



Planning Department

**TOWN OF ACTON**  
472 Main Street  
Acton, Massachusetts 01720  
Telephone (978) 929-6631  
Fax (978) 929-6340  
[planning@acton-ma.gov](mailto:planning@acton-ma.gov)

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**MEMORANDUM**

**To:** Zoning Board of Appeal **Date:** December 28, 2015  
**From:** Robert Hummel, Assistant Town Planner *RH*  
**Subject:** Variance #15-16 —270, 272, 274 Central Street

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**Applicant:** West Acton Baptist Church  
**Property Owner:** West Acton Baptist Church  
**Location:** 270, 272, 274 Central Street  
**Map/Parcel:** F2A-100, 101, 116, 7 119  
**Zoning:** WAV  
**Proposed Use:** Zoning relief from the maximum setback requirements in Section 5 of the Zoning Bylaw.  
**Hearing Date:** January 4, 2016  
**Decision Due Date:** March 12, 2016

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**Background**

The property consists of 3 lots and is currently under one owner. The applicant would like to convey Lots 2 and 3 with the building thereon. By themselves, they each meet the dimensional requirements as listed in ZBL Section 5, except that the buildings on each of the two lots exceed the 10-foot maximum front yard (note (10), Table of Standard Dimensional Regulations). According to the plan, the house on Lot 2 has a front yard setback of +/- 44.6 feet, and the Annex on Lot 3 has a front yard setback of +/-11 feet. As long as these buildings remain owned in common with the church building on Lot 1 the property as a whole conforms with the maximum setback requirement because the church building on Lot 1 conforms (+/-6.8 feet). To convey Lots 2 and 3 into separate ownerships, the Applicant is seeking a variance from the maximum front yard requirement for both the House and Annex.<sup>1</sup>

Section 81-L in the Municipal Planning and Subdivision Legislation (M.G.L. ch.41, s. 81A-81GG) provides that the "... division of a tract of land on which two or more buildings were standing when the subdivision control went into effect in the city or town in which the land lies into separate lots on each of which one of such buildings remains standing, shall not constitute a subdivision". The first Acton Zoning Bylaw did not go into effect until 1953, and all of the buildings have been standing for the past 100 years.

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<sup>1</sup> The applicant is also asking for a waiver of the requirement in the Rules and Regulations to provide a Contour Plan and a USGS Map because topography of the premises is not a factor. The Planning Department has no objection to granting this waiver.

The Land Court in *Malcolm v. Community Planning and Development Committee of North Reading*, 5 LCR 30 (1997)<sup>2</sup> ruled that in so dividing land, the resulting lots need not conform, or conform to the extent possible, to zoning requirements.

### **Comment**

1. Under the land court ruling, the applicant could convey Lots 2 and 3 without a variance. However, if the Board of Appeals can find that the prerequisite conditions for a variance exist, the granting of a variance would memorialize the zoning relief more formally in the registry record.
2. The Planning Department has no objections to this variance request.

### **Recommendations**

If the variance is granted, the decision should include findings, conditions and limitations as follows:

- a. That the Petitioner must record the variance decision at the Middlesex South District Registry of Deeds or the Land Court prior to the conveyance of the lots.
- b. That all taxes, penalties and back charges resulting from the non-payment of taxes, if any, shall be paid in full prior to the conveyance of the lots.
- c. That the variance conditions (if any) have been stated for the purpose of emphasizing their importance, but are not intended to be all-inclusive or to negate the remainder of the Bylaw.
- d. That the Town of Acton may elect to enforce compliance with the conditions (if any) of this variance using any and all powers available to it under the law.
- e. That other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by the decision.
- f. That the Board reserves its right and power to modify or amend the terms and conditions of this variance with or without a public hearing upon the request of the Applicant, its designees or assigns, or upon its own motion.
- g. That the proposed request is consistent with the Master Plan; is in harmony with the purpose and intent of the zoning bylaw; will not be detrimental or injurious to the neighborhood; is appropriate for the site; and complies with all applicable requirements of the zoning bylaw.
- h. Before granting any variance, the Board needs to meet the following mandatory findings.
  - i. That owing to circumstances relating to the soil conditions, shape, or topography of the LOT or STRUCTURES in question and especially affecting such LOT or STRUCTURES but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the Petitioner; and
  - ii. That desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw. In deciding whether the requested variance nullifies or substantially derogates from the intent or purpose of this Bylaw, the Board of Appeals shall consider whether the granting of such variance is consistent with the Master Plan.

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<sup>2</sup> Source: Mark Bobrowski, *Handbook of Massachusetts Land Use and Planning Law*, 2<sup>nd</sup> Edition, 2002.