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November 1, 2021

Zoning Board of Adjustment
Township of Berkeley Heights
29 Park Avenue
Berkeley Heights, NJ 07922

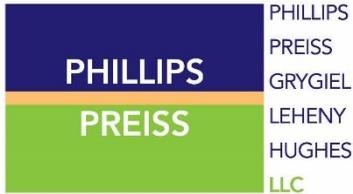
**Re: Planning Review #2
Application P&F1-21
Major Subdivision w/Variances
Oz Custom Builders
Block 2006, Lot 32
R-15 Zone**

Dear Chairman Sullivan and Members of the Board:

This is the second review letter in association with the above referenced application. The applicant is seeking major subdivision approval in order to divide the Westminster Presbyterian Church property into 5 new parcels. The applicant had received preliminary major subdivision approval from the Planning Board in April 2016, and also received an extension of approval; the extension has since expired. During our initial review of the application, it became apparent that the application required a “d(2)” variance, and thus the jurisdiction has been transferred to the Zoning Board of Adjustment. Since our initial review, the applicant has submitted revised plans; our office is in receipt of and have reviewed the following additional materials:

- Revised Major Subdivision Plan entitled “Westminster Presbyterian Church,” prepared by Murphy & Hollows Associates LLC, dated 4/30/2021, last revised 10/20/2021.
- Stormwater Management Report for “Westminster Presbyterian Church,” prepared by Murphy & Hollows Associates LLC, dated October 2021.

The following sections in the letter reproduce the contents of our initial review, dated August 17, 2021, while noting the changes presented in the revised plans. Original text from the initial letter are denoted in regular font, while modifications and new comments are provided in underlined text. Unless stated otherwise, the original comments shall remain valid.



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Site and Location

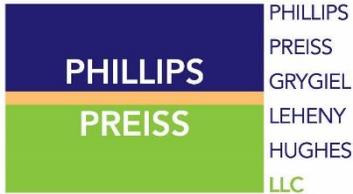
The existing property is an irregularly shaped lot with 259,748 square feet in total area. It is located at the intersection between Mountain Avenue and Plainfield Avenue, predominantly among single-family residences. The property is currently improved with a 2-story masonry building that serves as the main church building of the Westminster Presbyterian Church. Driveways from Mountain Avenue lead into a paved parking area to the east of the building. To the west of the building, there is a memorial garden; further west near the Plainfield Avenue frontage, two accessory structures are located on the site, both with access via driveways on Plainfield Avenue. The property is largely unimproved in other areas, which are covered by steep slopes and dense tree cover.

Proposed Development

The applicant proposes to subdivide the existing property into 5 new parcels:

- Proposed Lot 32.01: 128,372 square feet (2.95 acres). This parcel consists of the southeastern portion of the existing property along Maintain Avenue, and would contain the existing church building, southern driveway and parking area, and the memorial garden. A portion of the existing fence will be removed and replaced with a new fence.
- Proposed Lot 32.02: 20,327 square feet (0.47 acres). This parcel consists of the portion of the existing property by the intersection between Plainfield Avenue and Maintain Avenue. The existing accessory structures, driveways, and tree cover will be removed to accommodate a single-family dwelling and associated improvements.
- Proposed Lot 32.03: 42,400 square feet (0.97 acres). This is an irregularly shaped lot with partial frontage along Plainfield Avenue. Existing vegetation will be removed to accommodate a single-family residence and associated improvements.
- Proposed Lot 32.04: 25,534 square feet (0.59 acres). This is the northeastern corner of the existing property. Existing tree cover will be removed to accommodate a single-family residential development.
- Proposed Lot 32.05: 19,517 square feet (0.45 acres). This property would be located directly adjacent to the church parking lot area. Similarly, existing tree cover will be removed to accommodate a new single-family development.

The applicant additionally proposes to construct a new road (Westminster Court) ending in a cul-de-sac that extends from Plainfield Avenue to provide access to the 4 residential



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parcels. A 2-ft high retaining wall with drainage swale will be installed along the southern perimeter of Westminster Court. The applicant additionally proposes improvements to the sidewalk along Plainfield Avenue. 5 bioretention basins with underdrains, 2 on Proposed Lot 32.03 and 1 each on Proposed Lots 32.02, 32.04, and 32.05, will be provided. Around the basins, additional retaining walls ranging from approximately 3 feet to 6 feet in height are proposed around the basins.

Compliance

The subject property is located within the R-15 zone, which permits single-family detached dwellings as-of-right. However, because places of worship are not permitted in the R-15 zone, and the existing non-conforming church use will be intensified due to the reduction in lot area after the subdivision, a **d(2) variance** is required.

In addition, several “c” variances are required:

- Maximum other coverage (Proposed Lot 32.01): 10% permitted whereas 15.5% existing and 27.9% proposed. It should be noted that this is an existing nonconformity which will be exacerbated as a result of the reduction in the lot size; no actual addition of other coverage is proposed.
- Maximum impervious coverage (Proposed Lot 32.01): 25% permitted whereas 19.1% existing and 33.9% proposed. This variance is similarly caused by the reduction in the lot size due to the subdivision; no actual addition of impervious coverage is proposed.
- Minimum rear yard setback (Proposed Lot 32.02): 40 feet required whereas 15 feet proposed. This is a corner lot, where both street frontages are required to comply with front yard setbacks and one side yard setback and one rear yard setback must be maintained. While the proposed dwelling can meet side yard setback from the eastern property line, it is deficient in setback from the southern property line.
- Prohibited improvements on slopes of 25% or greater: Pursuant to §3.1.11.C1, on slopes of 25% or greater, no development, re-grading or stripping of vegetation shall be permitted unless the disturbance is for roadway crossings or utility construction. The revised plans newly provide an overlay of steep slope areas over proposed location of improvements and denotes that 108 square feet of areas with slopes of 25% or greater will be disturbed.

Planning Comments

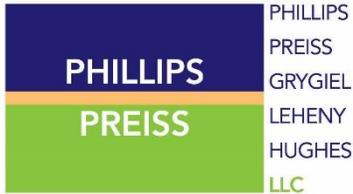
1. Pursuant to the MLUL at N.J.S.A. 40:55D-70d(2), the Board may grant a “d(2)” variance to permit expansion of a preexisting non-conforming use “in particular cases and for special reasons.” NJ courts have held that “special reasons” may be constituted by a hardship or if the granting of the variance can promote the general welfare; for example, if the expansion of the non-conforming use would minimize the non-conformity and make the use more compatible with its surroundings. In addition to the positive criteria, the negative criteria that the granting of the variance would not substantially harm the public good, nor substantially impair the intent and purpose of the zoning and master plan, shall be satisfied.

The applicant shall provide testimony justifying the d(2) variance for the intensification of the church use caused by the reduction in the lot size through subdivision.

2. Pursuant to the MLUL at N.J.S.A. 40:55D-70c, the Board may grant a “c” variance on two basis: (1) by reason of exceptional narrowness, shallowness, shape, exceptional topographic conditions, or other extraordinary and exceptional situation uniquely affecting a specific piece of property, the strict application of the regulation would result in practical difficulties or undue hardship upon the developer; or (2) the purposes of zoning would be advanced by the deviation and the benefits of deviating from the ordinance requirements outweigh any detriments. The Board must also be satisfied that the grating of the variance would not cause substantial detriment to the public good or substantially impair the intent and purpose of the zone plan and zoning ordinance.

The applicant shall provide testimony regarding the requested “c” variances for exceeding the coverage requirements on Proposed Lot 32.01, the deficient rear yard setback on Proposed Lot 32.02, and the prohibited improvements in areas with steep slopes of 25% or greater.

The Board should additionally note that there is significant disturbance (25,263 square feet) proposed in areas with slopes of 15%-24.99%. §3.1.11.C.2 requires site design and grading on slopes greater than 15% to provide minimum disruption of view corridors and scenic vistas and preserve significant natural topographic features to the greatest extent possible. The applicant should address and the Board should consider the overall impacts of the steep slope disturbance, and whether the proposed improvements have been designed to

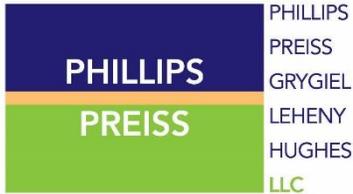


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preserve these sensitive environmental features to the greatest extent possible. We defer to the Board Engineer for additional comments on this issue.

3. In the R-15 Zone, a combined side yard setback of at least 30 feet must be maintained. The applicant has not indicated the proposed combined side yard setbacks for Proposed Lots 32.03, 32.04, and 32.05 (this requirement is not applicable to Lot 32.02 because it is a corner lot with only one side yard, while the church building and other improvements on Lot 32.01 will continue to be compliant). Based on the scaling on the plans and the proposed locations of the houses on each lot, it appears there would be a compliant side yard setback. The applicant shall confirm compliance. We recommend the Board to consider this as a condition of approval if the Board looks favorably on the application.
4. The applicant indicates that the proposed dwellings will comply with the height requirements of the zone. If the Board looks favorably on the application, we recommend height compliance as a condition of approval.
5. There will be substantial clearing of existing tree cover to accommodate the 4 new residences. If the Board looks favorably on this application, we recommend imposing a condition of approval that a tree replacement plan compliant with the regulations at Chapter 12.16 of the Municipal Code be submitted and approved prior to the issuance of construction permits.
6. According to the resolution of approval for the initial preliminary subdivision application, there was extensive discussion on the potential traffic safety issues of providing a new access from Westminster Court to Plainfield Avenue. The resolution notes that the applicant stated on the record to obtain a traffic study and Union County approval for its improvements affecting Plainfield Avenue. Because only preliminary approval was sought at the time, the Planning Board granted approval incorporating these representations and commitments as conditions.

The applicant has submitted a traffic impact statement, which noted that the site access location was previously reviewed and approved by the County in 2016 for the proposed subdivision. We note that the applicant has not provided a copy of County approval with this application. The traffic impact statement also concluded that the subdivision “will have no material impact on traffic conditions, due to the very low projected traffic generation.” The applicant should provide traffic testimony and confirm County approval; we defer to the Board Engineer for further comments on the adequacy of circulation, safety, access, sight distances, and other relevant matters.



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7. During the prior preliminary application, another topic of concern was the proposed drainage system and potential impacts of runoff. The resolution notes that the applicant agreed to perform a perc test and redesign the drainage system if necessary. We note that the applicant has not submitted results of a perc test. The applicant shall submit a study or provide testimony on these issues and if any substantial changes affecting these issues have been made to the proposed development since the time of preliminary approval. We defer to the Board Engineer for additional comments.

The applicant has newly submitted a Stormwater Management Report, which indicates that the proposed bioretention basins will discharge to the municipal storm system and will meet the quantity reductions and water quality reductions per NJDEP “major project” requirements. A waiver is requested for the groundwater recharge requirement, due to the low permeability of on-site soils. We defer to the Board Engineer for more detailed analysis on this issue.

8. The applicant shall also clarify how the bioretention basins will be maintained and who will be responsible for maintenance. Of particular concern is the extra basin located in the irregularly shaped area on Proposed Lot 32.03 that extends towards Plainfield Avenue. Because of the shape of the area and its distance from the residential home, this area is likely to be devoid of utility except for the retention basin. There may also be access issues due to the location of the basin. The applicant shall address these concerns. We defer to the Board Engineer for additional comments.
9. We additionally defer to the Township engineer for comments regarding the adequacy of grading and paving, environmental impacts, and other site and construction details.

We trust that the above information is responsive to your needs.

Respectfully submitted,

Keenan Hughes, AICP, PP