

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Warner Council Office Building
100 Maryland Avenue, Suite 217
Rockville, MD 20850
(240) 777-6600
<http://www.montgomerycountymd.gov/boa/>

**Case No. A-6718
PETITION OF SCOTLAND AFRICAN METHODIST EPISCOPAL ZION CHURCH**

OPINION OF THE BOARD
(Hearing Held: October 20, 2021)
(Effective Date of Opinion: October 27, 2021)

Case No. A-6718 is an application by the Scotland African Methodist Episcopal Zion Church (hereinafter referred to as the "Petitioner" or the "Church") for a variance needed for the proposed construction of an addition to a place of worship on an historic property. The proposed construction requires a variance of twenty-four (24.00) feet as it is within one (1.00) foot of the rear lot line. The required setback is twenty-five (25.00) feet, in accordance with Section 59-4.4.8.B of the Zoning Ordinance.

Due to COVID-19, the Board of Appeals held a remote hearing on the application on Wednesday, October 20, 2021. All participation was done via Microsoft Teams. The Petitioner was represented at the hearing by Scott Wallace, Esquire, and Laura Tallerico, Esquire. Pastor Rev. Dr. Evalina Huggins participated in the proceedings, as did Desmond Grimball, AIA, Antunavich Associates, who was accepted as an expert in architecture, and Alan Barney, P.E., Dewberry Engineers, who was accepted as an expert in civil engineering.

Decision of the Board: Variance GRANTED.

EVIDENCE PRESENTED

1. The subject property is Parcel N829, Plat 14249 Par A Scotland Church Subdivision, located 10902 Seven Locks Road in Potomac, Maryland, 20854, in the R-90 Zone. It is located on the northwestern side of Seven Locks Road, and is approximately 37,338 square feet in size. The property is described by counsel for the Petitioner as having "a narrow, elongated and irregular shape" that resulted from the realignment of Seven Locks Road, which formerly ran to the west of the subject property. See Exhibit 3.

2. The property contains an Historic Church, a related burial ground, and surface parking. The Petitioner's Statement of Justification ("Statement"), in the record as Exhibit 3, narrates the locations of these improvements, as follows:

The Historic Church is situated at the center of the Property. It is set back 22.75 feet from Seven Locks Road, 43.75 feet from the rear property line. The sum of the side setbacks is 358 feet. The front facade of the Historic Church faces southwest, as it was constructed to face the former Seven Locks Road, which ran to the west of the Property. Between the current Seven Locks Road right-of-way and the Historic Church is a grassy lawn with few trees allowing substantially unobstructed views of the Historic Church from Seven Locks Road.

As noted, other improvements on the Property include a burial ground and surface parking. The burial ground is situated to the northeast of the Historic Church among several mature trees. The surface parking area, which includes 14 parking spaces, is located to the southwest of the Historic Church. In 1989, a variance from the then-applicable setback requirements was granted for the parking area. (Case No. A-2687) (Exhibit E). The basis of that variance was "that the realignment of Seven Locks Road left a long, narrow and odd-shaped parcel, thus necessitating the request for variances for the proposed parking."

3. The Statement at Exhibit 3 states that the subject property is unique for the purposes of Section 59.7.3.2.E.2.a of the Zoning Ordinance because of its unusual shape, and because it is a historic property, as follows:

In this case, multiple unusual or extraordinary situation or conditions exist that justify the requested variance relief. First, the Property has an exceptionally narrow, elongated, and irregular shape. The Property is approximately 109 feet wide (measured east to west) at the center. Northeast and southwest of the center the Property progressively narrows ultimately reaching a minimum width of approximately 0 feet at the southern property line and approximately 30 feet at the northern property line. This condition constricts the area in which any addition to the Historic Church may be located. As noted, this Board previously found this condition sufficient to justify the setback variance for the existing parking area.

Second, the proposed development includes a historically significant structure. The Historic Church is designated as a historic resource in the Master Plan. Master Plan at C-3. As described in detail above, the Historic Church is located at the center of the Property and is highly visible from Seven Locks Road. Other improvements associated with the Historic Church occupy the areas to the north and south of the church structure with the burial ground to the northeast and parking to the southwest. As detailed above and shown on the Site Constraints Diagram (Exhibit G), the Historic Church and associated burial ground and parking area limit the buildable area of the Property.

4. The Statement at Exhibit 3 states that the unusual shape of the property is not the result of any actions by the Petitioner, but rather arose from the realignment of Seven Locks Road and a related dedication of land. Similarly, the Statement indicates that the location of the Historic Church is not attributable to actions of the Petitioner:

The Property's narrow, elongated, and irregular shape is not the result of the actions of the Petitioner. Rather, the Property's shape is attributable to the realignment of Seven Locks Road. As noted, Seven Locks Road formerly ran along the western side of the Property. The former Seven Locks Road was abandoned and, thereafter, Seven Locks Road was realigned such that it runs along the eastern side of the Property. As shown on the Record Plat, land was dedicated from the Property to achieve the realignment. As such, the realignment resulted in the narrow and irregular shape of the Property.

The location of the Historic Church on the Property is also not the result of the actions of the Petitioner. The Historic Church was completed in 1924 and then expanded in 1967 to serve the needs of the congregation at that time. Master Plan at pg. C-39. The current placement of the Historic Church at the center of the Property and [sic] also results from the realignment of Seven Locks Road. When Seven Locks Road was realigned, what was then the rear (northeastern) property line became the front property line. The main façade of the Historic Church continues to face southwest towards such that it would be oriented towards the former Seven Locks Road right-of-way. The realignment also resulted in the Historic Church being located at the center of the Property and set back approximately 23 feet from Seven Locks Road.

5. The Statement at Exhibit 3 indicates that the requested variance is the minimum necessary to permit construction of the proposed addition to this Historic Church and to overcome the practical difficulty posed by full compliance with the Zoning Ordinance, as follows:

The requested Variance is the minimum necessary to overcome the practical difficulty that compliance with the Zoning Ordinance would impose in that requiring the Petitioner to comply with the R-90 zone rear setback requirement would effectively preclude the addition to the Historic Church. Specifically, the placement of the proposed addition is driven by the presence of the Historic Church and associated improvements on the Property, as well as the Property's narrow, elongated, and irregular shape. The addition cannot be placed to the east or south of the Historic Church because doing so would obstruct the visibility of the Historic Church and its southwest-facing main facade from Seven Locks Road. The addition cannot be placed to the northeast of the Historic Church because the burial ground is located there. Placing the addition either to the northeast or southwest of the Historic Church is further precluded because the Property narrows considerably towards either end. As depicted on the Site Constraints Diagram (Exhibit "G"), the above-described conditions necessitate placing the addition to the rear (west) of the Historic Church. However, it will encroach into the

rear setback by approximately 23 feet. As such, granting the Variance is the minimum necessary to overcome the practical difficulties compliance with the Zoning Ordinance would impose.

6. The Statement at Exhibit 3 notes that granting the requested variance will allow the Historic Church to continue to serve the community, consistent with the Potomac Subregion Master Plan (2002),¹ as follows:

Granting the Variance would not substantially impair the intent and integrity of the General Plan and the Master Plan. In fact, granting the Variance will advance the goals of the Master Plan. As previously stated, the Historic Church is designated as a historic resource in the Master Plan. Master Plan pg. C-3. The Master Plan states that the Historic Church “stands as a pillar of continuity, representing the early days of th[e] post-Civil War black settlement” of Scotland. Id.at C-3 8. It further notes that the “structure has been in continuous use as a religious meeting place since its construction.” Id. at C-39.

The proposed addition will serve to retain and ensure the longevity of the Historical Church's existence of on the Property. First, as noted, placing the addition to the rear of the Historic Church retains the visibility of Historic Church and its main façade from Seven Locks Road. This will ensure the continued prominence and recognition of the Historic Church as a landmark in the surrounding the community. Further, the proposed addition will allow the continued operation of the Historic Church so that it can remain a “pillar of continuity” in the community. Specifically, the addition will allow the Petitioner to maintain the Historic Church while serving the needs of the congregation. The addition will allow for the incorporation of modern church amenities for which the Historic Church lacks space, including a new sanctuary, flex/dining space, a choir assembly, meeting rooms, a pastor's office, and storage. In sum, the proposed addition will modernize and expand the Historic Church allowing it to continue to serve as a religious meeting place for years to come. Thus, it will not substantially impair the intent of the Master Plan.

7. The Statement at Exhibit 3 states that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties because of the presence of mature trees and steep slope behind the proposed addition, and because of the proposed addition's height, as follows:

Granting the Variance will not be adverse to the use and enjoyment of the abutting or confronting properties. The proposed addition will only be approximately 26.88 feet in height and, therefore, although it will be placed close to the rear lot line, it will not create an imposing presence. Furthermore, there are many mature trees along the rear lot line, which screen the Property from the rear-abutting properties. The Petitioner does not anticipate that this condition will be substantially change with the construction of the addition, as the trees are mainly located on the rear-abutting properties. Additionally, the rear-abutting properties slope steeply along

¹ See Exhibit 5.

the rear property line resulting in the area of land along the property line being effectively unusable. This condition creates a buffer area between the addition and the improvements on rear-abutting properties. Given the foregoing, the Variance will not be adverse to the use and enjoyment of the abutting and confronting properties.

8. The Chair of the County's Historic Preservation Commission ("HPC") submitted a letter stating that "the church is a significant structure in the historical African American community of Scotland," and that the HPC had unanimously voted to approve the proposed improvements to the property. The letter expressed the HPC's support for the grant of the requested variance. See Exhibit 7.

9. At the hearing, Mr. Wallace provided some background for the Board members regarding the subject property and Historic Church, noting that the Church has been in use since 1924, and is in need of repair due to flooding. He stated that the Petitioner is seeking to construct an addition that will be attached to the existing Church by a common lobby. Mr. Wallace stated that the subject property has an exceptionally narrow and elongated shape, which he indicated served as the grounds for the variance previously granted by the Board. He stated that the property also contains a historically significant structure (the Church). Mr. Wallace then summarized why the proposed addition could not be located elsewhere on the property, calling out the unusual narrowness of the property's northeast and southwest sides, the presence of a burial ground northeast of the Church and the need for a buffer around that space, and the fact that the addition could not be placed east or south of the Church because it would obstruct the visibility of the Historic Church from Seven Locks Road. With respect to the impact of the proposed addition on neighboring properties, Mr. Wallace noted that the steep slope to the rear of the Church provides separation between the Church and the houses to the rear, and that the scale of the proposed addition was such that it would not be adverse to those property owners.

10. Pastor Huggins testified about the background and history of the Church. She testified that the Church is a stabilizing force for the community, especially the Scotland community. In response to a Board question, Pastor Huggins testified that the Church currently has 82 congregants, and that 113 persons attended their most recent worship service. She testified that the Church is currently meeting outside if weather permits, and otherwise meets via Zoom.

11. Mr. Grimball testified about his experience and credentials, and was accepted by the Board as an expert in architecture. He testified that he is familiar with the variance application. Mr. Grimball testified that the Church is proposing an addition that is approximately 4,900 square feet in size, that will not exceed 27 feet in height, and that will be located approximately two feet from the property's rear lot line. He testified that the addition will be connected to the Historic Church by a common lobby, and will include space for a 100-person sanctuary, a meeting room, and a Pastor's office.

Mr. Grimbball testified, referring to Exhibit 3(d), that the subject property has an exceptionally narrow and elongated shape. He testified that the subject property has a width of approximately 109 feet in the center, narrowing to a width of zero feet on its south side and 30 feet on its north side, later adding that the property was so narrow at its north and south ends that variances from the front and rear lot lines would be needed to accommodate construction in those areas. Mr. Grimbball testified that the property's shape resulted from the realignment of Seven Locks Road, which used to run on the opposite (west) side of the Church. He stated that the old right-of-way was abandoned, and that land was dedicated to achieve the realignment.

Referring to Exhibit 3(g), which has contour lines, Mr. Grimbball testified that this is a hilly site with dense tree growth around it. He testified that the entire property requires approval from the Historic Preservation Commission. Using the "Developable Area" Site Constraints Diagram, in the record at Exhibit 3(g), Mr. Grimbball testified that the known burial area is shown in green, and that the area shown in red is a buffer area needed to be respectful and to allow the burial area to remain intact. He testified that the blue area on the south side of the property shows the area needed to accommodate the necessary parking, and that the light green area along Seven Locks Road needs to remain open so as not to block the view of the historic building. As a result of these constraints, Mr. Grimbball testified that the only viable area for the proposed addition is the arced area shaded in blue, along the rear/west side of the property. He then testified that the "Variance Requested" Site Constraints Diagram at Exhibit 3(g) shows the variance needed. Mr. Grimbball testified that the Historic Preservation Commission has reviewed the proposed addition and the variance request, and has approved the design. He testified that the HPC sent a letter of support for the grant of the requested variance. See Exhibit 7.

Mr. Grimbball testified that the subject property is specifically referenced in the Potomac Subregion Master Plan, which he stated recommends historic sensitivity to and preservation of the Church and its grounds. Mr. Grimbball testified that the proposed addition will maintain the location of the Church and its relationship to the historic property. In response to Board questions, he testified that the Church building will be lifted to address foundation and flooding issues, and will be set down at a slightly higher elevation. He testified that two of the windows will be enlarged to make a door from the existing Church to the common lobby. Finally, Mr. Grimbball answered in the affirmative in response to a Board question asking if, in light of the topography, the addition would be built into the hillside.

12. Mr. Barney testified about his experience and credentials, and was accepted by the Board as an expert in civil engineering. He testified that he was familiar with the variance application, and was engaged to address the flooding and stormwater management issues on the property. Mr. Barney testified that regarding surrounding land uses, notably forested parkland to the southwest and a residential development to the northwest which he estimated is about 30 feet higher in elevation than the Church. Mr. Barney testified that the closest abutting residence is approximately 62.5 feet from the shared rear property line. He testified that the land behind the Church is a forested area

with mature trees and a retaining wall, approximately 20 feet in height, that was constructed to provide a level area for the residences located on the properties behind the Church. Thus he testified that these homes are raised a considerable level from the elevation of the Church, and accordingly concluded that due to this topography and the tree buffer, the proposed addition will be out of the sight lines of these homes, and will not be adverse to the use and enjoyment of these properties. Mr. Barney then testified that the areas to the southwest and east of the subject property are parkland, and accordingly that the proposed construction would not adversely impact those properties either.

In response to a Board question asking about flood exposure and mitigation, Mr. Barney testified that before Seven Locks Road was realigned, the area east of the Church had an unimpeded sheetflow of water to the Cabin John Creek. He testified that when the new road was built, it created an embankment, and that while culverts were built at that time to facilitate drainage, decades of development has increased runoff and created flooding issues. Mr. Barney testified that in addition to raising the elevation of the Church to just above the elevation of Seven Locks Road, the elevation of the parking lot would also be raised to form a barrier to backflow. In response to a Board question asking what the effect of these changes would be on neighboring properties, Mr. Barney testified that raising the parking lot would move the flood plain effects upstream, but that the affected area would be existing parkland. He testified that the houses behind the Church would not be affected by this increase to the flood plain up the creek.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59-7.3.2.E.2.a.i. - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds, based on the Statement, Site Plan, and testimony of Mr. Grimball, that the subject property has an exceptionally narrow, elongated, and irregular shape which constricts the buildable area available for the proposed addition. The Board finds that the constraints posed by the property's shape are further exacerbated by the presence of the Historic Church and the need to preserve the view of that Church from Seven Locks Road, and by the presence of the related burial ground on the property. The Board finds that these are extraordinary conditions peculiar to this property, in satisfaction of this element of the variance test.

Section 59-7.3.2.E.2.a.iv. - the proposed development contains a historically significant property or structure;

The Board finds, based on the Statement and the testimony of Mr. Grimball, that the Historic Church is designated as a historic resource in the Master Plan. See Exhibit 3. The Board further finds that the proposed addition will be connected to the Historic Church by a common lobby, and thus finds that the proposed development contains a historically significant property or structure, in satisfaction of this element of the variance test.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds, based on the Statement and testimony of Mr. Grimball, that the unusual shape of the subject property is attributable to the realignment of Seven Locks Road, and further finds, based on the Statement, that the location of the Historic Church on the property and relative to the road is also a result of that realignment and a related land dedication. Accordingly, the Board finds that the Petitioner is not responsible for the special circumstances pertaining to this property, in satisfaction of this element of the variance test.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds, based on the Statement and the Site Constraints Diagrams at Exhibit 3(g), that the location for the proposed addition is driven by the property's shape and the presence of the Historic Church and associated improvements. To this end, the Board finds that the addition cannot be placed to the east or south of the Historic Church because doing so would obstruct the visibility of the Historic Church from Seven Locks Road. The Board further finds that the proposed addition cannot be placed to the northeast of the Historic Church because the burial ground is located there, and that placing the addition on the northern or southern ends of the property is precluded by the narrowness of the property in those areas. Thus the Board finds that proposed location is the only available location on the property for the proposed addition. The Board further finds that the addition and its proposed location have been approved by the Historic Preservation Commission, which supports approval of the necessary variance. In light of the foregoing, the Board finds that the strict application of the Zoning Ordinance would preclude construction of the proposed addition in the only area available on the property for such construction, and in the area approved by the HPC, causing the Petitioner a practical difficulty, and further finds that the requested variance is the minimum needed to overcome this practical difficulty, due to the historic nature and unusual configuration of the subject property, in satisfaction of this element of the variance test.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds, for the reasons set forth in the Statement and recounted above in paragraph #6 under "Evidence Presented," that the requested variance can be granted without substantial impairment to the intent and integrity of the Potomac Subregion

Master Plan (2002). Accordingly, the Board finds that this element of the variance test is satisfied.

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

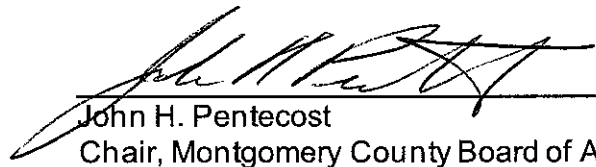
The Board finds, based on the Statement and the testimony of Mr. Barney, that the any view of the proposed addition from the homes abutting the subject property to the rear will be buffered by existing mature tree cover and the presence of a steep slope that causes the proposed addition to be at a lower elevation than the abutting residences. The Board further finds that the remainder of the property is bordered by parkland, the use of which will not be adversely affected by the proposed construction. Accordingly, the Board finds that granting the requested variance will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test.

Accordingly, the requested variance, needed to allow construction of an addition to a place of worship on an historic property, is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibit 4.

Therefore, based upon the foregoing, on a motion by Mary Gonzales, seconded by Caryn Hines, with John H. Pentecost, Chair, Bruce Goldensohn, Vice Chair, and Richard Melnick in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 27th day of October, 2021.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.