

DEVELOPMENT APPLICATION REVIEW | STAFF REPORT

DATE :	05.23.2022
TO :	Planning Board Commissioners
FROM :	Mallory Clark-Sokolov, PP, AICP, Senior Planner Tanya Marione, PP, AICP, Division Director
CASE :	P21-162
PROJECT :	25 Christopher Columbus Drive Signage (Minor Site Plan) with variances

I. APPLICATION BACKGROUND + PROPOSAL

- **Existing Conditions:** The building is currently under construction as approved under case P17-052 and amended under P18-156. The development of the property includes a mixed use (predominantly residential) tower at fifty-seven (57) stories containing 750 residential units, and a separate one-story school annex.
- **Proposed Conditions:** The applicant is proposing signage related to the tower including address/building signage and temporary advertising signage related to leasing the units.
- **Variances**
 - **Wall/Canopy Signage Size**
Required/Permitted: 30" high, 20 sf
Proposed: >20sf address sign + building sign
 - **Wall/Canopy Signage Projection**
Required/Permitted: 30" from façade
Proposed: Sign to be mounted at front of canopy, >30" from façade
 - **Awning Lettering Size**
Required/Permitted: 10" high, 20 sf
Proposed: 1ft 9.5 in

II. STAFF COMMENTS

- **Signage Size**
 - The total area of the building name signage in addition to the full address sign for sign E.01 exceed the 20sf area limitation. The Building sign associated with the branding of the development is within the limitation at 19.3sf. The addition of the full address sign is of benefit for public safety in the event of an emergency (easy legibility + confirmation for Fire/Police) and therefore staff feels the benefits of the variance outweigh the detriments.
- **Signage Projection**
 - Sign E.02 exceeds the projection limitation set in the plan as it is affixed to the front of an entry canopy which projects more than 30" from the building façade. Given the orientation of the building and the location of its main entry being substantially set back from the public r.o.w., staff recognizes the benefit of the additional projection to maximize wayfinding from the street/sidewalk and sees no detriment in granting the variance as the signage is located entirely within the property line and does not project into the public r.o.w.
- **Awning Lettering Size**
 - Similar to the above, the size of the lettering for sign E.02 exceeds the 10" height limitation set by the Plan. Staff recognizes that because the sign is setback substantially within the interior of the property, the excess height helps to maintain legibility of the building sign from

the public r.o.w. and helps to signify clearly from within and beyond the property line where the building entry/access is. Staff sees no substantial detriment to the general safety/welfare of the intent of the plan in the granting of the variance.

III. STAFF RECOMMENDED CONDITIONS

All testimony given by the applicant and their expert witnesses in accordance with this application shall be binding. The staff recommends the following conditions to mitigate the negative criteria:

1. All materials and color selections shall be shown on Final Plans. No change to the signage including materials as well as any changes that may be required by the Office of Construction Code, shall be permitted without consultation and approval by planning staff.
2. Applicant shall provide an affidavit from the architect of record representing that the constructed project is consistent with final approved plans.
3. All temporary signage shall be permitted for a period of 12 months from the memorialization of resolution or until the building is 85% leased, whichever comes first.

APPENDIX : REQUIRED PROOFS FOR VARIANCES

▪ D(1) USE VARIANCE (NJSA 40:55D-70D):

▫ Hardship

Prior to the 1948 Land Use Law amendments, a use variance could only be granted if an undue hardship was proven. NJSA 40:55D-70d states that “in particular cases for special reasons.” certain variances may be granted by the Board of Adjustment. These “special reasons” are also often referred to as positive criteria.

- In 1952, Ward v. Scott NJ 117 clarified that “special reasons” was bound by the purposes of general zoning.

▫ Positive Criteria

Medici v BPR, 107 NJ 1 (1987) sets forth the standard for reviewing a use variance, with the positive criteria requiring that the application shows;

1. That the purposes of zoning are advanced, and
2. That the use is particularly suited to the property, and
3. Must also meet the enhanced burden of proof – the Applicant must reconcile why the use is not listed in the permitted or conditional uses for this zone.

▫ Negative Criteria

No relief may ever be granted unless it can be done:

1. without substantial detriment to the public good, and
2. without substantially impairing the intent and purpose of the zone plan and zoning ordinance

1) Substantial detriment to the public good – Balancing Requirement.

The focus of this first prong of the negative criteria is on the variance’s effect on the surrounding properties. The board must weigh the zoning benefits from the variance against the zoning harms. In many instances, conditions of approval address the negative criteria standard and help to mitigate the impact of the variance.

2) Substantial impairment to the intent and purpose of the zone plan and ordinance.

The focus of this second prong of the negative criteria is on the power to zone based on ordinance and not variance

▪ D(6) HEIGHT VARIANCE (NJSA 40:55D-70D):

▫ Hardship

Variance on grounds of hardship must show that the height restriction in effect prohibits utilization of the property for a conforming structure. Grasso v. Borough of Spring Lake Heights, 866 A. 2d, 988 (2004). Height standards and variances are bulk and dimensional in their nature. Therefore, it is appropriate to consider the C(1) factors for undue hardship;

1. By reason of exceptional narrowness, shallowness or shape of a specific piece of property, or
2. By reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or
3. By reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon...

▫ **Positive Criteria**

In the case of a d(6) height variance, Courts have held through Coventry Square v. Westwood Zoning Board od Adjustment 138 NJ 285(1994) and later Grasso v. Spring Lake, 375 NJ Super 41 (App. Div 2004) that the special reasons for height variances vary from that of use differences in that the Applicant needs to prove that the site can accommodate the intensity of the proposal.

- Height restrictions are established with the intent of
 1. Limiting intensity in order to preserve light and air of the adjacent structures
 2. Maintaining a contextual density within the zone.
 3. Advance the purposes of zoning
- The Applicant must demonstrate that the proposed height will not offend the purpose of the height limitation, and in turn that granting the deviation will not disrupt the purposes of zoning.

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No relief may ever be granted unless it can be done:

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- 2. without substantially impairing the intent and purpose of the zone plan and zoning ordinance**

1) Substantial detriment to the public good – Balancing Requirement.

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▪ **'C' VARIANCE**

Required Findings for 'C' Variance Standard/Deviations under N.J.S.A. 40:55D-70(c)(2):

1. The justifications must relate to a specific piece of property;
2. The purposes of the Municipal Land Use Law would be advanced by the deviation from the zoning ordinance requirement;
3. The deviation can be granted without substantial detriment to the public good;
4. The community benefits of the deviation would substantially outweigh any detriment and;
5. The deviation will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

▫ **Negative Criteria**

No relief may ever be granted unless it can be done

- 1. without substantial detriment to the public good, and**
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1) Substantial detriment to the public good – Balancing Requirement.

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