

**RESOLUTION OF THE PLANNING BOARD OF THE CITY OF JERSEY CITY**

**APPLICANT:**                    **BGT ENTERPRISES LLC**  
**FOR:**                            **PRELIMINARY AND FINAL MAJOR SITE PLAN APPROVAL WITH “C” VARIANCES**  
   **(REAR YARD SETBACK)**  
   **325-329 NEWARK AVENUE, JERSEY CITY, NEW JERSEY**  
   **BLOCK 11001, LOT 6**

**CASE NO.:**                    **P20-117**

**WHEREAS**, the Applicant, **BGT Enterprises LLC**, per **CONNELL FOLEY, LLP** (Charles J. Harrington, III, Esq., appearing) made application to the City of Jersey City Planning Board, County of Hudson and State of New Jersey, for Preliminary and Final Major Site Plan Approval with “c” variances (rear yard setback), to wit, Calendar No. P20-117, to construct a new five (5) story mixed-use building with sixteen (16) residential units and ground floor commercial space (the “Project”), with regard to the property located at 325-329 Newark Avenue, and which is identified on the Jersey City tax maps as Block 11001, Lot 6, and is located within the NC Neighborhood Commercial zoning district (the “NC Zone”); and

**WHEREAS**, it appears that due notice of a hearing on the above said application before the Planning Board of the City of Jersey City, on July 6, 2021 at 5:30 p.m., was duly published as prescribed in the Jersey City Land Development Ordinance of the City of Jersey City; and

**WHEREAS**, the application was heard by the Planning Board on July 6, 2021 by way of a Virtual meeting via Zoom; and

**WHEREAS**, the Applicant has submitted proof that it has complied with the applicable procedural requirements including the payment of fees and public notices; and

**WHEREAS**, the Applicant and its witnesses first having been sworn and all testimony having been formally heard for this application; and

**WHEREAS**, after consideration of the application and the testimony presented at the meeting, the Planning Board has made the following findings of fact:

**FINDINGS OF FACT**

1. All the Recitals hereinabove set forth are incorporated herein by reference and all the exhibits, drawings and documents, including the architectural site plans prepared by

International Office of Architects (Murat Mutlu, AIA) dated June 25, 2021, the Applicant's General Development Application and supporting documents (collectively, the "Applicant's Supporting Documents") and City planner's testimony and reports, if any, are hereby incorporated by reference.

2. The Applicant made application to the City of Jersey City Planning Board, for Preliminary and Final Major Site Plan Approval to construct a new five (5) story mixed-use building with sixteen (16) residential units and ground floor commercial space (the "Project"), with regard to the property located at 325-329 Newark Avenue, and is identified on the Jersey City tax maps as Block 11001, Lot 6 (the "Property").
3. The Property is located within the NC Neighborhood Commercial zoning district (the "NC Zone") and is subject to the requirements of the Jersey City Land Development Ordinance (the "JC LDO").
4. The Property is an irregular triangular corner lot of approximately 3,698 square feet. The Property currently contains a one (1) story auto shop (former gas station) and a three (3) story residential building, and has 100% lot coverage.
5. Murat Mutlu, AIA was accepted as an expert in the field of architecture by the Planning Board. Mr. Mutlu testified as to the existing conditions, the site plan, floor plans, material selections, and overall building design. The Project will be providing a setback between the new building and the existing building to the west. This setback area will have a fence / door accessible by the building occupants and with a push bar out. He also described and explained that portions of the building on the upper floors will extend into the public right-of-way. The extension of the upper floor areas into the right-of-way is consistent with other projects approved by this Board and along Newark Avenue.
6. Edward Kolling, PP of Dresdner Robin was next to testify on behalf of the Applicant. Mr. Kolling was accepted as an expert in the field of planning.
7. Mr. Kolling testified as to the following variance:
  - a) A variance to permit a relief from the minimum required rear yard setback.
8. Mr. Kolling used Exhibit A-2 and explained to the Planning Board that this Property does not have an actual rear lot line, as defined in the JC LDO, but instead it has a rear lot "point" along Fourth Street.
9. This Property is a corner lot at Fourth Street and Newark Avenue, and it is a triangular lot. Accordingly, there are only three sides.

10. Mr. Kolling testified that the first thing to do is to determine what are the front, rear, and side lot lines.
11. On a corner lot, the frontage that is narrower is the front lot line. In this case, Newark Avenue has a lot line of 87.71 feet. The Fourth Street lot line is 121.52 feet. Accordingly, the front lot line is Newark Avenue.
12. A rear lot line is defined as the lot line opposite and most distant from the front property line. Fourth Street, because it is the longer lot line is a side lot line, just by practice and definition, but also, by this definition it is not a rear lot line, because Fourth Street cannot be most distant, because it actually touches the front property line; it's adjacent thereto. Therefore, it cannot be considered the rear property line.
13. The same is true for the interior lot line, which measures 84.23 feet, which is essentially perpendicular to Newark Avenue. Therefore, this lot line cannot be opposite and it does not meet that part of the definition. It is also not most distant, because it adjoins the front property list, so it is not most distant.
14. The definition of a rear yard actually addresses this particular condition, and it states that it is the opposite and most distant from the front lot line, or the point at which the side lot lines meet. Accordingly, there is a side lot line as an interior lot line, and a side lot line on Fourth Street, and where those two lines meet, that point becomes the rear lot point (this is shown on Exhibit A-2).
15. Mr. Kolling explained that the next step would be to take the rear setback from that point. In the NC Zone, the rear setback requirement is 15 feet. The distance from Newark Avenue to the rear lot point is 84.23 feet. A setback of 15 would be taken from that point. In essence, it is a radius which would measure 15 feet down the side lot line of the interior lot line and 15 feet down the Fourth Street side lot line (this is shown on Exhibit A-2).
16. Another way to define these side lot lines is that a "side lot line" is defined as any lot line that's not a front or a rear. Since those two lines do not meet the definition of either a front or a rear, by definition they are side lot lines. This further emphasizes that this Property has a front lot line, two side lot lines, and a rear lot point.
17. By definition, lot depth is the shortest horizontal distance between the street line (the front line) and the rear lot line. In this case, that distance is 84.23 feet.
18. Mr. Kolling acknowledged that it could be argued that the Fourth Street frontage is the lot depth because the definition goes on to say that the greatest dimension on a corner lot is its depth. While Mr. Kolling did not agree with that analysis, he advised that that could result in

a greater required setback from the rear lot point. However, it does not change the review and analysis of the requested rear lot variance because the proposed setbacks are a much better design and a benefit for the neighboring property.

19. If one measured 15 feet from the rear lot point, the side yard is always going to be 0. So, if the building were built strictly complying with the ordinance, you would have a 0 side yard. In this case, this would not be a good approach to design because the adjoining building on Lot 5 has eight or nine nonconforming lot line windows. So if the building were built right on the lot line, approximately 60 of those 85 feet would be covered by the proposed building, and those lot line windows would be covered. There are also protrusions that come out of that building that would also be covered. If you apply the greater rear yard setback of 25 feet, you still have 60 feet of building covering almost all of the windows, as well as the protrusions.
20. The Project's proposal is to provide a 3'—8" side yard setback. By pulling the building back 3'—8", it recognizes the existence of those nonconforming windows, and those protrusions, and allows them to continue to exist, providing more air, light, and open space to that property, and on the particular Property itself.
21. If you compared a 15-foot setback or 25 feet, the open space provided by the 3'—8" setback creates more air, light, and open space, by applying a side yard where none is required.
22. This is a much better approach to development. The benefits of providing a side yard versus a rear yard substantially outweigh any detriments and applying the strict application of the rules would result in a much greater detriment.
23. The benefits of granting the rear yard variance substantially outweigh any detriments. There is no substantial detriment to the intent of the zone plan. This Project is consistent with the intent of the NC Zone, which is to provide for ground floor commercial uses in mixed-use buildings. There is no substantial detriment to the public welfare or the public good, and this serves the general welfare by granting the variance.
24. The Division of City Planning testified that the requested variance is minor in nature and finds that the testimony of Mr. Kolling is satisfactory to justify the variance.

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Board of the Jersey City, County of Hudson and State of New Jersey, for the foregoing reasons, approves the within application for Preliminary and Final Major Site Plan Approval with "c" variances (rear yard setback), to wit, Calendar No. P20-117, to construct a new five (5) story mixed-use building with sixteen (16) residential units and ground floor commercial space (the "Project"), with regard to the property located at 325-329 Newark Avenue, and which is identified on the Jersey City tax maps as Block 11001, Lot 6, and is located within the NC Neighborhood Commercial zoning district, in accordance with the plans and testimony submitted to the Planning Board of the City of Jersey City, subject to the following conditions:

1. No change to the site design shall be permitted without consultation with and approval by planning staff.
2. All testimony given by the applicant and their expert witnesses in accordance with this application shall be binding.
3. All street trees/landscaping shall be installed in accordance with 345-66 and the City's Forestry Standards, prior to an issuance of a Certificate of Occupancy.
4. All comments from JC Engineering and JCMUA shall be addressed and shown on final signature plans.

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BLOCK 11001, LOT 6

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**VOTE:** 7-0

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COMMISSIONER:	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
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Christopher Langston, Chairman	X
Dr. Orlando Gonzalez, Vice-Chairman	X
Eduardo Torres, Commissioner	X
Geoffrey Allen, Commissioner	X
David Cruz, Commissioner	X
Vidya Gangadin, Commissioner	X
Harkesh Thakur, Commissioner	X

  
Christopher Langston (Jul 27, 2021 15:51 EDT)  
CHRISTOPHER LANGSTON, CHAIRMAN  
JERSEY CITY PLANNING BOARD

  
Cameron Black (Jul 27, 2021 15:58 EDT)  
CAMERON BLACK, SECRETARY  
JERSEY CITY PLANNING BOARD

APPROVED AS TO LEGAL FORM:

  
Santo T. Alampi (Jul 28, 2021 15:35 EDT)  
SANTO ALAMPI, ESQ.

**DATE OF HEARING:** July 6, 2021  
**DATE OF MEMORIALIZATION:** July 20, 2021