

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17846 of Brown Memorial A.M.E. Church, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy provisions under section 403, a variance from the rear yard provisions under section 404, and a variance from the non-conforming structure provisions under 2001.3,¹ to allow the construction of an addition to an existing church in the R-4 District at premises 130 Fourteenth Street, N.E. (Square 1034, Lot 824).

HEARING DATE: November 25, 2008

DECISION DATE: November 25, 2008

DECISION AND ORDER

Brown Memorial A.M.E. Church (the applicant or the Church), the owner of the subject property, filed this application for variance relief on June 27, 2008. Following a public hearing on November 25, 2008, the Board of Zoning Adjustment (the Board) voted to approve the requested relief.

PRELIMINARY MATTERS

Applicant representation The applicant authorized the law firm of O'Malley, Miles, Nysten & Gilmore, P.A. to represent it during the Board proceedings. (Exhibit 9).

Self-Certification The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3113.2 (Exhibit 8 and Exhibit 30, Tab B²).

¹ Although the applicant did not seek relief under subsection 2001.3, the District Office of Planning (OP) suggested that this relief was needed. As will be explained in this Decision, the Board agrees with OP. Therefore, the caption is amended to include this relief.

² The self-certification form filed with the initial application stated that the applicant sought relief from the lot occupancy requirements and rear yard requirements of the Zoning Regulations. (Exhibit 8). Later, the applicant modified the design and filed a supplemental self-certification form which amended the lot occupancy calculations, reducing the proposed lot occupancy from 99% to 81%. (Exhibit 30, Tab B) It should be noted that the modified design affected only the degree of variance relief that was requested; it did not alter the type of relief that was requested.

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Notice of Public Hearing

Notice. Pursuant to 11 DCMR 3113.13, notice of the hearing was sent by the Office of Zoning to the applicant, all owners of property within 200 feet of the subject site, Advisory Neighborhood Commission (ANC) 6A, and the District of Columbia Office of Planning (OP).

Posting. The applicant claimed that it posted placards at the property regarding the application and public hearing in accordance with 11 DCMR 3113.14 through 3113.20. It also submitted an affidavit to this effect in accordance with 11 DCMR 3113.19 and 3113.20. (Exhibit 33). However, the Board received correspondence from the Capitol Hill Restoration Society which, among other things, stated that the property had not been properly posted. (Exhibit 34). While the applicant maintained that the posting was “adequate,” it requested a waiver of the Board’s posting rules “out of caution”. The Board granted this request after finding that the public had received actual notice of the application and public hearing date.

ANC 6A The subject site is located within the jurisdiction of ANC 6A which is automatically a party to this application. In its report dated November 6, 2008, ANC 6A indicated that at a regularly scheduled monthly meeting with a quorum present, it voted to oppose the application. The ANC cited two general concerns about the project: (1) The application is incomplete because the Church needs relief from the parking requirements and did not seek this relief in its application; and (2) The Church cannot meet its burden of proof to obtain an area variance. The ANC report also cited specific reasons why it believed the three-pronged test for a variance had not been met.

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

Persons in Support No persons testified in support of the application. However, the Board received several letters in support of the application from nearby property owners. (Exhibit 31). The letters all stated that the proposed addition was necessary in order to fulfill the Church’s mission of providing top-quality services for its parishioners and for the surrounding community.

Persons in Opposition No persons appeared at the hearing to testify in opposition. However, as mentioned above, the Board received a letter in opposition from the Capitol Hill Restoration Society. (Exhibit 34). In addition to challenging the applicant’s posting of the property, the letter stated that the application was so confusing as to be indecipherable, and that the applicant had not made a showing that it could satisfy the variance test.

Government Reports

OP Report OP reviewed the variance application and prepared a report recommending approval of the variance request, adding that the applicant also needed relief under § 2001.3(a)-(b) of the Regulations. (Exhibit 32). OP’s representative, Maxine Brown Roberts, also testified at the public hearing, explaining that the proposed addition would be extending the non-

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conforming lot occupancy and rear yard at the property. As such, according to Ms. Roberts, additional relief under § 2001.3(a)-(b) is necessary.

Department of Transportation (DDOT) DDOT reviewed the application and also prepared a report recommending approval of the variance request. (Exhibit 36). In its report, DDOT concluded that the proposed addition would not have a significant traffic impact on the neighborhood. DDOT noted that although the addition would “displace” 300 square feet of the existing parking lot, the applicant planned to provide one off-street parking space within five blocks of the property. This off-site parking would satisfy the applicant’s parking requirements under § 2116.3, which allows a church, under certain circumstances, to locate up to 50% of its required parking spaces off-site.

FINDINGS OF FACT

The Site and Surrounding Area

1. The subject property is located at 130 14th Street, NE, at the intersection of 14th Street and Constitution Avenue, NE, Square 1034, Lot 824. It is within the Capitol Hill Historic District and is zoned R-4.
2. The property is at the apex of a triangular square with Constitution Avenue to the north, a public open space and 14th Street to the east, North Carolina Avenue to the south, and row houses to the west. (See, OP Report site drawing and photo, Exhibit 32, p. 2). The property is in North Lincoln Park, a predominantly residential community with a mixture of row houses and institutional uses.
3. The lot itself is an odd triangular shaped lot which is occupied by a two-story structure that is used as a church by the Brown Memorial Church (the Church). The structure is non-conforming with respect to lot occupancy (75%³) and rear yard (5 feet⁴).

The Church

4. The Church has a long history in the Capital Hill neighborhood, having been established about 125 years ago. The Church population is aging, with many congregants in their 80s. Some are blind, others are stroke victims or have other physical challenges.
5. The Church building consists of a sanctuary with a basement. The basement has a fellowship hall directly below the sanctuary and an extended area whose roof forms a patio above the fellowship hall.

³ The maximum lot occupancy in the R-4 zone is 60%. 11 DCMR § 403

⁴ The minimum required rear yard in the R-4 zone is 20 feet. 11 DCMR § 404

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6. The current Church building was constructed in 1959 and lacks the amenities of a modern church. There are no elevators or ramps, and ingress and egress is difficult for many of the congregants. Although the Church conducts seven Sunday school classes, it has no dedicated classrooms or meeting rooms. As a result, classes and meetings currently take place in an area of the basketball court, which is noisy and crowded. Moreover, the rest rooms in the basement are not readily accessible from the sanctuary above. They are located two landings down and across the length of the building from the main sanctuary.

The Project

7. The Church proposes to resolve these problems by expanding the Church building with an addition. The addition will, for the most part, be built over the footprint of the existing elevated patio that fronts along the North Carolina Avenue side of the Church. (Exhibit 30, Tabs C & D and Exhibit 31).

8. According to the Church's architect, the shape of the lot constrains the Church's ability to expand to the rear or the side of the building without eliminating or reducing the existing parking. Because the odd shape of the lot does not allow for design flexibility; the addition has to be spread out over the patio area. (OP Report, Exhibit 32).

9. The addition will result in the transformation of the patio into a two story building and will house a multi-purpose room, restrooms, and an audio video room on the first floor, and office rooms and a conference room on the second floor. The existing basement space under the patio will be converted from a series of office rooms to include a fellowship hall, a kitchen facility, multiple meeting rooms, office space, and restrooms.

10. The proposal also calls for access ramps and stairs to the entrance points along the front, back, and sides of the Church. The stairs along 14th Street will extend seven feet into public open space consisting of parkland, and the proposed extension along North Carolina Avenue will extend seven to ten feet into the public space. The Church represents that it will seek the necessary approvals to extend into the public space.

11. Because the property is within a historic district, any building permit to alter the building must be approved by the Mayor or his agent. Prior to this review, the permit is referred to the Historic Preservation Review Board (HPRB) for a non-binding recommendation. In this instance, the Applicant requested the HPRB to review its design in concept. On or about March 27, 2008, the HPRB indicated that it would be prepared to make a recommendation of approval if the Church retained an existing porch which presently encroaches onto the parkland. The retention of the porch ensures that the character of the building, when expanded, will not be changed. However, in order to abide by the HPRB condition, the proposed stairs at that side of the building must be constructed outside of the porch, causing an additional encroachment of six feet into the public space.

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12. Because the parking requirement for a church is based upon the number of seats in its sanctuary, 11 DCMR 2101.1, and because the sanctuary is not being expanded, no additional parking will be required as a result of this proposal. However, the proposed addition will result in a loss of 2 of the Church's 10 required parking spaces. The Church represented that these spaces will be located off-site which is permitted for places of worship by 11 DCMR § 2116.3. That provision includes a number of prerequisites that the Church will need to satisfy in order for the Zoning Administrator to clear a building permit for issuance.

13. The proposed expansion is modest in scope, and no more than what is necessary for the Church to fulfill its mission. When complete, the addition will result in expanded space to accommodate the Church's community outreach ministries, provide additional classrooms, provide expanded and additional administrative offices, and provide elevators and ramps for handicapped access. (Exhibit 30 and OP Report, Exhibit 32).

The Zoning Relief

14. The church building, when expanded, will cover 81% of the lot. As explained previously, because the maximum lot occupancy in the R-4 zone is 60%, the Church requires a variance from the lot occupancy requirements under § 403.2 of the Regulations.

15. The church building, when expanded, will have no rear yard. Because the minimum required rear yard in the R-4 zone is 20 feet, the Church also requires a variance from the rear yard requirements under § 404 of the Regulations.

16. Because the Church proposes to enlarge the existing non-conforming building in a manner which increases the non-conforming lot occupancy and non-conforming rear yard, the Church also requires a variance under § 2001.3 of the Regulations.

The Impact of the Proposed Addition

17. The Board finds that the proposed addition will not adversely affect the traffic or parking conditions in the neighborhood. The new addition merely creates auxiliary spaces to serve the existing congregants and does not increase the intensity of use. (DDOT Report, Exhibit 36). No new programmatic activities will take place in the expanded facility. The additional space or rooms will allow the Church to more efficiently and effectively accommodate its current activities. (OP Report, Exhibit 32). Moreover, there is no requirement for additional parking since the sanctuary is not being expanded, *see*, § 2101 of the Regulations, and the displacement of the existing parking spaces will not adversely impact neighborhood parking or traffic.

18. The Board finds that the proposed addition will not deprive neighboring property owners of light and air, as the expansion will occur in an area of the Church which is set back from the building on the adjacent property. (OP Report, Exhibit 32).

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19. The Board finds that the Church with the proposed addition will be compatible with the neighborhood and the zone plan will not be compromised. Churches are allowed as a matter-of-right in the R-4 zone, and the expanded Church building will remain well within the permitted height and density for the zone. Also, the width of the building will be consistent with the existing row houses in the North Lincoln Park neighborhood, and most of the expansion will occur over a preexisting elevated patio footprint, resulting in a visual impact which will be *de minimus*. (Exhibit 30). Moreover, the lack of a rear yard will not be inconsistent with the land use pattern along North Carolina Avenue, as most of the other buildings are also built to the property line. (OP Report, Exhibit 32).

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 variances from the strict application of the Zoning Regulations. As stated above, the applicant here seeks relief from the lot occupancy requirements under § 403, the rear yard requirements under § 404, 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. The Church has remained on this site for over 100 years, but finds that it can no longer effectively carry out its religious and social programs without the expansion requested.

The Board recently found an exceptional condition under virtually identical circumstances in the *Application No. 17609 of First Baptist Church, Inc.*, 55 DCR 3345 (2008). There, as here, the applicant requested a variance in order to add an addition to facilities that could no longer accommodate the church’s programmatic needs. The decision noted that its finding was consistent with local appellate case 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

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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. *Id.* at 3350. *Accord District of Columbia Bd. of Zoning Adjustment*, 582 A.2d 949 (DC 1990) (variance properly granted to permit the expansion of an overcrowded university medical office building).

Furthermore, an exceptional condition can also be found in the fact that the existing building is a historic building situated on a triangular shaped lot. Because of the historic nature of the property, the Church is constrained in its ability to demolish all or part of the existing building. Because of the triangular shaped lot, the Church is unable to expand to the side or the rear, without eliminating the on-site parking. Accordingly, for the most part, the Church must expand over the existing patio.

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)

Both elements of this test are met here. The Church needs adequate meeting rooms and classrooms in order to fulfill its mission. (Findings of Fact 6, 7 and 9). Also, the Church must remove architectural barriers in order to meet the needs of an aging congregation. (Findings of Fact 4 and 6). Requiring the Church to adhere to the strict application of the Regulations would result in the Church being unable to provide handicap access, as the addition allows for elevators and ramps to make the entire building accessible to everyone.

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. As explained, the expansion will not adversely affect the neighboring property owners' access to light and air. (Finding of Fact 18). Nor will the expansion have any significant transportation impacts on the neighborhood. (Finding of Fact 17). Finally, the expansion will not substantially impair the intent, purpose, and integrity of the zone plan. (Finding of Fact 19).

Section 13(b) (d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10 (d)(3)(B)) requires that the Board's written orders give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. Specifically:

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The written rationale of the decision shall articulate with particularity and precision the reasons why the Commission does or does not offer persuasive advice under the circumstances. In so doing, the government entity must articulate specific findings and conclusions with respect to each issue and concern raised by the Commission. Further, the government entity is required to support its position on the record.

As noted, the ANC opposed the application, raising concerns that (1) “the application was incomplete” because the Church did not seek a parking variance; and, (2) the Church “does not meet [its] burden of proof for an area variance”.

With respect to the parking requirements, the ANC claims that the proposed addition will reduce the number of parking spaces by one or two spaces, and the Church will not have the ten parking spaces on-site which are required under § 2101.1 of the Regulations. However, as this application is self-certified and does not include a request for parking relief, this issue is not even before the Board. The Church believes that it will be able to continue to satisfy its parking requirement of ten spaces by providing two of them off-site in accordance with 11 DCMR § 2216.3. Should it turn out that the Church is mistaken, no building permit will issue unless and until a parking variance is granted. Under either scenario, the ANC’s concerns will be addressed.

Regarding the legal requirements for an area variance, the ANC claims that the addition “is not required by an exceptional or extraordinary situation or condition”, the lack of an addition “will not present a difficulty for the applicant’s expressed desire to expand its community outreach ministries, provide classrooms for Sunday School purposes, and provide church administrative offices and conference rooms” and, “the addition ... is detrimental to the public good because [it will] encroach onto parkland”. Since this aspect of the ANC’s issues and concerns is essentially an assertion that the application is without merit, the Board need not repeat its reasons for concluding otherwise, but will refer the ANC to the preceding discussion, which contains “specific findings and conclusions with respect to each issue and concern raised by the Commission.” D.C. Official Code § 1-309.10 (d)(3)(B).

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, § 404, and § 2001.3 pertaining to lot occupancy, rear yard and non-conforming structures, to allow the construction of the proposed addition.

VOTE: 5-0-0 (Ruthanne G. Miller, Marc D. Loud, Mary Oates Walker, Shane L. Dettman and Anthony J. Hood to grant)

Vote taken on November 25, 2008

ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

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A majority of the Board members approved the issuance of this Decision and Order.

ATTESTED BY:


RICHARD S. NERO, JR.

Acting Director, Office of Zoning

FINAL DATE OF ORDER: JUN 15 2009

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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



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As Director of the Office of Zoning, I hereby certify and attest that on JUN 15 2009, 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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Acting Director, Office of Zoning

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