

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
S side of Bond Avenue, 266.87'		
E of New Avenue	*	OFFICE OF
4 th Election District		
2 nd Council District	*	ADMINISTRATIVE HEARINGS
(58 and 60 Bond Avenue)		
	*	FOR BALTIMORE COUNTY
Jacob Smith, Trustee of		
Reisterstown St. Luke's Methodist		
Episcopal Church		
Petitioner	*	CASE NO. 2012-0278-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of a Petition for Variance filed by Roni B. Young, Esquire, on behalf of the legal owner, Jacob Smith, Trustee of Reisterstown St. Luke's Methodist Episcopal Church. The Petitioner is requesting Variance relief from Section 1B01.2.C.1.a. of the Baltimore County Zoning Regulations (B.C.Z.R.), as follows:

- To permit a front yard setback of 26' in lieu of the required 50' setback for a non-residential principal building in a DR 3.5 zone;
- To permit a side yard setback of 12' in lieu of the required 20' setback for a non-residential principal building in a DR 3.5 zone, and
- To permit a rear yard setback of 16' in lieu of the required 30' setback for a non-residential principal building in a DR 3.5 zone.

The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner's Exhibits 1 and 2.

Appearing at the public hearing in support of the variance request were Joseph J. Smith, Daniel and Jacqueline Ward, Arlena and Jacob Smith, Frances Dutton, Sharon McKoy, Gladman

Kapafumuuti, and Brent Petersen with George William Stephens, Jr. and Associates, Inc., who prepared the site plan. Roni B. Young, Esquire appeared and represented the Petitioner.

The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R.

Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. A ZAC comment was received from the Department of Planning on June 5, 2012, indicating their support provided architectural elevations are submitted for review and approval prior to the issuance of any building permits.

Testimony and evidence revealed that the subject property is 1.187 acres and is zoned DR 3.5. The property is improved with a small church that has been in existence since 1880. The church, which was started by slaves, has never had indoor bathroom facilities. In or about 1941, the church acquired an adjacent parcel on which was constructed a small structure known as the “green building.” See Exhibit 3. This “green building” is where parishioners have had to use restroom facilities, and the pastor testified as to the difficulties this posed in inclement weather, and for children or disabled individuals. The Petitioner proposes to construct a modest one story addition (1,450 square feet) onto the west side of the existing church, which will contain a hallway and bathroom facilities.

Based upon the testimony and evidence presented, I am persuaded to deny the request for variance relief. Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People’s Counsel, 407 Md 53, 80 (2008).

Petitioner has met this test.

As noted by Petitioner's Counsel, the property contains an historic church building and is situated immediately adjacent to a cemetery used by the church, which the pastor described as "full." These site constraints not only render the property unique, they also dictated where the Petitioner could construct this addition to provide restroom facilities. If relief were denied, the Petitioner would clearly suffer a hardship in that church members would need to continue leaving the building to use the bathroom. Finally, the grant of relief will not have a detrimental impact upon the community's health and welfare. To the contrary, the construction of the restrooms will not only be a convenience for church members, it will also positively impact the community's safety and well being.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and after considering the testimony and evidence offered by the Petitioner, I find that Petitioner's variance request should be granted.

THEREFORE, IT IS ORDERED, this 22 day of June, 2012, by this Administrative Law Judge, that Petitioner's Variance request from Section 1B01.2.C.1.a. of the Baltimore County Zoning Regulations (B.C.Z.R.), as follows:

- To permit a front yard setback of 26' in lieu of the required 50' setback for a non-residential principal building in a DR 3.5 zone;
- To permit a side yard setback of 12' in lieu of the required 20' setback for a non-residential principal building in a DR 3.5 zone, and
- To permit a rear yard setback of 16' in lieu of the required 30' setback for a non-residential principal building in a DR 3.5 zone,

be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The Petitioner may apply for a building permit and may be granted same upon receipt of this Order. However the Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason this Order is reversed, the Petitioner will be required to return and be responsible for returning said property to its original condition.
2. Compliance with the ZAC comments made by the Department of Planning dated May 31, 2012, a copy of which is attached hereto and made a part hereof.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:pz