



TOWNSHIP OF WEST ORANGE

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Department of Planning and Development

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TO: Zoning Board Members

FROM: Paul Grygiel, AICP, PP, Planning Director

DATE: December 1, 2020 – *revised February 8, 2021*

RE: **ZB-20-12/Jesus, Others, Yourself, Church of God Inc.**
Block: 160; Lot: 11; Zone: R-4
446 Northfield Avenue
Seeking “d(1)”, “d(3)” and parking variances for a house of worship

The applicant has made some modifications to the proposed plans. This memorandum supplements my original review memorandum dated December 1, 2020. New information is denoted in **bold**, deletions are shown in ~~striketrough~~.

INTRODUCTION/LAND USE

The applicant is requesting approvals to convert a portion of an existing building to use as a house of worship. The proposed use is permitted as a conditional use in the R-4 zone in which it is located but does not meet all of the conditions for the use, meaning “d(3)” variances are required. A “d(1)” use variance is also required to continue to allow multiple principal uses on the property. A “c” variance is required for the minimum number of parking spaces.

The subject property is located on the south side of Northfield Avenue to the east of its intersection with Walker Road. A mix of land uses is located in the vicinity. Specifically, Rock Spring golf course is located to the east, a multifamily residential development is located to the south and west and offices are located to the north across Northfield Avenue, followed by single-family residential.



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SUBMISSIONS

ITEM

SIGNED BY

DATE/REVISION

Site and Architectural Plans (3-8 sheets)
Boundary Survey
Planner's Report

J. Michael Petry, PE, PP, RA
John J. Butler, PLS
J. Michael Petry, PP

~~6/16/20~~ 1/28/21
3/3/20
9/23/20

VARIANCES REQUIRED

<i>"d(1)" Variance – Multiple Principal Uses</i>			
SECTION/REQUIREMENT	PERMITTED /REQUIRED	EXISTING	PROPOSED
25-8.12 Maximum principal uses on one lot (except in certain zones)	One	Three	Two

<i>"d(3)" Variance – Conditional Use Standards for House of Worship</i>		
SECTION/REQUIREMENT	PERMITTED /REQUIRED	EXISTING/PROPOSED
25-24.2 b.1.(j)(1) Minimum building setback from property lines	125 ft.	1.4 ft. front, 66.8 ft. rear, 20 ft. and 68 ft. sides
25-24.2 b.1.(j)(1) Minimum parking aisle setback from property lines	75 ft.	7.1 ft. front, 19 ft. rear, -0.8 ft. and 2.3 ft. sides
25-24.2 b.1.(j)(2) Minimum buffer strip along property lines	50 ft.	19 ft. rear, -0.8 ft. and 2.3 ft. sides

<i>"c" Variance</i>			
SECTION/REQUIREMENT	PERMITTED /REQUIRED	EXISTING	PROPOSED
25-12.2 b.1. Minimum number of parking spaces	33	13	13 14

ADMINISTRATIVE ISSUES

Section 25-51.10c of the West Orange Land Use Regulations Ordinance includes the following requirement for an applicant for a "d" variance:

"A planning report prepared by a licensed Professional Planner and a traffic report prepared by a licensed Professional Engineer. The Board may waive the provision of such reports at its discretion."



The applicant has provided a planning report, but has not submitted a traffic report. If the applicant is not intending to submit a traffic report, it should amend its application to request a waiver from this requirement.

PROPOSED DEVELOPMENT

The applicant is seeking preliminary and final major site plan approval and variances for modifications to an existing building. The subject property is 12,555 square feet (0.29 acres) in area and located at 446 Northfield Avenue, which is identified as Block 160, Lot 11 on the Township of West Orange's official tax maps. A three-story building is located on the property. Until recently the building was occupied by a child care center and two office uses, one of which remains. Site photographs taken on October 26, 2020 are included at the end of this memorandum.

The applicant is proposing to occupy the main and second floors of the building for use as a house of worship. The existing office use in the basement (1,022 square feet) is proposed to remain. The main floor is 816 square feet in area and is proposed to be used for assembly space (678 square feet) and storage/office space (138 square feet). The second floor is 582 square feet in area and proposed to be used for classroom space for the church. No alterations are proposed to the interior layout, **other than closing and decommissioning an existing fireplace and adding exit signs and emergency lighting.**

~~No~~**The only changes are proposed to the exterior of the building are to add exterior stairs providing a second means of egress from the first and second floors to replace an existing fire escape if required by code. The only**Proposed site changes are **milling and repaving the parking lot, restriping and resurfacing portions of the parking lot, adding a handicap parking space, replacing an existing shed with a smaller one in a different location, relocating 29 linear feet of curbing and modifying the site lighting.** There are 13 existing parking spaces located on the property. **The restriping of the parking lot and moving the existing shed will result in 14 parking spaces, including one handicap space, being provided.** Site photos taken on October 26, 2020 are included at the end of this memorandum.

DISCUSSION/RECOMMENDATIONS

The Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-70d(1) enables a board of adjustment to grant a variance use or principal structure not permitted in the zoning district. While a house of worship is permitted as a conditional use in the R-4 zone, multiple principal uses are not permitted on one lot in the R-4 zone. The applicant must provide proofs for the variance per the standards determined by the MLUL. In the applicant's planning report, it is noted a house of



worship has been deemed an “inherently beneficial use.”¹ I would note multiple principal uses already exist on the subject property.

The Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-70d(3) enables a board of adjustment to grant a variance from a standard pertaining solely to a conditional use. The applicant must provide proofs for the variance per the standards determined by the MLUL. As indicated by the applicant’s planner, a house of worship is considered an “inherently beneficial use.”

The New Jersey Supreme Court ruled in Sica v. Board of Adjustment of Tp. of Wall, 127 N.J. 152 (1992) that in connection with an inherently beneficial use, the Board must undertake a four-part “Balancing Test” in determining whether to grant the “d” variance:

1. Identify the public interest at stake;
2. Identify the detrimental effects that would be created by the granting of the variance;
3. Determine whether the imposition of reasonable conditions would reduce the impacts, if possible; and
4. Weigh the positive and negative aspects of the proposed project and determine whether granting the variance would cause detriment to the public good

The applicant’s planner also notes that for a “d(3)” variance, an applicant must demonstrate that a property remains appropriate for a conditional use, despite not meeting all of the standards for the use, per Coventry Square v. Westwood Zoning Board of Adjustment, 138 N.J. 285 (1994).

In addition, the MLUL at N.J.S.A 40:55D-70c permits a board of adjustment to grant variances from the bulk regulations of a zoning ordinance and other zoning deviations that do not require a “d” variance. A “c(1)” variance is for cases of hardship due to factors such as shape or topography, or due to “an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.” A “c(2)” variance may be granted where the purposes of zoning are advanced and the benefits of deviating from the ordinance requirements outweigh any detriments. The benefits derived from granting a “c(2)” variance must include benefits to the community as a whole, not just the applicant or property owner. A “c” variance applicant also must address the “negative criteria,” and affirmatively demonstrate that the variance can be granted “without substantial detriment to the public good” and “without substantial impairment to the intent and purpose of the zone plan and zoning ordinance” of the municipality. The applicant’s planner should provide testimony as to how the above variance proofs are addressed.

¹ The MLUL at N.J.S.A. 40:55D-4 defines an “inherently beneficial use” as “a use which is universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare. Such a use includes, but is not limited to, a hospital, school, child care center, group home, or a wind, solar or photovoltaic energy facility or structure.”



The applicant's planner must also address the "negative criteria" for all of the above variances, and affirmatively demonstrate that the variance can be granted "without substantial detriment to the public good" and "without substantial impairment to the intent and purpose of the zone plan and zoning ordinance" of the municipality.

At the time of my most recent site visit, there was a shed located in the parking lot near the western property line blocking one or more parking spaces, as shown in a couple of the photos. The applicant ~~should discuss the use of this shed and whether it is intended to remain, as it impacts the availability of the limited parking spaces that exist on the subject property~~ **has amended its application to replace the shed with a smaller one in the southeastern corner of the parking lot.**

The Township of West Orange Site Plan Review Advisory Board (SPRAB) held a virtual meeting on October 13, 2020. At this meeting, the SPRAB reviewed the above application with the applicant and its attorney, engineer/architect/planner and other representatives. The applicant has not submitted any updated materials addressing the following site plan and design issues discussed at this meeting:

- Architectural plans: Several issues were raised with regard to possible building code compliance, including changes in occupant load and provision of accessible features.
- Signs: No signage is currently shown on the site and architectural plans. The applicant indicated the existing freestanding sign will be updated to include it as an occupant of the premises – as shown in the site photos, this already has been done. It was asked that the plans be updated to show any existing and proposed signage, including parking lot directional signage.
- Parking and circulation: The applicant's engineer stated no changes are proposed to the general layout of the parking lot, other than converting one existing space to an accessible space. The lot will be restriped and repaired, as necessary. A concern was noted about the ability of firetrucks to navigate the site, and a truck turning template was requested to be added to the site plan. The applicant is committed to designating a "parking coordinator" to monitor any issues with parking.
- Trash and recycling: In response to a question, it was indicated there will be minimal refuse generated by the use and that municipal pickup will continue to be utilized.
- Environmental issues: It was noted the Turtle Brook runs through the property and a request was made to determine whether there are any existing approvals and/or restrictions related to this watercourse.

These issues have been addressed through testimony and revised site and architectural plans.





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