



City of Dover

Board of Adjustment

September 20, 2023

V-23-04

Location: 101 & 107 N. Queen Street, Dover DE

Owner: Mt. Zion Church A.M.E. Church

Tax Parcels: ED-05-076.08-03-37.00-000
ED-05-076.08-03-38.00-000

Application Date: August 18, 2023

Present Zoning: RG-1 (General Residence Zone)

Present Use: Place of Worship (Church)

Reviewed By: Katherine Oehmke, Planner I
Dawn Melson-Williams, AICP, Principal Planner

Variance Type: Area Variance

Variances Requested: Allow for an increase in the maximum sum of all areas permitted to be covered by a principal building and accessory buildings from 20% to 56.89% in order to allow for a proposed building addition.

Project Description

The Applicant is requesting an area variance from the requirements of Article 3 §1.14(a)(v) of the *Zoning Ordinance*. The use of the subject properties is as a Place of Worship (Church), which is a conditionally allowed use in the RG-1 Zone (General Residence Zone). The Variance Request is to increase the maximum sum of all areas permitted to be covered by a principal building and accessory buildings from 20% to 56.89% in order to allow for a proposed building addition.

The location consists of two parcels upon which the existing Church Building stands. The existing principal building exceeds this building coverage limitation of the *Zoning Ordinance* and is considered legal non-conforming. This request is to allow for design development of a Building Addition to the Church which would then be subject to a separate Conditional Use Site Plan application review process with the Planning Commission.

Property and Adjacent Properties: Zoning and Land Use

The two subject properties total 11,520 SF in land area and are zoned RG-1 (General Residence Zone). The Church location sits on the northeast corner of North Queen Street and Fulton Street spanning half of the overall block from N. Queen Street to an alley on the east. The front elevation of the building faces N. Queen Street. See Existing Conditions Sheet C-051 in Exhibit C.

The Place of Worship structure known as Mt. Zion A.M.E. Church that sits on these properties was built circa 1959 with later renovations. The church building's original construction was established prior to the current zoning provisions of the City of Dover *Zoning Ordinance*. It is considered a legal non-conforming use and building. The existing church building (footprint) covers 44.72% of the total land area. Also, the existing church building encroaches into the front yard setbacks and the other property line setbacks.

The properties in the surrounding blocks are zoned RG-1 (General Residence Zone). The property (109 N. Queen Street) adjacent to the north contains a one-family detached dwelling that is listed as a Vacant Building. Continuing to the north are other single family detached dwellings. There are several churches along N. Queen Street in the proximity. A series of parcels across the street from the subject site are owned by Mt. Zion A.M.E. Church. Directly across from the church is a single family home owned by the applicant. There is also a parking lot for the church.

A Zoning Map Exhibit ([Exhibit A](#)) prepared by Staff is attached to this Report. It shows the subject properties location and surrounding zoning.

Code Citations

RG-1 (General Residence Zone)

Zoning Ordinance, Article 3 Section 2. General residence zones (RG-1 and RG-2) lists the permitted uses, conditional uses, and other provisions of the RG-1 zone. In Article 3 Section 2.11, it notes for the RG-1 zone that the allowable uses include those uses permitted in the one-family residence zones; this refers to *Zoning Ordinance*, Article 3 Section 1.

In the One-family Residence Zones, Places of Worship are a conditional use and have specific requirements for development. See code excerpt below.

Article 3 Section 1

1.14 The following uses are permitted, conditional upon the approval of the planning commission in accordance with the procedures and subject to the general conditions set forth in section 10.1 and to any specified requirements set forth below:

(a) Places of worship, including parish houses; [and] schools, including nursery schools, kindergartens and day care centers in accordance with [article 5](#), Supplementary Regulations, section 14. Child day care facilities; philanthropic and eleemosynary institutions; hospitals and sanitariums for general medical care; and funeral homes subject to the following requirements:

- i. Any school permitted under this paragraph [subsection 1.14(a)] shall be a nonprofit organization within the meaning of the Internal Revenue Act and shall be registered effectively as such thereunder.
- ii. Any school permitted under this paragraph [subsection 1.14(a)], other than a kindergarten, nursery school, or day care center, shall occupy a lot with an area of not less than two acres, plus one acre for each 100 pupils for which the building is designed.
- iii. Any kindergarten or nursery school permitted under this paragraph [subsection 1.14(a)] shall be limited to a maximum of 50 children in zones R-8 thru R-20 and a maximum of 100 children in all other zones. At least 100 square feet of outdoor play space per child shall be provided. Outdoor play space shall be fenced or otherwise enclosed on all sides and shall not include driveways, parking areas, or land unsuited by other usage or natural features for children's active play space. Fencing or other enclosures shall be a minimum height of four feet. The minimum lot area for each ten, or remainder over the multiple of ten, children shall be the same as the minimum lot area requirement for each dwelling unit in the districts in which such uses are to be located.
- iv. No such building or part thereof shall be erected with less than a 50-foot front yard or nearer than 25 feet from any other street or property line.
- v. The sum of all areas covered by all principal and accessory buildings shall not exceed 20 percent of the area of the lot.
- vi. Courts shall conform to the requirements of [article 5](#), section 3 hereof.

The current use as a Place of Worship is allowed as a Conditional Use per Article 3 Section 1.14 (a). The current use as a Place of Worship since established prior to the adoption of the *Zoning Ordinance* is considered legal non-conforming and can continue indefinitely per *Zoning Ordinance*, Article 7. Nonconforming Buildings and Uses. For any expansion of the use, it would be subject to the current zoning provisions and would require consideration through the Conditional Use application process to become a conforming use.

With the proposed Building Addition, the property would also become subject to the requirements listed (items i through vi). Specifically for this use as a Place of Worship, the requirements of Item iv and Item v would apply.

- The placement of the building on the lots does not meet the setback provisions outlined in Item iv; however, these setbacks are considered legal non-conforming and are allowed to continue as long as the degree of nonconformity is not increased or any new conformity created (per *Zoning Ordinance*, Article 7. Nonconforming Buildings and Uses). Any Building Addition would be limited to the existing setbacks of the existing building. Any Building Addition could not be placed any closer to the property lines than the existing building.
- In the case of Item v for the coverage of the lot by the principal building, a Building Addition increases the degree of nonconformity for the building coverage compared to the lot area. Thus, it requires consideration of a variance.

Applicant's Proposed Project

The Applicant has submitted a Site Plan Set (Exhibits C and D) and Architectural Drawing Set (Exhibit E). These plans/drawings depict the existing conditions of the site and building and the Building Addition proposal. A Building Addition with a footprint of 1,402 SF is proposed. This will increase the existing principal building coverage from 44.72% to a total building area of 56.89%. The Applicant had met with Planning Staff prior to the application submission to discuss the project proposal and the required review processes. Planning Staff generally finds the Variance requested to be the least necessary to allow for a Building Addition.

If the area variance is granted, the proposed project will still be subject to a separate application for a Planning Commission Review Process for a Conditional Use Site Plan and other applicable *Zoning Ordinance* provisions.

Exceptional Practical Difficulties Tests

Zoning Ordinance, Article 9 §2 dictates the specific powers and duties of the Board of Adjustment with regard to granting variances. Specifically, the Board must determine:

2.1 Variance – The board shall have the authority to authorize variances from provisions of the Zoning Ordinance that are not contrary to public interest where the board determines that a literal interpretation of the Zoning Ordinance would result in undue hardship or exceptional practical difficulties to the applicant. In granting variances, the board shall determine that the spirit of the Zoning Ordinance is observed and substantial justice is done.

2.11 Area Variance. A variance shall be considered an area variance if it relates to bulk standards, signage regulations, and other provisions of the Zoning Ordinance that address lot layout, buffers, and dimensions. In considering a request for an area variance, the board shall evaluate the following criteria and document them in their findings of fact:

- (a) the nature of the zone in which the property lies;
- (b) the character of the immediate vicinity and the contained uses therein;
- (c) whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
- (d) whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the Zoning Ordinance.

Review of Application

As part of the Application, the applicant was asked to summarize how the requested variance relates to the above criteria. The applicant's response along with a staff assessment of the application in accordance with the required criteria is provided below.

1. The nature of the zone in which the property lies.

Applicant Response:

"The property is currently zoned RG-1 (General Residential). Places of worship is a permitted use, conditionally approved by the Planning Commission. The building and use were established on these parcels prior to the City of Dover Zoning Ordinance being established. The use has not changed since it was established in 1959."

Staff Response:

The subject properties (two parcels) are zoned RG-1 (General Residence Zone). The RG-1 zone predominately allows for one-family dwellings (residences). However, there are a series of uses that are allowed through a Conditional Use review process. The Conditional Use process could allow for the placement of places of worship, schools, day care facilities, and other institutional uses. The use of the property as a Place of Worship is permitted as a Conditional Use in this RG-1 zone.

2. The character of the immediate vicinity and the contained uses therein.

Applicant Response:

“There are currently three active churches within one block of this parcel, five active churches within two blocks. Directly across the intersection of Fulton St and N Queen St is Calvary Baptist Church. The current building and proposed addition are brick façade, which is consistent with other buildings within close proximity.”

Staff Response:

The area is a grid system of city street blocks with mid-block alleys consisting of lots laid out in the late 1800s-early 1900s. The area developed as housing with places of worship (churches) at select locations. The current Mt. Zion A.M.E. Church structure is largely massed and all brick with large stained glass windows, similar to the other churches in the area. The roof line is roughly the same height as the other structures both residential and non-residential in the area. The Church Building sits at a corner location with the front of the building (and its entrances) facing North Queen Street. The Church Building is set back slightly in comparison to the houses along the same side of the street. Staff acknowledges that there are other church properties in the proximity that also appear to be non-conforming with setbacks and the 20% building coverage regulation found in the current Code due to dates of construction.

3. Whether, if the restriction upon the applicant’s property were removed, such removal would seriously affect neighboring properties and uses.

Applicant Response:

“This building was constructed prior to the Zoning Ordinance being established and exceeded the building area coverage requirement prior to the Code. The adjacent and neighboring properties also exceed the maximum building area requirement of 20%, therefore this application does not set a precedent for future applications on neighboring properties.”

Staff Response:

Planning Staff acknowledges the pre-existing condition of the property for a Place of Worship was prior to *Zoning Ordinance* enactment in the City of Dover, as well as the pre-existing building coverage being more than the current allowed. The Church has been at this location since 1959 and there is no proposed use change.

The proposed Building Addition would be located where an existing access sidewalk and ramp system to the current Church Building exists on its north side. The Building Addition will continue to maintain the existing setbacks from the north property line and from the N. Queen Street front (west) property line. The new entry system (sidewalk, steps, ramp system) into the building will be closer North Queen Street. The increase in building coverage of the lot would have limited impact on neighboring properties as the Building access from the street sidewalk system and nearby parking opportunities of on-street parking and church designated parking lots remains the same.

4. Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the *Zoning Ordinance*.

Applicant Response:

“The church membership is improving, which benefits the community it serves; however, the current building footprint cannot continue to serve the needs of the members and requires additional space. Not permitting the addition as proposed would have an impact on the day-to-day activities and function of the church. The addition provides much needed Sunday School classroom space and additional office space. A second floor to the building is not feasible based on the existing structural components of the building. The extensive renovations required to the original building from a structural standpoint alone would be too costly for the age of the building and not feasible. A second floor to the building would also make the building out of character with the surrounding neighborhood. The first floor of the existing church is elevated several feet above the surrounding homes, and the roof line is equal in height with the adjacent homes. Adding a second floor would elevate the roof line significantly higher and would make the building out of character. The addition as proposed provides added safety elements such as moving the primary entrances to one end of the Sanctuary. Currently the Sanctuary is accessed by two entrances, one at the front and one at the back. The proposed addition allows the members to monitor the public entering and exiting the building. The existing ADA ramp is located on the side of the building. The proposed addition pushes the ADA entrance closer to the street for easier access. Not allowing the addition would limit the church from improving the current condition.”

Staff Response:

The pre-existing size of the properties (lots) limits the ability to comply with the present-day provisions of the *Zoning Ordinance* related to principal building coverage of the lot. The Building Addition seeks to continue the use of the Building as a Church facility at this location in the neighborhood while modernizing the building for programming functions and ADA accessibility. In review of alternatives, Staff concurs that adding an additional second story (thus not increase building coverage of the lot) would be out of character with the neighborhood and may not be structurally feasible. Planning Staff finds that an exceptional practical difficulty may be determined to be present.

Variance Recommendations

Planning Staff finds that the subject properties have conditions that limit any growth at this site based on the current zoning regulations. Planning Staff notes that the properties have existed in their current size and the existing Place of Worship (Church Building) at this location predate the establishment of the *Zoning Ordinance* in the City of Dover in 1961. The current zoning requirements would prohibit any increase in building coverage of the property; thus, limiting most improvements to the building/facility. Planning Staff finds that the Applicant has demonstrated an exceptional practical difficulty; they would incur by not having this Variance granted.

Staff recommends **approval** of the variance for reasons as follows:

- The *Zoning Ordinance* permits legal-nonconforming uses and setbacks to continue, provided the degree of non-conformity is not increased. The use of the property for a Place of Worship can continue. The current building setbacks will continue to be maintained.
- The ability to increase the amount of building coverage of the principal building on the property will allow for improvements to the building's function and ADA accessibility. A variance is required in order to construct any increase in building footprint on these parcels.
- The property is largely in keeping with the surrounding neighborhood in character, as several Places of Worship are located within this residential area of the City.
- For any expansion of the Place of Worship use, a Conditional Use application to the Planning Commission will be required subject to the provisions of the *Zoning Ordinance*. As a Building Addition is proposed, this would require review of a Conditional Use Site Plan by the Planning Commission.

Advisory Comments to the Applicant

- If granted, variances become null and void if work has not commenced within one (1) year of the date the variance was granted. At present there is no provision for extension.
- If the requested variance is granted, the Applicant must still obtain the appropriate Site Development Plan and construction activity Permits approvals for construction of a Building Addition on the property. In this case, it will be a Conditional Use Site Plan as the use as a Place of Worship is subject to Conditional Use, which may be achieved through an application and review process involving the Planning Commission. Contact the Planning Office to discuss steps for application submission.
- The Applicant should be aware that whenever the Board of Adjustment denies an application for a variance, such application for a variance, or an application on the same property, which is substantially similar, shall not be accepted for reconsideration by the Board of Adjustment sooner than one year from the date of denial (*Zoning Ordinance*, Article 9 §3.8).

GUIDE TO ATTACHMENTS

Exhibit	Description/Author	# Pages
	BOA Application Form	1
A	Zoning Map Exhibit (Staff)	1
B	Applicant's Written Responses: Revised Letter of August 18, 2023	2
C	Mt. Zion AME Church Addition Site Plan Set (Sheets: C-001 Title Sheet, C-501 Existing Conditions, and C-101 Preliminary Site & Grading Plan).	3 with Addendum excerpt from Exhibit D
D	Mt. Zion AME Church Addition Site Plan Set Revised Title Sheet C-001	1
E	Mt. Zion AME Church Addition & Renovation Architecture Set (Sheets: A-100 Basement Plan – New Work & Room Finish Schedule, A-101 First Floor Plan – New Work & Room Finish Schedule, and A-201 Exterior Elevations)	3