

IN RE: PETITION FOR VARIANCE

E side of York Road; 56 feet N of the
c/l of Yarmouth Road
9th Election District
5th Councilmanic District
(7601 York Road)

**The Ascension Evangelical Lutheran Church
of Baltimore County, Inc.**

Petitioner

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY

Case No. 2010-0068-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Variance filed by the legal owner of the subject property, The Ascension Evangelical Lutheran Church of Baltimore County, Inc., for property located at 7601 York Road. The Variance requests are from Section 1B01.2.C.1.a of the Baltimore County Zoning Regulations as follows:

- To allow a street corner side yard setback of 23 feet in lieu of the minimum required 35 feet for a non-residential principal building in a D.R. Zone; and
- To allow an existing interior side yard setback of 8 feet in lieu of the minimum required 20 feet for a non-residential principal building in a D.R. Zone; and
- To allow an existing rear yard setback of 28 feet in lieu of the minimum required 30 feet for non-residential principal building in a D.R. Zone.

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

Appearing at the requisite public hearing in support of the variance requests were John Holman, Chairman of the Church Building Committee, on behalf of Petitioner, The Ascension Evangelical Lutheran Church of Baltimore County, Inc., and Douglas B. Riley, Esquire, the attorney representing Petitioner. Also appearing in support of the requested relief were Laurie

McLain with Hord Coplan Macht, Inc., the architect who prepared the building floor plan and elevation drawings, and Douglas L. Kennedy with KWC Engineering Technologies, Inc., the professional engineer who prepared the site plan. The case garnered interest in the community and several neighbors and interested persons attended the hearing, including Brian Murphy of 614 Coventry Road, Susan Hartman of 18½ Cedar Avenue, Laurie Newton-King of 501 Yarmouth Road, Jim Kirschner of 604 Worcester Road, and Francis Holman of 12 Cedar Avenue in Towson.

Petitioner's attorney, Mr. Riley, presented an overview of the proposed project and indicated that the Ascension Lutheran Church (the "Church") has occupied the subject property since 1948. The original Church building was followed by an addition for an education wing. At this juncture, the Church desires to construct another addition to the existing building in order to provide a more formal reception area, additional offices, better handicapped access, and additional bathroom facilities. As shown on the site plan, the addition would be located on the York Road side of the property. In order to build the addition as proposed, Petitioner is in need of variance relief to permit a 23 foot street corner side yard setback in lieu of the required 35 feet. In addition, due to Petitioner's current plans, there are several existing conditions that must be brought to current zoning requirements or granted variance relief. This includes an 8 foot side yard setback at the southwest corner of the existing building where 20 feet is required, and a 28 foot rear yard setback at the east side of the building where 30 feet is required.

To provide additional background information regarding the Church, Mr. Riley called John Holman as a witness. As indicated earlier, Mr. Holman is Chairman of the Church Building Committee. He and his wife, Francis Holman, have lived in the community for almost 30 years and are active members of the congregation. Mr. Holman indicated that the Church is

located at the northeast corner of York Road and Yarmouth Road in the Wiltondale neighborhood, less than a mile south of downtown Towson. As shown on the site plan, Mr. Holman explained that the original Church building was built in approximately 1949-50. An education wing was added in 1959, and a third addition was constructed in 1992. The Church also owns the adjacent property to the east, 500 Yarmouth Road, and utilizes it as a residence, while using the backyard of that property for a children's play area.

Currently, the Church has approximately 800 members, with about 130 nursery school students as well. The Church desires to build an office wing near the existing education wing and sanctuary and also create elevator space for that area, and to connect this wing to a smaller addition for a chapel and fellowship space. Mr. Holman stressed that the need for this additional space is not driven by a need to expand the congregation, but rather the recognition of potential safety issues due to the age of the church buildings and a desire to meet current fire codes and to create ADA¹ accessibility. Mr. Holman indicated that the Church is somewhat "landlocked," in the sense that it is surrounded by residential neighborhoods to the north, south, and east, and has few areas within which to expand except toward York Road. In fact, due to space constraints and a desire not to impact the residential communities, existing parking at the Church is across the street on York Road.

Next to testify was Laurie McLain, Petitioner's architect. As illustrated on the floor plan that was marked and accepted into evidence as Petitioner's Exhibit 2, Ms. McLain explained that the new addition would have three private offices, an entry lobby/reception area, a copy/work room, and a parlor, and would have direct access to the sanctuary and education areas. Presently, the office areas for the Church are spread throughout; however, the addition would permit the office areas to become more centralized in one location. Ms. McLain also indicated that

landscaping would be provided per a landscaping plan. Finally, Ms. McLain emphasized that if the variance relief is not granted, especially for the new addition toward the York Road side of the property, the Church cannot realistically go forward with the project. This would obviously impact the Church and the congregation, but would also have a negative effect on the community because the Church would not be able to go forward with much needed improvements to ADA accessibility requirements, as well as aesthetically improving the appearance of the building.

Finally, Mr. Riley called the engineer, Douglas Kennedy, to testify in support of the requested variance relief. Mr. Kennedy was offered and accepted as an expert in engineering, site design, and knowledge of the Baltimore County Zoning Regulations and the legal standard for variance relief. Mr. Kennedy discussed a number of the unusual features and characteristics of the property that compel the need for variance relief. First, the Church property is comprised of five parcels of land and collectively is much larger than the other properties in the vicinity. Second, the property has an irregular “L” shape and is also bordered on three sides by streets -- York Road to the west, Worcester Road to the north, and Yarmouth Road to the south. The property is also unusual in that it has off street parking directly across the street on York Road. Finally, the property is located in somewhat of a transition area in this mixed use corridor of York Road, with primarily residential communities to the east, but with a blend of educational (Towson University), medical (St. Joseph’s Hospital), and mixed commercial uses to the west.

The shape of the property and the frontage on three streets, as well as the permitted nonresidential use of the property as a Church, shrink the available building envelope and cause the setbacks to be more onerous than for residential buildings. Mr. Kennedy also offered his expert opinion that the impact on the nearby residential community would be almost immeasurable. This is because the addition to the existing building would extend toward York

¹ Americans with Disabilities Act of 1990.

Road, not into the community. In addition, as shown on the elevation drawing that was marked and accepted into evidence as Petitioner's Exhibit 3, as well as the photographic rendering that was marked and accepted into evidence as Petitioner's Exhibit 4, the addition would fit in with the existing building and, indeed, would not look like an addition at all, but rather a seamless extension of the existing Church building. It would also have aesthetic character, with attractive rooflines, brick veneers, and large, architecturally pleasing windows, making the newly improved building a positive influence on the community.

As indicated earlier, the case did garner attention in the nearby community and several interested citizens attended the hearing. Testifying as a spokesman on behalf of the community was Brian Murphy of 614 Coventry Road. Mr. Murphy is a local attorney in the Baltimore area and is also President of the Wiltondale Improvement Association. He has lived in the community for about 25 years and indicated that the Wiltondale community consists of 372 homes and includes the east side of York Road from Stevenson Lane to the south side of Cedar Avenue and all the streets in between, exclusive of Weatherbee Road and Worthington Road. Mr. Murphy explained that neither he nor the Association is expressly for or against the Church's proposed addition. He acknowledged that the Church has always been a good neighbor and other than some traffic issues from time to time, there have been few problems with the Church.

In an effort to keep the community informed, Mr. Murphy indicated he sent a newsletter to the Wiltondale residents, a copy of which was marked and accepted into evidence as Community Exhibit 1. In the newsletter, Mr. Murphy generally summarized the Church's proposal and his October 20, 2009 meeting with Church officials and their architect and engineer. He also explained the nature of the requested zoning relief as well as a preliminary construction schedule and the potential temporary impacts of construction, such as storage

trailers, construction equipment, and intermittent sidewalk closures along York Road on the Church side. Mr. Murphy then invited members of the community to reply with their comments, which he would submit at the hearing.

In response, Mr. Murphy received a number of comments, with what he described as about a 50-50 mix of those in support and those opposed to the Church's plans. He submitted nine emails that were representative of the responses received, which were marked and accepted into evidence as Community Exhibits 2A through 2I. These emails produced a range of reactions about the project, from negative comments including traffic issues, overcrowding the existing church property, and construction impacts and disruptions, to positive comments supporting the Church's plans and lauding the Church as a good neighbor in the community.

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 September 30, 2009 which indicates the Office met with the applicant to discuss the architecture. The Planning Office found that the proposed addition and building material appear to be consistent with the existing building and offers support of the subject proposal.

Considering all the testimony and evidence presented, I am persuaded to grant the requested variance relief. While it can be argued that the Church is very close to exhausting its available space on the subject property for improvements, however needed those improvements may be, I find in this case that special circumstances or conditions exist which are peculiar to the land or structure which is the subject of the variance requests. In particular, the primary focus of this case is the 23 foot setback from the proposed addition to the York Road side of the property. This setback area would have the most potential impact on the site given its proximity to York Road. The other variance requests are minor and seek to simply legitimize existing conditions.

In my view, the unusual shape of the property and its frontage on three streets, and its location as a gateway to the residential neighborhoods behind it, as well as its proximity to commercial mixed uses nearby, renders the property unique in a zoning sense. In addition, although the Church is a use permitted by right on the property, the setback requirements for this nonresidential use are more extensive and burdensome than for a residential property situated only a few blocks away. Thus, the imposition of zoning disproportionately impacts the subject property as compared with others in the District.

I further find that the variance requests can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. I note that Petitioner's elevation drawing and photographic rendering show a prominent, architecturally pleasing addition to the Church property. There are no plans to expand the Church or its services, only to create a better working environment for Church employees, as well as better access for handicapped persons and additional bathroom facilities for a currently underserved building.

Based on the evidence produced at the hearing, I do not believe there will be any negative impacts from the addition². This is perhaps underscored by the letter submitted by Petitioner's attorney, Mr. Riley, dated July 30, 2009 from Stephen E. Weber, Chief of the County's Division of Traffic Engineering. This letter, marked and accepted into evidence as Petitioner's Exhibit 5, responds to a request from Mr. Riley for an exemption to the Basic Services Map – Transportation to allow the Church to expand its current building despite being located in a deficient traffic shed at York Road and Burke Avenue. In his response letter, Mr. Weber

² Obviously, there will be temporary impacts during construction of the addition and related landscaping; however, unfortunately, these impacts are inherent in virtually every construction project. Hopefully, the Church will continue as a good neighbor and make efforts to minimize the impacts to the adjacent community and keep the community informed during that process.

calculates that based on a review of the site plan and information detailing the purposes of the proposed expansion, the additional number of daily peak-hour trips generated by the addition to the building would be zero; thus, in Mr. Weber's view, the County's Basic Services legislation should not prevent the issuance of any building permits. In short, I find that the variance requests can be granted in such a manner as to meet the requirements of Section 307.1 of the B.C.Z.R., as interpreted in *Cromwell v. Ward*, 102 Md.App. 691 (1995).

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance relief should be granted.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 9th day of December, 2009 that Petitioner's request for Variance relief from Section 1B01.2.C.1.a of the Baltimore County Zoning Regulations as follows:

- To allow a street corner side yard setback of 23 feet in lieu of the minimum required 35 feet for a non-residential principal building in a D.R. Zone; and
- To allow an existing interior side yard setback of 8 feet in lieu of the minimum required 20 feet for a non-residential principal building in a D.R. Zone; and
- To allow an existing rear yard setback of 28 feet in lieu of the minimum required 30 feet for a non-residential principal building in a D.R. Zone,

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

1. Petitioner may apply for building permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

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