

Bulk variances for minimum lot area, frontage, depth, front, side and rear yard setbacks, impervious and building coverage, and for number of off-street parking spaces

**RESOLUTION
LEONIA PLANNING BOARD
APPLICATION OF NJ CALVARY CHURCH
CALENDAR NO. 2023-03**

WHEREAS, NJ Calvary Church (hereinafter referred to as the “Applicant”) applied for bulk variances for Site Plan approval (hereinafter referred to as the “Application”), as further described herein; and

WHEREAS, the property subject of the Application is identified on the Tax Map of the Borough of Leonia as Block 802, Lot 14 and Block 1203, Lot 1, and is more commonly known as 135 Fort Lee Road, Leonia, New Jersey (the “Property”); and

WHEREAS, the Property is located in the D Zone; and

WHEREAS, the Property is improved with a multi-tenanted office building; and

WHEREAS, the Applicant seeks permission to utilize a portion of the existing office building for a house of worship and ancillary uses related to a house of worship; and

WHEREAS, the application was called for a public hearing on June 13, 2023 on proper notice, at which time the Applicant was represented by Matthew G. Capizzi, Esq. and testified in support of the Application; and

WHEREAS, the Applicant presented the testimony of Ho Joon Chung, who was sworn and qualified as an expert in the field of architecture; and

WHEREAS, no exhibits were marked into evidence at the hearing; and

WHEREAS, the Applicant submitted in support of the Application a 1-page plan entitled “Zoning Application for Calvary Church” prepared by Ho Joon Chung, dated February 7, 2023 that depicted the floorplan of the demised space on the Property that the Applicant seeks to occupy; a 1-page survey prepared by Lakeland Surveying, dated March 28, 2017; and a 1-page signage plan prepared by Ho Joon Chung, dated February 7, 2023 that depicted the proposed signage; and

WHEREAS, the following members of the public appeared at the hearing and either asked questions or provided comments:

Robert Pawlick, 11 Highland Avenue, Leonia, New Jersey; and

Vito Mazza, 430 Grandview Terrace, Leonia, New Jersey; and

WHEREAS, the Board was assisted in the hearing by its planner, Sanyogita Chavan, P.P., who prepared a review memorandum dated May 28, 2023, and its engineer, Drew DiSessa, P.P.; and

WHEREAS, the Board has carefully considered the testimony of the Applicant; and

WHEREAS, the Board has made certain findings of fact and conclusions with respect to this Application.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Borough of Leonia that the following facts and conclusions of law are made and determined.

1. All of the recitals set forth above are incorporated herein by reference.
2. The Property is owned by Dobrivoye and Olivia Filipovich, who have consented to the Application.

3. The Property is located in the Borough of Leonia’s D Zone, which allows houses of worship as principal permitted uses.

4. The bulk standards for houses of worship in the D Zone are set forth in § 290-7(G) of the Borough’s Zoning Ordinance. The Property does not conform to many of these requirements as follows:

	Required	Proposed
Minimum Lot Area	1 Acre	0.3 acres
Minimum Frontage	150 feet	66.79 feet
Minimum Lot Depth	200 feet	139.27 feet
Minimum Front Yard Setback	50 feet	14.8 feet
Minimum Side Yard Setback	25 feet	0.2 feet
Minimum Rear Yard Setback	50 feet	42.3 feet
Impervious Coverage	65%	98%
Building Coverage	25%	32%
Off Street Parking	44 spaces	31 spaces

However, these requirements are not applicable to any of the other permitted uses in the D Zone, as §290-7(G) provides the conditional use standards for houses of worship in the residential zones of the Borough and is cross-referenced by § 290-23(A)(8), which enumerates that houses of worship are permitted in the D Zone “subject to § 290-7(G)”. Because houses of worship are specifically permitted “subject to” § 290-7(G), no conditional use variance is required here. Instead, the Board treats these deviations as bulk variances.

5. In addition to the foregoing, the Application required a variance for sign area, but during the hearing, the Applicant agreed to eliminate the sign variance deviation such that no relief is required.

6. As represented by the Applicant, the congregation intends to utilize the demised premises on the Property for worship services and fellowship on Sunday mornings, and the congregation's pastor will utilize the space for office use affiliated with the house of worship and ministering to individual members of the congregation during the remainder of the week. The remainder of the office tenants in the building do not use the Property on Sunday, which is when the highest parking demand for the demised premises will exist.

7. As shown on the Architectural Plan submitted with the Application, the sanctuary room will have 25 seats and there is a multipurpose room that is to be used for the fellowship activities after the religious services that are scheduled to take place only on Sundays. The limited space in the demised premises serves as a practical inhibitor to larger gatherings that would present a problem regarding off-street parking. Thus, the 31 parking spots on the Property are sufficient to accommodate the needs of the congregation, given that the peak parking demand will only occur on weekends when the office use on the Property is not in operation. To ensure that the parking demand from the proposed use does not interfere with the operation of the other businesses on the Property, the Applicant stipulated that it will not increase the number of seats in the sanctuary above 25, would not undertake any construction to enlarge the space or make the multipurpose room amenable to seating for the congregation during religious services.

8. The Board is authorized, pursuant to *N.J.S.A. 40:55D-70(c)(1)* to grant relief based upon a hardship arising from the physical conditions of the Property or an extraordinary situation caused by the lawfully existing the structures existing on the Property. Here, the

Applicant seeks to operate a permitted house of worship use in an existing building. However, because there are different zoning standards that are applicable to houses of worship than other uses in the D Zone, the Application requires bulk variance relief for minimum lot area, frontage, depth, front, side and rear yard setbacks, building and impervious coverage, and off-street parking. The Board finds that absent relief, the Applicant and its congregants would not be able to freely exercise their religion at the Property, which is an appropriate location for same given that the Borough Council has permitted house of worship uses in the D Zone.

9. The Board concludes that the grant of relief for the requested variances would not cause substantial detriment to the public good because of the nature of the Applicant's operations and the fact that no construction is proposed. Given the limitations set forth above and the fact that the peak utilization of the demised premises will occur when the remainder of the offices on the Property are not in active use, the Board finds that there will not be a substantial detriment from the parking shortfall. The area deficiencies (such as the lot depth, area, width, setbacks and coverages) for the proposed house of worship will not cause any impact to the adjacent properties because all of these conditions have existed for decades without incident. As no changes to the building or the Property are proposed, there will be no impact.

10. For these same reasons, the Board concludes that the grant of the requested variances will not substantially impair the intent and purposes of the zone plan and zoning ordinance. The provisions of §290-7(G) were crafted to establish the area and bulk requirements for religious uses in the A Residential Zones for stand-alone houses of worship and were designed to ensure that there was adequate space for such uses without causing impacts to the prevailing residential uses in those areas. Here, while the Borough Council applied the same standards to house of worship uses in the D Zone, the potential for adverse impacts to non-

residential uses is substantially lessened. Furthermore, the Applicant is not constructing a new house of worship on a vacant site. Instead, it is utilizing what was office space within an existing building and no construction is proposed, which is obviously a very different condition than a ground-up construction of a house of worship in a residential area. The grant of relief under these circumstances is reasonable and will not undermine the zoning goals set forth in § 290-7(G).

NOW THEREFORE, BE IT RESOLVED the Application of Calvary Church for variances for minimum lot area, frontage, depth, front, side and rear yard setbacks, impervious and building coverage, and for number of off-street parking spaces as set forth herein is hereby approved, subject to the following conditions:

1. **Location and Type:** The Applicant shall be permitted to utilize the Property for a house of worship shown on the Architectural Plan prepared by Ho Joon Chung, dated February 7, 2023 dated subject to the following conditions:

A. The Applicant shall not be permitted to increase the number of seats in the sanctuary beyond the twenty-five (25) seats shown on the Architectural Plan. Any proposal for an increase in the number of seats shall be reviewed and approved by the Board prior to the number of seats being increased.

B. The Applicant shall not modify the demised premises to eliminate the partition wall between the sanctuary and the multi-purpose room.

C. The Applicant shall revise its signage plans to conform to the maximum area limitations in the Zoning Ordinance.

2. **Legal and Engineering Fees:** The Applicant shall be responsible for all legal and engineering fees of the Planning Board in connection with this application and no Certificate of Occupancy shall be issued until all such fees are paid.

3. **Other Fees:** All additional fees, if any, required by the Borough Ordinances shall be paid.

4. **Reliance by Board on Testimony and Application:** This approval is specifically granted based upon the testimony of the Applicant, the exhibits, the application, any and amendments to same, submitted to the Board, all of which have been relied upon by the Board.

5. **Compliance with Ordinance:** Except for the variance(s) approved herein, the Applicant shall comply with all other provisions of the Zoning Code of the Borough of Leonia.

6. **Compliance with Laws:** The Applicant shall comply with all Borough Ordinances, and any and all State and Federal laws and applicable regulations.

7. **Non-Severability of Conditions:** The relief granted to the Applicant is specifically made subject to the conditions referred to herein. In the event any condition is held to be invalid, unenforceable, or unlawful, the entire variance shall be unenforceable. It is the intent of the Board that the variance(s) not be approved if any condition is invalid, and that the conditions are not severable from any variances or relief granted herein.

8. **Appeal Period:** The Applicant has been advised that there is an appeal period for the relief granted herein for a period of forty-five (45) days from the date of publication of notice of the relief granted pursuant to this Resolution in a newspaper of general circulation approved by the Board. Accordingly, any work or construction done prior to the expiration of the appeal period is accomplished at the sole risk of the Applicant.

The Board rendered its decision at the meeting prior to the adoption of this Resolution by the following vote:

Moved by: Mr. Ford
 Seconded by: Mr. Botten

	<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Absent</u>	<u>Not Qualified To Vote</u>
Michael DeGidio, Chairman	x				
Mayor Zeigler	x				
Councilman Fusco	x				
Ira Gold, Vice Chairman	x				
William Russell	x				
Ron Wolf	x				
Patrick Botten	x				
Timothy Ford	x				
Sean Thompson	x				
Haesok Ko					
Damee Choi					

Said Resolution was adopted by the following vote:

Moved by: *Mr. Ford*
 Seconded by: *Mr. Botten*


	<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Absent</u>	<u>Not Qualified To Vote</u>
Michael DeGidio, Chairman	✓				
Mayor Zeigler				✓	
Councilman Fusco	✓				
Ira Gold, Vice Chairman	✓				
William Russell	✓				
Ron Wolf				✓	
Patrick Botten	✓				
Timothy Ford	✓				
Sean Thompson	✓				
Haesok Ko	✓				x
Damee Choi				✓	x

Dated: June 28, 2023

LEONIA PLANNING BOARD

By: 
 Michael DeGidio, Chairman

CERTIFIED TO BE A TRUE COPY

By: 
 Michael Greco, Administrative Secretary to
 the Planning Board