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MEMORANDUM

To: Rocky Hill Planning Board From: Tamara L. Lee, PP, AICP, LLA, ASLA



Re: Orthodox Church of St. Elizabeth Date: April 27, 2017
 Variances, Site Plan, and
 Preservation Plan
 Block 13, Lot 10

The Applicant has submitted the following information:

- Completed application forms for Site Plan Development, Variances and Preservation Plan
- Completed checklists for variance and site plan applications
- Letter of Interpretation from NJDEP, dated May 14, 2012
- Architectural Plans (2 sheets), prepared by Paul K. Tajjloff, Architect, LLC, dated December 6, 2011
- Site Plans (5 sheets), prepared by D. S. Engineering, PC, dated December 26, 2016

After reviewing the plans and visiting the site, I offer the following comments:

1.0 Background

The 1.5 acre site is located on south side of Princeton Avenue, along the municipal line bordering Montgomery Township in the R-1 Residential Zoning District. The existing church was constructed in 1905. Churches are a conditional use within the R-1 zone. The existing church does not satisfy all the conditions of the conditional use, therefore it is currently a pre-existing, non-conforming use.

The applicant proposes to expand the church. It is a two story structure and each floor is presently 1,130 sf. The application proposes to add 980 sf to each floor. The total square footage will increase from 2,260 sf to 4,220 sf, almost doubling the size of the church. In addition, the new construction will add a bell tower and a total of four (4) new cupolas, typical of Russian Orthodox Church architecture. The existing stone parking lot will be paved and curbed as part of this project.

2.0 Zoning/Master Plan

As noted, churches are permitted in the R-1 Zoning District as conditional uses. If they satisfy the specified conditions, they are permitted in the R-1 zone. Historically, churches have been considered compatible with residential uses because they often serve the communities in which they are located. The extra requirements associated with the conditional uses are designed to minimize the impact of a non-residential use in a residential zone. A church is a more intense use than a house so things like the size of the building, the traffic circulation and expansive parking lots could adversely impact surrounding homes.

This church has been here since 1905 so it predates the current ordinance and even New Jersey's Land Use Law. The proposed application will increase some of the current non-conformities, thereby intensifying them and in turn intensifying the non-conforming use. In this case, the Board will be asked to determine if the expanded church can operate within the R-1 zone and still be compatible with the other uses in the neighborhood despite the increase in the nonconforming conditions. If the expanded church does not jeopardize the character of the community or create any adverse impacts, then the Board may determine that the proposed project will be consistent with the goals and objectives of the Borough's Master Plan.

3.0 Variances Requested/Required

3.1 Conditional Use Variance (D-3 Variance)

Pursuant to Section 80-85D(1), the conditions for a church within the R-1 Zoning District are as follows:

- The minimum lot size shall be two (2) acres.
- The facility shall be connected to public water and sewer.
- No building shall be within fifty feet (50') of any lot line.
- No accessory use shall be located within twenty-five feet (25') of any lot line.
- A fifteen foot (15') wide planted buffer shall be provided between all parking areas, outdoor facilities and adjacent lot lines.
- Parking shall be provided at a rate of one (1) space per three (3) seats.
- All other bulk requirements of the zoning district shall apply.

The application does not satisfy several of these conditions. In some cases they are pre-existing non-conformities but in others, the non-conformity is enhanced by the proposed construction. Pre-existing, non-conforming conditions do not require a new variance, but when non-conforming conditions are made worse by the proposed construction, the proposal is potentially intensifying the impact of the non-conforming use and so the condition must once again be evaluated as a D-3 use variance; that is, the variance that's required when a conditional use does not meet the requisite conditions.

- A. Lot Size – The lot size is not changing, but the proposed expansion will almost double the size of the church. Case law has determined that the intensification of a non-conforming use is equivalent to an expansion of a non-conforming use. The purpose of requiring a larger lot size for churches is to help mitigate the higher intensity of the church use. A D-3 variance is required because the lot is undersized and the church will be enlarged.
- B. Front Yard Setback – This is a pre-existing, non-conforming condition and none of the construction proposed will intensify this condition. Therefore, the front yard setback non-conformity is a pre-existing condition that does not require any new variance. The zoning schedule and variance notes should be corrected to show that the required front yard setback is 50 feet.
- C. Side Yard Setback – The western facade of the building will be extended toward the rear of the lot and this side of the building is less than the required fifty feet (50') from the property line. Therefore, there is the potential for the longer façade to adversely impact the adjoining property. This is another intensification of a non-conforming condition so a new D-3 variance is required. The zoning schedule and variance notes should be corrected to show that the required side yard setback is 50 feet.
- D. Accessory Use Setback – Parking is an accessory use and some parking is proposed within 25 feet of both the front yard lot line and both side yard lot lines. Improvements to the parking constitute an intensification of the accessory use and therefore a new D-3 variance is required. The zoning schedule and variances notes should be amended to show that the required accessory use setback is 25 feet.
- E. Buffer Planting – The building is being expanded. The size of the building and the increase in activity that will inevitably go along with a larger building represents an intensification of the use. This may create a greater need for buffering. Therefore, the lack of the requisite buffer planting requires a new D-3 variance. This buffer requirement and variance condition should be added to the zoning schedule and variance notes.

Case law has determined that the proofs necessary to justify the granting of a D-3 variance require the applicant to demonstrate that the expanded church will not adversely impact the neighborhood, will remain compatible with the character of the community and will continue to be consistent with the goals and objectives of the Master Plan despite the fact that it does not satisfy some of the conditions of the conditional use. The applicant is not required to provide 'special reasons' as if this were a non-permitted use.

3.2 Height variance (D-6 variance)

The existing building height is approximately 44 feet. The proposed building height will be 49'- 3". The permitted building height is 35 feet, the same as any residential structure in the R-1 zone. (S.80-85E(7)) Case law has determined that excessive building height has the ability to adversely impact the character of a neighborhood just as much as a non-permitted use might therefore a use variance is required for a building with excessive height. However, the requisite proofs are a little different. Again, case law has

determined that, under these circumstances, the use is assumed to be permissible and only the proposed height is evaluated relative to the character of the neighborhood.

This particular application is unique because it requires both a D-6 use variance and a preservation plan approval. The preservation plan review makes consideration of the architectural design of the tall elements relevant. In this application, the additional height is generated by adding ornaments to the existing and proposed steeples. Steeples are customary and incidental to churches. The new ornaments are known as 'onion domes' and they have special significance in the Russian Orthodox Church.

In my professional opinion, since this is a Russian Orthodox Church, the domes positively enhance the character of the architecture. However, the design of the domes would be more authentic if the dome on the main building were slightly larger than the rest, since there is usually a meaningful hierarchy to the domes in traditional Russian Orthodox Church architecture. In short, I'm suggesting that it would be appropriate for the main dome to be slightly larger, even though this would necessitate a slightly larger D-6 variance. It's possible that the lesser domes could be made smaller, but then it becomes a matter of appropriate scale with the building. The applicant should discuss the relevance and history of the use of domes to the proposed use.

3.3 Accessory Structure Setback (D-3 variance)

The zoning schedule indicates that there will be a frame shed 9.7 feet from the side lot line. The shed is not shown on the plans. If a shed is proposed and it is less than 25 feet from a property line, then a D-3 variance may be required, unless it is the same shed that currently exists on site. The applicant should present testimony to clarify this situation.

3.4 Buffer Planting (D-3 variance)

A 15 feet wide buffer planting is required and the existing buffer is approximately 6 feet on the east side and almost non-extended on the west side. Even though most of the expansion will occur on the east side, the fact that the church will almost double in size suggests that the driveway on the west side will see more traffic. Therefore, a visually impervious buffer may be appropriate along both side property lines. The applicant might consider some fencing with landscaping. Regardless, a D-3 variance is required.

3.5 Lot width (C variance)

The existing lot width is 119.44 feet and the required lot width is 150 feet. (S.80-85E(3)) This is a requirement of all uses, including residential uses within the R-1 zone. Although this is a pre-existing condition, the building is proposed to be wider and therefore the relevance of the lot width is impacted. Therefore a new 'C' or bulk variance is required for lot width. Since the applicant is choosing to expand the width of the building, rather than simply extending the building toward the back, it would be hard to make a case for a 'valid hardship' ('C-1' variance) however, a 'C-2' arguments might apply. The applicant should present appropriate testimony.

3.6 Impervious Cover (C variance)

The existing impervious cover is 21.58%. Permitted lot coverage is 20%. (S. 80-85E(8)) The proposed lot coverage is 22.22%. A 'C' variance is required for the increase in impervious cover. This appears to be a de minimis increase in impervious cover. It seems as though the existing gravel lot was considered impervious for the purposes of these calculations. Often gravel driveways and parking lots become so compacted by use that they are routinely considered impervious.

4.0 Site Plan/Subdivision

4.1 Parking Lot

The proposed parking lot is designed to utilize essentially the same space as the existing gravel parking lot, although the new lot will be curbed and paved. The parking is very close to the wetlands and in fact, some of it is within the wetlands transition area. While the gravel lot may have helped to slow and filter the stormwater runoff from the parking area, the paved lot will not. Moreover, the edge of the parking lot closest to the wetlands is proposed to have a depressed curb, allowing all the runoff from the parking lot to sheet flow directly into the wetlands. Oils from the asphalt and parked cars could adversely impact the wetlands. Typically this is an issue that would be under the jurisdiction of the NJDEP. The applicant should advise the Board whether or not a permit will be sought for construction within a wetlands transition area.

Regardless of regulatory jurisdiction, the wetlands are a local natural resource and the Planning Board may be rightly interested in their well-being. I would recommend that a raised Belgian block curb be installed along the southern edge of the parking lot without grout between the stone blocks. In addition, a French drain within a gravel trench should be installed on the back side of that curb. The open jointed curb will slow the sheet flow runoff and the gravel trench will capture the runoff, helping to contain a lot of the pollutants within this runoff's 'first flush.' This would help protect the wetlands. This is my opinion as a landscape architect. I must defer further to the Board Engineer and NJDEP for further comment.

4.2 Landscaping Plan

No landscaping is proposed. A landscaping plan should be provided and reviewed. Considering the increased intensity of the use of the site, more buffer would be appropriate. Since available space for a buffer is limited, a fence may be useful to help shield adjoining residential properties from parking lot activity. Also, some foundation planting around the building would be appropriate.

4.3 Grading and Drainage

The grading seems very flat and there are some low spots at the bottom of steps and ramps leading to first floor entrances. The applicant should explain to the Board how the site will drain and confirm that these low spots will also drain. In addition, the applicant should tell the Board where roof downspouts will be so the Board can evaluate where that drainage will flow. Downspouts should be added to the architectural and engineering plans.

4.4 Lighting

Section 80-59 stipulates that the maximum average light level cannot exceed 0.5 FC across the site. Footmetrics should be added to the plan so the Board can evaluate the proposed lighting.

Cc: Christine Witt, Board Sect.
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