jr. being necessarily absent;
and no Zoning Commission member having participated)

Vote taken on July 10, 2007

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

Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY:



JERRILY R. KRESS, FAIA

Director, Office of Zoning

MAR 12 2008

FINAL DATE OF ORDER: _____

BZA APPLICATION NO. 17609
PAGE NO. 10

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17609

As Director of the Office of Zoning, I hereby certify and attest that on **MARCH 12, 2008**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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BZA APPLICATION NO. 17609

PAGE NO. 2

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