

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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TUESDAY

JULY 10, 2007

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The Special Public Meeting
convened in Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 9:30 a.m., Ruthanne G. Miller,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER	Chair
CURTIS ETHERLY, JR.	Vice Chair
MARC D. LOUD	Board Member
JOHN A. MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

GREGORY JEFFRIES

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLY BAILEY	Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN RICE
MATT JESICK
KAREN THOMAS
MAXINE BROWN-ROBERTS

The transcript constitutes the minutes from the Special Public Meeting held on July 10, 2007.

A G E N D A

APPLICATION NO. 17609 5
First Baptist Church

VOTE ON APPLICATION NO. 17609 22
Approved, Three to Zero to Two

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P-R-O-C-E-E-D-I-N-G-S

9:56 a.m.

CHAIRPERSON MILLER: This meeting will please come to order.

Good morning, ladies and gentlemen, this is the July 10th Public Meeting of the Board of Zoning Adjustment of the District of Columbia.

My name is Ruthanne Miller. I'm the Chair of the BZA. Joining me today to my left is Mark Loud, Mayoral Appointee; Mr. John Mann, representing NCPC. Next to him is Mr. Clifford Moy who is with the Office of Zoning, Sherry Glazer with the Office of the Attorney General, Bryan Stockton, a legal intern in the Office of the Attorney General this summer and Beverly Bailey with the office of Zoning.

I just want to say that we'll be holding this Public Meeting first to discuss and deliberate on one case and then we'll be moving into our Public Hearing.

Copies of today's meeting agenda

1 are available to you and are located to my
2 left in the wall bin near the door.

3 We do not take any public
4 testimony in our meeting unless the Board asks
5 someone to come forward.

6 Please be advised that this
7 proceeding is being recorded by Court Reporter
8 and is also Webcast live.

9 Accordingly, we must ask you to
10 refrain from any disruptive noises or actions
11 in the hearing room. Please turn off all
12 beepers and cell phones.

13 Does the staff have any
14 preliminary matters?

15 SECRETARY MOY: No, ma'am.

16 CHAIRPERSON MILLER: Okay. Then
17 let's proceed with the agenda.

18 CHAIRPERSON MILLER: Yes. The
19 first case of decision-making for the Special
20 Public Meeting is Application No. 17609 of
21 First Baptist Church, Inc., pursuant to 11
22 DCMR 3103.2 for a variance from the limitation

1 of the number of stories under Section 400, a
2 variance from the lot occupancy provisions
3 under Section 403, a variance from the court
4 requirements under Section 406 and a variance
5 from the non-conforming structure provisions
6 under Sub-section 2001.3 to allow the
7 construction of a four-story addition to an
8 existing church in the R-4 District at
9 premises 710 Randolph Street, N.W. That's in
10 Square 3131, Lots 41 and 823.

11 As the Board will recall, the
12 application was amended to withdraw variance
13 relief from the limitation on the number of
14 stories and the court requirements.

15 On July 3rd, 2007, the Board
16 rescheduled the decision-making on this
17 application because the Board lacked the
18 required quorum of participating members
19 pursuant to Section 3101.2.

20 The Staff would also remind the
21 Board that originally the Board had at its
22 last hearing requested post-hearing documents

1 which included filings from the Applicant to
2 allow any plan changes that would mitigate
3 potential adverse impact of the proposed
4 building wall on the adjacent property owner
5 as well as allowing a filing from the ANC-4C
6 to file minutes of its May 8th, 2007, ANC
7 meeting.

8 Also, the staff notes that there
9 is a preliminary matter in that on July 5th,
10 2007, the Applicant filed a copy of a letter
11 which was sent to a May Francis Phillips, the
12 adjacent property owner at 708 Randolph Street
13 and that's identified in your case folders as
14 Exhibit 34.

15 Since the record was closed, the
16 Board should act on this filing.

17 And in brief, the Board should act
18 on the merits of the request for the variance
19 relief to construct the four-story addition as
20 to lot occupancy provisions under Section 403
21 and enlargement of the nonconforming
22 provisions under Subsection 2001.3.

1 And that concludes the staff's
2 briefing, Madam Chair.

3 CHAIRPERSON MILLER: Thank you,
4 Mr. Moy.

5 I think before we get into the
6 merits of this case we should address whether
7 or not to waive our rules to accept the letter
8 that Mr. Moy made reference to which is our
9 Exhibit Number 34.

10 The rules would need to be waived
11 because the records has been closed. And the
12 standard for waiver is good cause and that
13 waiving the rules will not prejudice the
14 rights of any party nor otherwise be
15 prohibited by law.

16 And in looking at this letter, it
17 appears to address actions that the Applicant
18 has taking to mitigate any adverse impacts on
19 the neighboring property related to the
20 construction of the project. And in my view
21 there is good cause to accept this into the
22 record because I think it's very important to

1 show what representations the Applicant is
2 making to address adverse effects which are
3 part of our analysis.

4 And I don't believe it would
5 prejudice any party. In fact, I think it
6 would be helpful to the neighbor to have that
7 kind of a commitment in the record and I open
8 this up to further comments.

9 BOARD MEMBER MANN: I agree that
10 we should also accept it into the record.

11 We asked for -- well, we said the
12 Applicant was allowed to file any plan changes
13 that would mitigate potential adverse impacts
14 of the proposed building wall on the adjacent
15 property owner.

16 This isn't exactly a plan change
17 that would mitigate those impacts. But it
18 does address the same issues, although my take
19 on it is slightly different. I don't see it
20 so much as mitigating the proposed building
21 wall as the actual building of the wall.
22 Nonetheless, I think it goes to a lot of the

1 same mitigating -- a lot of the same
2 mitigations that this proposed action would
3 cause.

4 BOARD MEMBER LOUD: I'd just like
5 to add my voice in support of the waiver as
6 well. I think it speaks to the ongoing
7 dialogue between the Applicant and the ANC in
8 an indirect way and it encourages that kind of
9 dialogue.

10 Some of the things that are
11 addressed in the letter were first noted in
12 the ANC's submission on the file regarding
13 damage to adjacent property. So, I think it's
14 something that meets all of the tests you laid
15 out and encourages the kind of dialogue we
16 like to see.

17 CHAIRPERSON MILLER: Okay. I just
18 want to also just highlight a little more
19 about what we're talking about for those who
20 might be listening.

21 The representations in the letter
22 go to certainly care that's going to be taken

1 during construction. But the last paragraph
2 also says that the rear yard will be
3 landscaped to your satisfaction. Your being
4 the neighbor that this is addressed to,
5 including the installation of appropriate
6 plantings and new patio furniture to be
7 approved by you. And that's something that
8 would -- I see it as lasting. You know, a
9 lasting compensation if the wall has some kind
10 of an adverse impact.

11 But in any event, it has enough
12 relevance and no prejudice and I think that we
13 should certainly take it into the record.

14 Okay. And I think we have a
15 consensus of the Board on that.

16 I guess to start off on this
17 deliberation I just want to review what we're
18 looking at.

19 The Applicant in this case is a
20 nonprofit. It's a church that seeks variances
21 under 2001.3 for an addition to a
22 nonconforming structure. And 403, it's the

1 lot occupancy requirements that they need a
2 variance from.

3 Because they want to build an
4 addition, that would increase the lot
5 occupancy from 66.25 to 78.6 percent. And the
6 maximum lot occupancy allowed in the R-4
7 District where this is 60 percent.

8 They plan to demolish a two and a
9 half story end-unit row dwelling and replace
10 it with a three-story addition.

11 And they want to do this to house
12 church offices, storage and mechanical rooms,
13 bathrooms and class and multipurpose rooms.
14 Apparently, what's driving this is an
15 overcrowding of their current facilities and
16 the building that they've been using right now
17 that would be demolished has been used for
18 administrative purposes for many years.

19 I think it's important to note
20 also that the church has been in existence for
21 143 years and it has many social service
22 programs which serve the community including

1 a child development center, they serve senior
2 citizens. They do financial planning
3 assistance, health and wellness, legal aid,
4 computer training, Bible classes, things like
5 that. And these services that they're finding
6 they don't have enough capacity in their
7 present facility to accommodate.

8 Some of us on the Board -- I
9 think, Mr. Mann, you were on the Board and I
10 was on the Board in 2004 when we looked at an
11 application by the same Applicant to also do
12 an expansion. And at that time this Board
13 found that it was too massive. And we
14 deliberated on this and then the Applicant
15 ended up withdrawing.

16 But in any event, they've come
17 back with a project that is scaled back and I
18 think addressed our concerns about massing.

19 That's just the background I want
20 to set. Now, we have to look at this under
21 the standards of the variance.

22 They have to show that there's a

1 unique or exceptional condition that give rise
2 to practical difficulties and that the strict
3 application of the regulation result in purely
4 an exceptional practical difficulties to them.
5 And that the relief granted would not cause
6 substantial detriment to the public good.

7 I also think in setting the stage
8 for the legal analysis, we need to look at
9 Monaco which to me looked totally on point.

10 Monaco talks about how the use as
11 a public service is very significant and that
12 the standard applied in variance cases are
13 different when you're dealing with a nonprofit
14 that is doing public service for the
15 community.

16 Also, in looking at Monaco, I was
17 surprised in finding a quote I think that
18 really applies to this case. And so I just
19 want to read the quote. They are looking at--
20 the first prong of the test is the exceptional
21 condition. And they said, this is the Court
22 of Appeals speaking. Says "But consequently

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1 we conclude that when a public service has
2 inadequate facilities and applies for a
3 variance to expand into an adjacent area and
4 common ownership which has long been regarded
5 as part of the same site, then the Board of
6 Zoning Adjustment does not err in considering
7 the needs of the organization as possible
8 'other extraordinary and exceptional situation
9 or condition of a particular piece of
10 property'. That's Monaco. It's a 1979 Court
11 of Appeals decision.

12 And I think that's exactly the
13 situation here that they're expanding into
14 this row house that they have been using.
15 It's the same space because they don't have
16 adequate facilities for their public service.

17 To me that runs right into
18 practice difficulties, that they the
19 additional space to accommodate their ongoing
20 needs. And since they are a nonconforming
21 property I think no matter what they would do,
22 however they would add, they still would need

1 a variance. So, they have a practice
2 difficulty that way.

3 And I think no substantial
4 detriment is really an important concept
5 because I know that there is friction
6 sometimes between institutions and
7 communities. And sometimes that's over the
8 adverse impacts that the institutions may have
9 on the community such as are related to
10 traffic and parking and noise or whatever.
11 And there are other things.

12 And so in looking at that, I don't
13 think we had a lot of evidence in our record
14 of adverse impacts.

15 The design was scaled back, which
16 did address light and air to surrounding
17 properties. And also the look of the massing.

18 They have represented that they're
19 not going to have new programs which would
20 increase traffic or parking.

21 They changed the windows. I think
22 in the church they're placed so that -- above

1 eye level so that members of the church won't
2 be able to look into the neighbors' property.
3 And by that letter, Exhibit 34, the church has
4 agreed to landscape impacted neighbors' yard.
5 So, I guess I'll go through this but if you
6 want to jump in at anytime, otherwise feel
7 free when I'm finished for your two cents, you
8 two.

9 But we give great weight to the
10 ANC and the Office of Planning. And in this
11 case, both the ANC and the Office of Planning
12 are opposed.

13 And the ANC, they have a report
14 which approves their minutes. And so in their
15 minutes we looked to see what the issues were.
16 And the issues that I saw in the minutes were
17 rats, damage to neighbors' home and overall
18 changes to the area.

19 Well, the rats and the damage to
20 neighbors' homes, I think they are
21 construction related which is temporary and we
22 don't deal with that. That's DCRA.

1 I don't understand -- I don't know
2 if you all remember what -- well, what was
3 meant by overall changes to the area. It's
4 not explained. So, it's hard to address that.

5 But I do know that in Exhibit 27
6 that the Applicant did try to address the
7 concerns of the ANC by making certain
8 commitments that address protecting
9 neighboring property and they're working on
10 traffic and parking problems with the
11 community. But I don't see that that's even
12 particularly related to this expansion because
13 we don't see an increase in traffic, I don't
14 think in the record as a result of that.

15 Office of Planning's concerns are
16 different. They are opposed to this
17 application because they said the increase in
18 lot occupancy is to the degree that it's in
19 excess of the R-5-E District which is a high
20 density resident district. And they find that
21 the expansion is not consistent with the
22 preservation of row house neighborhoods.

1 Beyond that, they didn't really
2 explain that there was any substantial
3 detriment or why this would be substantial
4 detriment.

5 I think that often when Office of
6 Planning approaches its analysis of the
7 variance test before the Board it doesn't look
8 to the cases that we looked to at the Court of
9 Appeals. And so sometimes there's a
10 disconnect there. And I see that in this
11 case.

12 They recognize the needs of the
13 church to provide services. And then I think
14 it's increased density so they're against it.
15 They don't address the Monaco test at all.

16 So, I think that we do and we look
17 to the Court of Appeals for guidance. And so
18 my conclusion is that when we weigh everything
19 there isn't substantial detriment. There is
20 an impact in increase of lot occupancy but I
21 think that it's outweighed by the services --
22 weighing the services that the church performs

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1 that the Court of Appeals recognizes that we
2 can weight and I don't see any substantial
3 detriment on a community.

4 So, I open it up for further
5 comments.

6 BOARD MEMBER MANN: I think your
7 analysis was pretty thorough and I don't
8 disagree with any of it. It was particularly
9 helpful, the citation of the Monaco case,
10 because I think that certainly helps me
11 understand this particular case in the
12 perspective of a nonprofit and the way that
13 the standard changes slightly for the
14 nonprofits versus other cases that we might
15 consider.

16 And the other thing regarding --
17 there was sort of a lack of testimony
18 regarding the negative impacts that this might
19 cause. Yet there seem to be this sort of aura
20 hanging over this application from the
21 previous application that I think was not
22 borne out by the testimony that we heard

1 regarding the potential negative impacts. And
2 I think it was important that you pointed out
3 that it's not like there's going to be any
4 increase in the number or type of programs or
5 anything. They are simply expanding the
6 amount of space in which they can accomplish
7 these programs in a more efficient way.

8 So, I just wanted to point that
9 out. But I think that your analysis is right
10 on target.

11 BOARD MEMBER LOUD: Again, I just
12 want to add my echo, I guess, what you guys
13 have said particularly in terms of Monaco and
14 the standard and echo that the testimony that
15 the church provided was that there would not
16 be any new or additional ministries, just a
17 sort of reshuffling of the cards on the deck
18 for greater utilization of space efficiency.

19 I do want to point out thought hat
20 the ANC's concerns that were submitted were
21 not taken lightly by any of us and certainly
22 not by myself. But there was a unanimous vote

1 by the ANC against this.

2 But I think as you laid out your
3 or our analytical framework and what we take
4 into consideration and then as Exhibit 34
5 speaks to some of the concerns that the ANC
6 raised, and you highlighted that some of the
7 other concerns that the ANC raised are beyond
8 the scope of the BZA particularly as it
9 relates to DCRA issues with rats or with
10 structural damage that we are sharing with the
11 ANC, some of the reasons why -- while we're
12 taking their review under great weight. we're
13 also making a decision that would support the
14 Applicant.

15 So, I just wanted to put that on
16 the record.

17 CHAIRPERSON MILLER: Okay. Thank
18 you.

19 And, you know, I do recall we did
20 have a little bit of a dialogue with Office of
21 Planning about the Monaco case and what was
22 different about this case from other cases and

1 we talked about the fact that it was the
2 nonprofit or church providing public service
3 and a public service was a very important
4 factor.

5 Okay. Any other comments?

6 Okay. At this time then I would
7 like to make a motion to approve Application
8 No. 17609 of First Baptist Church, Inc.,
9 pursuant to 11 DCMR Section 3103.2, for a
10 variance from the lot occupancy provisions
11 under Section 403. And a variance from the
12 nonconforming structure provisions under
13 Subsection 2001.3 to allow the construction of
14 an addition to an existing church at premises,
15 710 Randolph Street, N.W. in the R-4 District.

16 And do I have a second?

17 BOARD MEMBER MANN: Second.

18 CHAIRPERSON MILLER: Any further
19 deliberation?

20 All those in favor say aye.

21 (AYES)

22 CHAIRPERSON MILLER: All those

1 opposed?

2 All those abstaining?

3 Would you call the roll please?

4 SECRETARY MOY: Yes. Staff would
5 record the vote as three to zero to two, this
6 on the motion of the Chairperson to approve
7 the application. Seconded by Mr. Mann and
8 also in support of the motion, Mr. Loud. And
9 we also have no Zoning Commission member or
10 other Board Member participating on the
11 application.

12 CHAIRPERSON MILLER: Thank you.

13 So, I think that concludes this
14 case and do we have any other items on the
15 agenda for the public meeting?

16 SECRETARY MOY: That concludes the
17 Special Public Meeting, ma'am.

18 CHAIRPERSON MILLER: Okay. Then
19 the meeting is adjourned.

20 (Whereupon, the above matter was
21 concluded at 10:17 a.m.)