LIEBERMAN BLECHER & SINKEVICH P.C.
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September 14, 2023

**VIA EMAIL AND FEDEX**

Mark Healey, PP/AICP
Planning Director/Senior Zoning Officer
Franklin, NJ
Mark.Healey@franklinnj.gov

***RE: ECG New Jersey Inc.***
***Veronica Plaza Unit 1011, 1165 Route 27***
***Block 88.01, Lot 43, General Business Zone***
***Franklin, NJ***
***D(3) Use Variance Application for Conditional Use – House of Worship***

Dear Mr. Healey:

This firm represents ECG New Jersey Inc. ("ECG") regarding the use of the above-named unit as a church. This memo is submitted in support of ECG's application to the Franklin Township Zoning Board for a D(3) use variance to use the unit as a house of worship, which is a permitted conditional use in the applicable zone. It has been prepared in consultation with Gordon Gemma, P.P. ECG seeks two variances from the parking conditions applicable under Ordinance 112-37: parking requirements, and parking location.

## I. GENERAL DESCRIPTION

The unit is 1,600 square feet and occupies part of the Veronica Plaza shopping center on Route 27. The unit was previously used as retail, most recently as a spa.

The proposed use of the unit will be as a house of worship, with only one service on Sunday afternoons, from 12 p.m. to approximately 2:30 p.m., 3 p.m. at the latest. The church will not host any other activities during the week. All Bible study is conducted via Zoom, and Sunday services are also live streamed on Zoom. The church does not use buses to bring attendees to worship. Members of the congregation come by car or public transportation which is within walking distance of the Property.

ECG New Jersey is a small Christian church with only one branch in New Jersey. The church previously rented space at Six Mile Run Reformed Church on Route 27 for

approximately one year. The congregation also meets on Zoom. In addition to the single weekly service, outside the church space itself, the congregation works with local community groups and raises money for charity. They do community service at the food bank on Churchill Street. There are other branches of the church in other states, including New York, Washington, Texas, and California, all of which use similar small spaces.

There are 48 seats proposed in the church. All 48 seats will be movable chairs. Current membership is about 25 people. The expected average occupancy is 30-35 people. The maximum total occupancy proposed is 49 persons. The total worship area is approximately 350 SF. There are no plans or reasonable expectations to increase past the 48-seat capacity. There will also be a movable table and movable pulpit for religious services. Although there are no current plans, at some point in the future the applicant may install temporary walls on the interior of the unit for a small babysitting "cry" room for children to stay during services.

The only proposed additions to the building are new emergency lights inside the unit and a new lettered sign in the front of the unit. Existing exterior emergency lights will remain. The new sign with the church's name, "ECG-TJN Church," will be contained within the existing sign box and will be approximately 14' 9" long, which is smaller than the existing sign for the previous tenant, SkyVue Spa, and otherwise complies with all ordinance requirements for signage. The applicant does not seek any sign variances. No external improvements other than the sign are proposed. No construction, or increases in lot coverage or floor area, are proposed, and there will be no reduction to egress. The church has no current plans to sublet the space.

## II. OTHER USES IN SHOPPING CENTER

Other uses in the shopping center are as follows:

| **Rear Building** | **Sq. Ft.** |
|---|---|
| **ECG NJ (previously SkyVue Spa)** | 1600 |
| **Paramount Staffing** | 2000 |
| **King's Pizzeria** | 1600 |
| **Juanita's International Beauty Salon** | 1530 |
| **AAA Pharmacy** | 1530 |
| **A-1 cleaners/vacant** | 1466 |
| **L'Affaire Bakery** | 1466 |
| **China Moon** | 1360 |
| **Cool Nails** | 1253 |
| **Gladys African Fabrics & Market** | 1253 |
| **Veronica Plaza Diner & Restaurant** | 2533 |

| | |
|---|---|
| Total | 17,591 |

| **Front Building** | **Sq. Ft.** |
|---|---|
| **Carbon Health Urgent Care of Somerset** | 3600 |
| **Trinity Rehab** | 3200 |
| **Vacant (prev. 7 Eleven)** | 3060 |
| **Vacant (prev. dental office)** | 1400 |
| **Vacant** | 1750 |
| **Total** | 13,010 |

In addition, with the construction underway for Dunkin Donuts, there will be a new building containing Dunkin Donuts, with a total square footage of 33,881 for the shopping center.

Currently, nearly all other uses in the rear building are closed on Sundays. L'Affaire Bakery and China Moon are open on Sundays. Gladys African Fabrics & Market is open on Sundays after church service ends. Dunkin Donuts will be open on Sundays.

## III. VARIANCES REQUIRED

This application requires variances from two of the conditions on a house of worship: 112-37D and 112-37E.

**Variance #1: Parking requirements.** (112-37D)

*(1) One parking space per every three seats.*

Ordinance Requirement: One seat shall be considered 22 inches in calculating the capacity of pews or benches. In the event there is no seating provided, parking shall be provided at one parking space for every three persons at the largest anticipated gathering or a minimum of one parking space for every 15 square feet of worship area.

Variance Needed:

**Summary:** Under the ordinances, the shopping center, together with the unit, will require 155.4 parking spaces. Only 153 spaces exist. Therefore, there will be a deficiency of 2.4 spaces, requiring a variance.

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**Details:** The applicable standard for the unit is based on one space for every 15 square feet of worship area. Per the plan provided, the worship area is approximately 350 square feet. This requires 23.33 parking spaces.

The unit is in a shopping center, which is currently under construction with the new Dunkin Donuts building. With the new Dunkin Donuts, the total square footage will be 33,881 SF. Under Franklin ordinances, a shopping center over 25,000 square feet uses the standard of one spot per 225 square feet of gross floor area (112 Attachment 4).

Under Franklin ordinances, off-street parking for combined uses shall be the sum of the requirements for the individual uses. Ord. 112-99.

Calculation of parking is therefore as follows: parking for the remainder of the shopping center (1 place per 225 SF), plus parking for the place of worship (1 place per 15 SF worship area).

| Parking Spaces | | Calculation |
|---|---|---|
| 153 | existing (after modifications related to Dunkin Donuts) | |
| 143.47 | requirement for remainder of shopping center (33,881 SF – 1,600 SF unit) | 32,281 SF / 225 = 143.47 |
| 23.33 | Requirement for church (minimum based on 1 per 15 SF worship area) | 350 SF / 15 = 23.33 |

However, under Ordinance 112-98, half of the off-street parking space required by any use whose peak attendance will be at night or on Sundays (such as but not limited to churches, theaters and assembly halls) may be assigned to a use which will be closed at night or on Sundays. This means the church may consider half of its required spaces as assigned to the other uses that are closed on Sundays. This leaves the church with only 11.67 spots required.

| Parking Spaces | | Calculation |
|---|---|---|
| 23.33 | church (minimum based on 1 per 15 SF worship area) | 350 SF / 15 = 23.33 |
| 11.67 | Parking requirement for house of worship after assigning half to uses closed on Sundays | 23.33 / 2 = 11.67 |

The final calculation is as follows:

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| Parking Spaces | | Calculation |
|---|---|---|
| 153 | existing (after modifications related to Dunkin Donuts) | |
| 143.47 | requirement for remainder of shopping center | 32,281 SF / 225 = 143.47 |
| 23.33 | church (minimum based on 1 per 15 SF worship area) | 350 SF / 15 = 23.33 |
| 11.67 | Parking requirement for house of worship after assigning half to uses closed on Sundays | 23.33 / 2 = 11.67 |
| 155.4 | Total parking requirement (house of worship and remainder of shopping center) | 143.47 + 11.67 = 155.4 |
| 2.4 | Deficiency | 155.4 – 153 = 2.4 |

**Variance #2: Parking location.** (112-37E)

Ordinance Requirement: The majority of the parking shall be located to the rear of the main structure, with no more than 10% of the total parking located at the front entrance for handicapped accessibility, weddings and funeral services.

Variance Needed: Due to the Dunkin Donuts construction, all spaces in the rear of the building are being eliminated or curbed and landscaped. As a result, parking in the rear of the building will not be possible, and a variance is required.

## IV. STATEMENT OF IMPACT OF VARIANCES

**State why the property is particularly suitable for the proposed use, including any inherently beneficial conditions and/or any undue hardship, if any, showing that the property cannot reasonably be adapted to a conforming use.**

Houses of worship are a permitted conditional use in the GB zone. The applicant only requires a variance due to technical non-compliance with parking ordinances applicable to the zone. The status of the shopping center is preexisting. Most houses of worship in the Township are typically stand-alone buildings, rather than units in a shopping center, which means the parking requirements for a house of worship do not take into account, generally, the possibility that a unit would be in a shopping center.

The property cannot reasonably be adopted to conform to the conditions for the number of parking spaces because the unit is contained within a pre-existing shopping center. The applicant cannot change the site plan of the shopping center. Because this house of worship

would be housed in a shopping center unit, there is already a very large amount of parking, which is not being used by other units in the shopping center.

In addition, the property cannot reasonably be adopted to conform to the condition for the location of parking, because the pre-existing site plan for the shopping center dictates parking location. In addition, Dunkin Donuts is removing all existing rear parking spaces behind the unit, which makes it impossible to fulfill this requirement.

**Supply a statement of facts why relief can be granted without substantial detriment to the public good.**

As it relates to the number of parking spaces, relief can be granted without substantial detriment to the public good because there is no anticipated impact on the public from the deficiency of 2.4 parking spaces at the shopping center. Most uses at the shopping center are closed on Sundays. In addition, the unit will only hold one service on Sunday afternoon, for only a few hours. The deficiency of 2.4 spaces is not anticipated to impact the public because the unit will be able to use 2.4 spaces that already exist at the shopping center without preventing others who need the spaces from accessing them. There will be no need for them to park on the street, or at any other location, since there is a large amount of preexisting parking which can accommodate this deficiency, because nearly all other uses are closed on Sundays. There will be no practical or aesthetic impact to the public.

As it relates to the location of parking, relief can be granted without substantial detriment to the public good because there is no anticipated impact on the public from the use of front parking spaces to access the unit. The unit will still be wheelchair accessible. The ingress and egress to the unit will not be impacted. Any aesthetic concerns about parking located in the front of a house of worship, which might typically be a stand-alone building, are not relevant here because the parking is preexisting as part of a shopping center. The applicant is not adding new parking anywhere that it does not already exist. There will be no practical or aesthetic impact to the public.

**Supply a statement of facts why relief can be granted without substantial detriment to the intent and purpose of the zone plan and zoning ordinance.**

These two variances can be granted while aligning with the intent and purpose of the zone plan and zoning ordinance because a house of worship is a permitted conditional use in the zone, and the minor relief requested from the parking ordinance does not impair the intent of Franklin's zoning.

Ordinance 112-8(M) states that "the purpose of the GB District is to provide business and commercial uses for the local traveling public. The district is established to preserve and enhance commercial, financial, retail and similar activities and services." Allowing these two variances will not impair this purpose of the GB zone. Rather, it will enhance the diversity of the GB zone businesses and services, as intended by the ordinance.

The parking requirements are intended to ensure there is sufficient parking for both the conditional use and the area around it. In this case, that intention is well satisfied because there is a large amount of parking at the site. Even though there is a deficit of 2.4 spaces technically, in practice there will be no practical deficit, because the other uses at the shopping center are nearly all closed on Sunday, so nearly all the 153 spaces will be available for use. Even if the church reaches maximum capacity and has to use 24 parking spaces, there is essentially no possibility that every space in the lot will be taken. As a result, adequate space is ensured for both the conditional use and surrounding uses.

The ordinance also mandates, "The majority of the parking shall be located to the rear of the main structure, with no more than 10% of the total parking located at the front entrance for handicapped accessibility, weddings and funeral services." While it is not immediately clear from the ordinance what the intent of this provision is, it is evident from the text of the ordinance that at least some parking can be located at the front entrance. The ordinance does not state any public health or safety reason why the parking should be located to the rear.

One clue as to the ordinance's purpose may lie in the Commercial Design Standards, at Ordinance 112-206.7, which states: "Placing large amounts of parking between the front door of buildings and the adjacent street contributes to an unenthusiastic arrival experience for patrons and creates a detached relationship between the primary building and the street. The scale of parking areas should be reduced by locating a portion of the parking lot out of view, providing clear pedestrian circulation paths and amenity areas within parking areas, and using increased landscaping within parking lots to screen spaces and reduce the overall visual impact of large parking areas."

If the ordinance's purpose is one of keeping parking away from the public eye, relief from this requirement will not cause substantial detriment to that purpose because the parking is preexisting in the shopping center, and the church will not be adding any new parking. The parking does not sit between the front of the building and the street. It is a self-contained parking area. If this church does not use the parking spaces, they will sit empty on Sundays.

In addition, the language of the ordinance cites a "main structure." At this shopping center, there are two main buildings existing, and another Dunkin Donuts building will be added.

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Therefore there is not a "main structure" as there conventionally would be with a stand-alone church.

For these reasons, this variance relief can be granted without substantial detriment to the intent and purpose of the zone plan and zoning ordinance.

## V. REMAINING CONDITIONAL USE ORDINANCE REQUIREMENTS SATISFIED

Under Ordinance 112-37, houses of worship are a permitted conditional use in the general business zone. Our client meets these conditions as follows. The only conditions which our client does not meet are 112-37(D) and (E), regarding parking.

First, the application meets the following requirements under Ordinance 112-34 which states that conditional uses shall be permitted upon authorization by the Planning Board, provided that they comply with the following requirements and other application requirements:

1. The use is so designed, located and proposed to be operated that the public health, safety, welfare and convenience of the citizens will be protected.
2. Adequate landscaping and screening is provided.
3. Adequate off-street parking and loading is provided, and ingress and egress is so designed as to cause minimum interference with traffic on abutting streets.
4. The use conforms to all applicable regulations governing the district in which it is located.

No impact to public health, safety, welfare or convenience of citizens is anticipated. The existing landscaping and screening of the shopping center will not be affected. Although two variances are required for technical nonconformity with the parking requirement ordinances, adequate off-street parking is provided and there will be no new interference with traffic. Finally, the use conforms to all applicable regulations in the GB zone, with the exception of the two variances requested.

**1. Roadway location.** (112-37C)

Requirement: No place of worship having a gross floor area over 5,000 square feet shall front or have direct vehicular access to a street classified in the Township Master Plan as a scenic roadway (with the exception of those roadways under state or county jurisdiction) nor shall a place of worship having a gross floor area over 5,000 square feet be located on any roadway with an improved cartway width of 18 feet or less.

Requirement Satisfied: This condition has been satisfied; the unit is within a larger shopping center and has no direct vehicular access to a street.

2. **Parking requirements.** (112-37D)

(1) One parking space per every three seats. (Variance requested – see above)

(2) Overflow parking.

Requirement: Depending on the number of special occasions, the Planning Board may require overflow parking to be constructed of pervious pavement materials. Parking may be banked upon approval of the Planning Board in anticipation of future growth, but it shall be delineated on the plan and included in all coverage calculations and drainage calculations.

Requirement Satisfied: Applicant does not anticipate any overflow parking. In the event of unanticipated overflow parking, the large number of parking spots that are unused on Sundays may serve as overflow parking.

3. **Parking location.** (112-37E) (Variance requested – see above)

4. **Parking setbacks and standards.** (112-37F)

Requirement: Unless modified herein, the parking setbacks and standards contained in Article XI (§ 112-81 et seq.) for the applicable zone shall apply, provided that no parking or access driveways shall be permitted within any required buffer area identified in Subsection K below.

Requirement Satisfied: No changes to the existing parking facilities are proposed.

5. **Building setbacks.** (112-37G)

Requirement: The walls of the main building or of any accessory building or structure greater than 100 square feet shall be set back in compliance with the zone district requirements, but in no case less than 50 feet from the abutting street right-of-way line or lines (front yard setback) or less than 25 feet from every adjoining property line.

Requirement Satisfied: No changes to the building setbacks are proposed.

6. **Building height.** (112-37H)

Requirement: The building shall not exceed the height restrictions for the zoning district in which it is to be located unless in accordance with § 112-28.

Requirement Satisfied: No changes to the building height are proposed.

7. **Impervious cover.** (112-37I)

Requirement:

(1) Impervious cover shall be permitted to be two times the allowable percent in the applicable residential zone, and shall comply with the applicable percent in nonresidential zones and the HBD zone.
(2) Impervious cover may be increased an additional 10% upon approval by the Planning Board where the parking, drive or pedestrian surface is constructed of pervious pavement material, subject to the same conditions contained in Subsection D(2) above.

Requirement Satisfied: No changes to the building's impervious cover are proposed.

8. **Lot cover.** (112-37J)

Requirement: Lot or building cover maximums shall not exceed the allowable percent in the applicable zone.

Requirement Satisfied: No changes to the lot cover are proposed.

9. **Buffers and lighting.** (112-37K)

Requirement: Buffering, landscaping and/or fencing shall be required pursuant to either of the following standards in Subsection K(1) or (2) below where any yard is adjacent to a residential zone or residence:

(1) Fifteen feet of heavily landscaped buffer containing, at a minimum, a double, staggered row of evergreen trees planted at a maximum of 10 feet on center with a minimum planting height of six to eight feet, or approved equivalent; a mix of evergreen and deciduous shrubs; and a six-foot high, solid, board-on-board fence; or

(2) Twenty-five feet of heavily landscaped buffer containing, at a minimum, a triple, staggered row of evergreen trees planted at a maximum of 10 feet on center with a minimum planting height of six to eight feet, or approved equivalent; and a mix of evergreen and deciduous shrubs.

(3) Lighting shall be designed to minimize glare and spill-over onto adjacent property or into the sky. This shall be accomplished through the use of cutoff fixtures and/or reflectors so that light is directed, as much as possible, to the area intended to be illuminated. The light source shall be fully concealed. Where located adjacent to a residential zone or residence, lighting fixtures shall be limited to 15 feet in height and 250 watts in power and shall not exceed 0.0 footcandles beyond the property line zoned or used for residential purposes;

Requirement Satisfied: The lot is not adjacent to a residential zone or residence. Therefore, this requirement does not apply. In addition, no changes to the buffers, landscaping, fencing or lighting are proposed.

**10. Minimum Lot Area.** (112-37L)

Requirement:

(1) In the A, CP, RR-5 and RR-3 Districts: two times the minimum lot area required of a single-family home.
(2) In the R-40, R-20, R-15, R-10, R-10A, R-10B, C-R and R-7 Districts: three times the lot area required of a single-family home or one acre, whichever is greater.
(3) In the GB, NB, OP and HBD Districts: the minimum lot area requirement applicable to nonresidential uses.

Requirement Satisfied: No changes to the lot size are proposed.

**11. Location on flag lot prohibited.** (112-37M)

Requirement: When located in a residential zone and/or adjacent to a residence, no place of worship shall be located on a flag lot as such term is defined in § 112-71.
[Amended 9-14-2010 by Ord. No. 3898]

Requirement Satisfied: Under Ord. 112-71, a "flag lot" is "a lot or parcel created by subdivision which:

A. Does not have the required length of frontage on a public street;
B. Is connected to a public street by means of a flagpole; and
C. Is located behind a lot or portion of a lot which has frontage on a public street."

This unit is not in a residential zone or adjacent to a residence. In addition, it does not meet the definition of a flag lot. Therefore, a house of worship in this unit is in compliance.

## VI. CONCLUSION

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We respectfully submit this application for your review. Please do not hesitate to contact our office with any questions or for any additional information.

Very truly yours,

/s/ Zoe N. Ferguson
Zoe N. Ferguson, Esq.
of LIEBERMAN BLECHER & SINKEVICH, P.C.

/znf
cc: ECG New Jersey, Inc. (*via email*)
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