

STAFF REPORT COMMENTS

Address: 31 Woodland Avenue

Application: ZB-22-2140 – (d1) – use variance & (c) – variance for off-street parking to permit rental of space for commercial purposes

	<u>No Comments</u>	<u>Report Attached</u>	<u>Not Submitted</u>	<u>No Objections</u>	<u>Not Required</u>
Christa Anderson, Zoning Officer		✓			
Eric Evers, Director/Fire Chief		✓			
Steven Zagorski, Police Chief				✓	
Engineering Division		✓			
Ralph Maritato, Construction Official				✓	
John Linson, City Forester				✓	
Board of Health	✓				
Historic Preservation Commission	✓				
City Planner-Burgis (if required)		✓			
Environmental Commission (if required)			✓		

Sent to applicant / attorney on: _____

(circle one)

Due Back: _____

COMMUNITY SERVICES

TO : Zoning Board members
FROM : Christa Anderson, Zoning Officer CA
DATE : August 22, 2022
SUBJECT : Zoning Board application #ZB-22-2140
31 Woodland Avenue; The Rector, Wardens and Vestrymen of Calvary Episcopal Church in Summit New Jersey
Use variance request to allow rental of space in the Parish House for commercial purposes
COPY TO: File

The application is filed as a direct application having no prior zoning review although several conversations have taken place between the attorney for the applicant and the Zoning Officer. The applicant, commonly referred to as Calvary Episcopal Church, requests approval for a use variance in order to lease space to commercial users whereas such uses are not a typical accessory use to the permitted house of worship use. The church was most recently granted a site plan approval (memorializing resolution dated June 4, 2018) to construct the cloistered walkway which connects the actual church building to the building known as the Parish House and to reconfigure the parking spaces. Sheet 3 of the approved site plan is included in this application. For reference, the definition of house of worship is provided below.

HOUSE OF WORSHIP – A building or structure, or groups of buildings or structures, that by design, construction, or alteration are primarily intended for conducting organized religious services and associated accessory uses.

The current application proposes to permit leasing of space in the Parish House to two identified users, Passion For Spices and Elite Fencers. Typical hours of business for each of the specific proposed users are provided in the application; however, the hours submitted with this application are not consistent with the hours of operation posted on the Passion For Spices website. The proposed hours must be clarified and the Passion For Spices website must be consistent with any approval granted under this application. The same will be applicable to the hours of operation for Elite Fencers.

Parking Demand - With regard to the hours of operation, I note that there is overlap of schedules. **The applicant should be prepared to describe how many users of each business are anticipated at any given time and should be prepared to describe the realistic parking demand for each use.** The site currently is approved having 41 parking spaces plus two handicap spaces. It is my understanding that some of the existing parking spaces are used by a local real estate office. The applicant should provide the number of such spaces and the agreed upon days and times when the spaces are committed to that user.

Other Non-Regular Users – The applicant should be prepared to provide general information of requested days and hours of operation for this category of users as this proposal in the application is extremely vague. Would this category of user ever be multiple users at the same time which could potentially create a higher parking demand? Should the application be approved, the Board may wish to establish a maximum day(s) and time(s) schedule for these occasional non-regular users.

No site plan changes are proposed.

No signage is proposed and none will be permitted as of right.

Copy To:

- PL/Zoning Chm./Atty.
- Boards Members
- Applicant
- Applicant's Atty.

COMMUNITY SERVICES

TO: Christa Anderson, Zoning Officer
 Eric Evers, Director/Fire Chief
 Steven Zagorski, Police Chief
 Engineering Division
 Burgis Associates (if applicable)

Ralph Maritato, Construction Official
 John Linson, City Forester
 Health Department
 Tom Conway, Chair, HPC
 Environmental Commission (if applicable)

FROM: Chris Nicola, Land Use Assistant, DCS

DATE: August 8, 2022

LOCATION: 31 Woodland Avenue **BLOCK:** 1903 **LOT:** 1

APPLICATION: Calvary Episcopal Church **FILE NO.:** ZB-22-2140

PROJECT: (d1) – variance & (c) – variance for off-street parking to permit rental of space for commercial purposes.

Attached is a copy of the plans and application for the subject property. Please review this proposal and return a copy of this memo with your comments prior to the date indicated below. Attach additional pages or reports, if necessary.

Please respond by: **August 26, 2022** (Please email cnicola@cityofsummit.org if you are unable to meet this date.)

COMMENTS:

Comply with applicable codes (JM)

Eric P. Evers

Fire Chief

August 22, 2022

DO NOT WRITE BELOW THIS LINE, PLEASE

____ Zoning; ____ Fire; ____ Police; ____ Engineer; ____ Construction Official; Forestry; ____ Board of Health; ____ HPC

400 Valley Road
Suite 304
Mt. Arlington New Jersey 07856
Main: 877 627 3772



Memorandum

To: Zoning Board

From: Christopher L. Dour, P.E., P.P.

Date: March 24, 2022

Subject: 31 Woodland Avenue
Block 1903, Lot 1
Summit, Union County, NJ

Summit No.: ZB-22-2140

We have reviewed the application and associated submissions prepared by Bartholomew A. Sheehan, Jr., Esq. of Dempsey, Dempsey & Sheehan, for The Rector, Wardens and Vestrymen of Calvary Church, the Applicants, for the subject property as referenced below:

- a. Application to Zoning Board of Adjustment dated May 11, 2022;
- b. Memorandum in Support of the Application for Development w/Exhibits, consisting of eight (8) pages, prepared by Hilary P. Ulz, Esq. of Dempsey, Dempsey & Sheehan;
- c. Application for a Certified List of Property Owners dated 4/11/22;
- d. Use Plan w/handwritten notations; and
- e. Plan entitled, "Preliminary and Final Site Plan, 31 Woodland Avenue, Tax Lot 1, Block 1905, City of Summit, Union County, New Jersey", consisting of eight (8) sheets, prepared by Michael T. Lanzafama, PE & LS of Casey & Keller, Incorporated, signed, dated 09/20/2017, last revised 06/07/2018 with Municipal Board Approvals.

Based on our review of the above-referenced documents, this office offers the following comments:

1. The 122,133-square foot (2.8-acre) property is located at the northeast corner of the intersection of Woodland Avenue and Deforest Avenue. To the immediate east is driveway access to the rear parking lot (vacated Larch Place), several businesses and the Maple Street parking lot. North of the property is the Beechwood at Summit apartment complex, and west (across Woodland Avenue) are a mix of commercial and residential properties.
2. The property is in the ORC (Office Residential Character) Zone, with surrounding properties in the B (Business), MFT (Multi-Family Tower Residential), and R-10 (Single Family Residential) Zone.

3. The Applicant received approval from the Zoning Board on May 21, 2018, with the Resolution memorialized on June 4, 2018, to improve the site by constructing a non-enclosed walkway from the existing Parish House to the existing House of Worship, resurfacing and re-striping the existing parking area, new walkways, patio area, improving landscaping, signage and adding lighting.
4. The present application is a request for a Use Variance to permit the Applicant to lease space for commercial services uses without reserved parking. The Applicant notes that they "...currently lease the space which is used for these commercial services at a rental rate that is below the market rate in furtherance of Calvary Church's community mission, and which fosters a benefit to the community at large." The Applicant further notes that "there have been no off-street parking issues associated with these uses experienced in the past."
5. The Applicant has provided Exhibit A "...which identifies the use, day and times of service, and the location within the building of such use" and "...the floor plans for the Parish House...attached...as Exhibit B."
6. The Applicant shall provide testimony if any signage is existing or proposed with the noted uses.
7. The Applicant shall provide testimony regarding the parking demand for these uses and if the demand can be met with on-site parking. We note that the parking approved by the Board included 41-standard parking spaces and 5-ADA compliant parking spaces.
8. With this application, the Applicant is not proposing any changes to the existing site plan, and we defer to the City Building Department for any interior building requirements.

The referenced application and plans provided, satisfy the engineering requirements for this variance application. **Should the Board approve the project, the approval may be subject to the issuance of a grading permit (Chapter 35, Article 15) and any required Board conditions.** The Applicant shall verify the need for a grading permit with the City which will not be issued until all conditions of the resolution of approval are satisfied.

If you have any questions or require anything further, please contact me.

CLD/lb

Copy To:

Ø PL/Zoning Chm./Atty.	Ø Applicant
Ø Boards Members	Ø Applicant's Atty.

COMMUNITY SERVICES

TO: Christa Anderson, Zoning Officer
Eric Evers, Director/Fire Chief
Steven Zagorski, Police Chief
Engineering Division
Burgis Associates (if applicable)

Ralph Maritato, Construction Official
John Linson, City Forester
Health Department
Tom Conway, Chair, HPC
Environmental Commission (if
Applicable)

FROM: Chris Nicola, Land Use Assistant, DCS

DATE: August 8, 2022

LOCATION: 31 Woodland Avenue **BLOCK:** 1903 **LOT:** 1

APPLICATION: Calvary Episcopal Church **FILE NO.:** ZB-22-2140

PROJECT: (d1) – use variance & (c) – variance for off-street parking to permit rental of space for commercial purposes

Attached is a copy of the plans and application for the subject property. Please review this proposal and return a copy of this memo with your comments prior to the date indicated below.

Attach additional pages or reports, if necessary.

Please respond **August 26, 2022** (Please email cnicola@cityofsummit.org if you are unable to meet this date.)
by:

COMMENTS: No objections

Ralph Maritato
(NAME) PRINT PLEASE

Construction Official
(PRINT TITLE)

8/9/22
(DATE)

Copy To:
 PL/Zoning Chm./Atty. Applicant
 Boards Members Applicant's Atty.

COMMUNITY SERVICES

TO: Christa Anderson, Zoning Officer
Eric Evers, Director/Fire Chief
Steven Zagorski, Police Chief
Engineering Division
Burgis Associates (if applicable)

Ralph Maritato, Construction Official
John Linson, City Forester
Health Department
Tom Conway, Chair, HPC
Environmental Commission (if
Applicable)

FROM: Chris Nicola, Land Use Assistant, DCS

DATE: August 8, 2022

LOCATION: 31 Woodland Avenue BLOCK: 1903 LOT: 1


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Please respond by: August 26, 2022 (Please email cnicola@cityofsummit.org if you are unable to meet this date.)

COMMENTS: No trees or landscaping are affected.
No objection. 

John Linson

Forester

8/22/22

(NAME) PRINT PLEASE

(PRINT TITLE)

(DATE)

Copy To:

⊖ PL/Zoning Chm./Atty.

⊖ Applicant

⊖ Boards Members

⊖ Applicant's Atty.

COMMUNITY SERVICES

TO: Christa Anderson, Zoning Officer
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FROM: Chris Nicola, Land Use Assistant, DCS

DATE: August 8, 2022

LOCATION: 31 Woodland Avenue **BLOCK:** 1903 **LOT:** 1

APPLICATION: Calvary Episcopal Church **FILE NO.:** ZB-22-2140

PROJECT: (d1) – use variance & (c) – variance for off-street parking to permit rental of space for commercial purposes

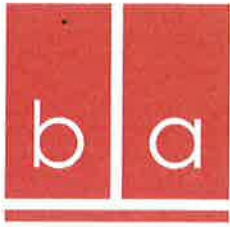
Attached is a copy of the plans and application for the subject property. Please review this proposal and return a copy of this memo with your comments prior to the date indicated below.

Attach additional pages or reports, if necessary.

Please respond **August 26, 2022** (Please email cnicola@cityofsummit.org if you are unable to meet this date.)
by:

COMMENTS: Do Comments.

George Kostas REHS 8/15/22
(NAME) **PRINT PLEASE** (PRINT TITLE) (DATE)



COMMUNITY PLANNING
LAND DEVELOPMENT AND DESIGN
LANDSCAPE ARCHITECTURE

PRINCIPALS:
Joseph H. Burgis PP, AICP
Edward Snieckus, Jr. PP, LLA, ASLA

B U R G I S
ASSOCIATES, INC.

MEMORANDUM

To: City of Summit Zoning Board of Adjustment
From: Ed Snieckus, Jr. PP, LLA & Tom Behrens, Jr., PP, AICP
Subject: The Rector, Wardens and Vestrymen of Calvary Church in Summit, New Jersey (Calvary Episcopal Church)
31 Woodland Avenue (File No. ZB-22-2140)
Block 1905 Lot 1
'd'(1) Use & 'c' Variance Requests
Date: September 2, 2022
BA#: 3903.09

I. INTRODUCTION

The Applicant, The Rector, Wardens and Vestrymen of the Calvary Church in Summit, New Jersey, is requesting 'd'(1) use variance relief to permit the renting of spaces in the building for third party commercial use. A 'c' variance is also requested from the applicable parking requirement. The site is located in the ORC Office Residential Character Zone wherein the existing house of worship is a permitted conditional use. The Applicant received 'd'(3) conditional use variance relief from the Zoning Board in 2018 to construct additions to the building and associated site improvements which have since been completed. The nature of the use proposal and extent of required variance relief are detailed herein.

II. DOCUMENTS SUBMITTED

Our office is in receipt of the following application documents for review:

1. Application and accompanying documents.
2. Parish House floor plans
3. Site plan (1 sheet) prepared by Kasey & Keller, Inc. dated revised June 21, 2018.

III. PROPERTY DESCRIPTION

The 2.8-acre site is identified as Block 1905 Lot 1 in City tax records. The irregularly shaped parcel has frontages of approximately 74 feet on DeForest Avenue and 291 feet on Woodland Avenue. Lot 1 is developed with several buildings including a 2-story stone parish house fronting DeForest Avenue, the Calvary Church building fronting Woodland Avenue and three additional 2 ½ story frame dwellings each with associated detached garages and a shed. Associated site improvements include paved parking areas and driveways, an extensive walkway system and landscaped areas. Access to the site is provided via a driveway easement from DeForest Avenue and one driveway on Woodland Avenue.

Surrounding development includes multifamily development to the north, commercial uses to the east and south on DeForest Avenue and the Hamilton House, single family homes, office use and Lincoln-Hubbard Elementary School to the west across Woodland Avenue. The following aerial image provides a general overview of the site (Note: Larch Place as shown on the map was vacated by the City).

IMAGE 1: SITE AERIAL PHOTOGRAPH



Source: Google Maps, September 2, 2022. Note: Lot lines are approximate.

PROPOSED DEVELOPMENT

The Applicant is requesting use variance relief to allow several third party commercial entities to operate within certain areas of the first floor of the building. At the moment, these uses include Passion for Spices cooking classes and Elite Fencers fencing classes. It is noted that there are no physical changes proposed to the site or interior of the building as the application is strictly limited to the aforementioned commercial uses of the building.

The following is offered for the Board's consideration with respect to specific elements of the development application:

1. Uses and Operations. Based on the schedule and location of use table provided in the application submission, the existing Passion for Spices use operates 7 days per week at varying hours. The Elite Fencers use operates Tuesdays, Thursdays, Fridays and Saturdays with some times overlapping the Passion for Spice classes. The schedule also notes that other "non-regular uses" include arts programs and dance programs for children up to 2 times per week in the Parish House area of the building.

The Applicant should specify their request to allow existing and potential future third party commercial uses of the building including the categories of uses, locations within the building that such uses occur and proposed hours of operation. The Applicant shall also discuss the extent to which such uses may coincide with each other and regular church services, programs and any non-profit uses of the building or grounds.

The Applicant shall confirm the maximum numbers of employees and students/clients of the proposed commercial uses at any given time.

2. Parking and Circulation. The site plan approved in 2018 includes a total of 46 parking stalls, including 5 handicap spaces. Variance relief was granted from the required 540 parking stalls required for houses of worship in accordance with the City's parking standards. The Applicant shall discuss the ability of the site and its circulation pattern to accommodate the proposed uses and pickup/drop off nature of the commercial uses. The Applicant shall also confirm the availability of on-street parking and public parking in near proximity to the site as well as the extent to which the proposed uses are utilized by Summit residents.
3. Signage. Our office has not received any plans for additional signage. The Applicant shall confirm whether any new signage is proposed for any of the proposed uses and request any variance relief as may be required.

IV. ZONING

The site is located in the ORC Office Residential Character Zone wherein the existing house of worship is a permitted conditional use. The following table illustrates the ORC Zone requirements in comparison with the site's existing and proposed conditions.

Table 1: ORC Zone Requirements

Requirements	ORC Zone	Existing
Min. Lot Area	87,120sf (2 ac)	No Change
Min. Frontage	200 ft	No Change
Min. Front Yard Setback DeForest Ave Woodland Ave	50 ft	No Change Addition: 28.34 ft (V)
Min. Side Yard Setback	50 ft	No Change
Max. Building Coverage	15%	20.33% (V)
Max. Lot Coverage	40%	54.38% (V)
Max. Building Height	35 ft	No Change
Min. Property Line Setback North East	20 ft 5 ft	No Change No Change
Min. Side Yard Buffer	50 ft	No Change No Change

(V): Variance relief previously granted.

Required Variance Relief

1. **'d'(1) Use Variance.** As noted above, the Applicant is requesting 'd'(1) use variance relief to permit several third party commercial/instructional uses to operate within the house of worship building on a daily building. The Applicant shall provide a justification as to the site's ability to accommodate these uses including consideration given to impacts to surrounding uses and the availability of on-site parking.
2. **'c' Parking Variance.** The Applicant shall specify the extent of required variance relief from the applicable City parking requirements for all proposed uses of the building.

V. STATUTORY CRITERIA

The Applicant is required to address the below statutory criteria for the requested 'd'(1) use and 'c' variance relief. It is our position that the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the Sica case law for inherently beneficial uses, which apply to the house of worship use itself, do not apply to the proposed commercial uses of the site. Therefore, the Medic case law for non-inherently beneficial uses requesting 'd'(1) use variance relief applies as summarized below.

'd'(1) Use Variance Relief (Medici)

The Municipal Land Use Law (MLUL) sets forth the statutory positive and negative criteria for variance relief. It permits a Zoning Board of Adjustment to grant a 'd' variance "in particular cases and for special reasons." The courts have determined that special reasons include a showing by the applicant that the granting of the variance will effectuate the intents and purposes of the MLUL and advance the goals and objectives of the local master plan. This is the "positive criteria" of the statute.

An applicant for a 'd'(1) use variance is obligated to address the planning issues raised in *Medici v. BPR, Co.*, 107 NJ 1 (1987). In accordance with the guidelines set forth in *Medici*, an applicant for a use variance must demonstrate that special reasons are satisfied by either showing that the proposed use is one which "inherently serves the public good" or that the proposed use promotes the general welfare because the proposed site is particularly suitable for that use. Particular suitability specifically refers to the unique attributes of the site that enable it to accommodate to the proposed use.

The negative criteria of the statute requires applicants to demonstrate that the granting of the variance will not cause substantial impairment to the public good. In addition, the *Medici* decision provides that in conjunction with the demonstration of the negative criteria, an enhanced quality of proof must be demonstrated to indicate that the grant of the requested use variance is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance.

'c'(1)/'c'(2) Variance Relief

The statute provides two approaches to 'c' variance relief, commonly referred to as the 'physical features' test and the 'public benefits' test. These are identified as follows:

- A. Physical Features Test: An applicant may be granted 'c'(1) variance relief when it is demonstrated that the noncompliant condition is caused by 1) an exceptional narrowness, shallowness, or shape of the property, 2) exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or 3) by reason of extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.
- B. Public Benefits Test: An applicant may be granted 'c'(2) variance relief where it can prove the following: 1) that the granting of the variance will advance the intents and purposes of the MLUL; 2) that the benefits of granting the variance substantially outweigh any potential detriments. The benefits are required to be public benefits rather than a benefit that simply accrues to the property owner.

In addition, the applicant must address the Negative Criteria of the statute. Here an applicant must demonstrate that the variance can be granted without substantial detriment to the public good and that it will not substantially impair the intent and purpose of the master plan and zoning ordinance.