

CITY OF JERSEY CITY

Department of Housing, Economic Development & Commerce
Division of City Planning
Interdepartmental Memorandum



DATE: 4/19/2021

TO: Board of Adjustment Commissioners

FROM: Matt Ward, PP AICP

RE: Combined Staff Memo
Cases #Z20-041 and #Z20-042
199 Summit Ave and 62-64 Storms Ave
Preliminary & Final Major Subdivision with "d" & "c" Variances
Preliminary & Final Major Site Plan with "d" & "c" Variances

I. Site Location and Background:

The subject site, inclusive of Block 15201, Lots 1-9, 18, 19, 53, 64, 65, 66 and 89, is located at 199 Summit Ave and 62-64 Storms Ave in the R-1 One- and Two-Family District.

The property currently consists of multiple one-story temporary school buildings, two semi-attached three-family homes (facing Storms) with accessory garage, one semi-attached two-family (facing Summit), one one-story garage or out-building structure. Ingwerson Place is a city right-of-way that is gated off and does not currently operate as a normal public street. It is also a narrow right-of-way that only measure 10 feet wide at Storms Ave. The applicant has property on either side of Ingwerson Place.

The site is comprised of sixteen (16) lots with frontages on Storms Ave, Summit Ave, Crawford St and Ingwerson Place. Altogether the site is 56,737 square feet of real property. The combine site is irregularly shaped and shares lots lines with 31 different parcels – most along their rear lot lines.

Since 2001, the entire site is zoned R-1. Prior to the 2000 Master Plan, these lots were zoned R-2 Low Density Residential.

The site fronts on four different streets, Summit Avenue, Storms Avenue, Crawford Street, and Ingwerson Place which is a public ROW but not accessible at this time. The largest street frontage of the site is along Summit Avenue where there are some commercial uses and a small open space called Miralla Triangle. Summit Avenue serves and a major north-south route with bus service. Storms Avenue is a lightly used residential street.

The majority of the site was previously used as a school and more recently as the temporary location for the Health and Human Services (HHS) offices for the City of Jersey City.



II. Application Proposals:

The Applicant is proposing a subdivision and site plan. This Staff Memo is for both of the applications. Below are short summaries of the proposals. There are more details of the project within the Staff Comments section of this memo.

Subdivision - Proposed subdivision of existing sixteen (16) lots to create five (5) new lots for a proposed multi-site development consisting of open space, mixed-use apartment buildings, and two-three family structures related to Case Z20-042.

“d” Variances: Expansion of a non-conforming use.

“c” variances: Rear Yard Setback.

Site Plan - Proposed multi-site project consisting of 172 new residential units, 1,045 square feet of ground floor retail, and 105 off-street parking spaces in two (2), five-story buildings, open space with transformer, and the rehabilitation of two (2) historically significant three-family dwellings at 62-64 Storms. The applicant is also proposing improvements and a franchise request of Ingwerson Place, a public right-of-way, so that it may be treated as a public open space with playground equipment accessible from Storms Ave. Ten (10) dwellings are proposed to be affordable housing.

“d” Variances: Use, Height, Expansion of a non-conforming use.

“c” Variances: Exterior Loading Space, Curb Cut Width, Minimum Drive Aisle Width, Signage

III. Staff Comments Regarding 64-66 Storms Ave (two 3-family structures):

Regarding the 64-66 Storms Ave component of these applications, the Applicant requires a D(2) variance as it relates to the Subdivision Application and Site Plan Application.

The applicant is proposing an inherently beneficial use as part of the Site Plan Application, nonetheless the applicant should provide proof that the proposed use can meet the purposes of zoning, the site is particularly suited for the use, and the proposal meets the enhanced burden of proof. Additionally, the applicant must demonstrate the variances can be granted without substantial impairment to the intent and purpose of the zone plan and zoning ordinance but can also be granted without substantial detriment to the public welfare.

The Site Plan application includes 10 units of income-restricted housing for moderate income households which amounts to 5% of all proposed units and considered to be inherently beneficial. This application was deemed substantially complete prior to the Inclusionary Zoning Ordinance taking effect.

As part of the subdivision, the applicant is proposing to expand two (2) three-family structures by subdividing off a large portion of their rear yards. Despite the fact that the lots created along Storms Ave will be 25x100 feet, the rear yard setbacks are proposed to be reduced from a 50.2 and 50.4 feet to 17.6 and 18 feet. They are asking to make small rear yard because the front yard setbacks are greater than 30 feet. The subdivision requires a “C” Variance for minimum rear yard.

As part of the Site Plan, the applicant is also enlarging the existing structures in the rear, in the site plan application. The proposed work on the existing three-family structures is not extending the footprint of the buildings but enclosing two areas at the rear of the structures. The applicant is proposing to restore the building facades of 64-66 Storms Ave and restore the existing fencing in the front yard. The applicant is also proposing additional landscaping in the front yards.

D(2) Variance: In certain circumstances, the aesthetic improvement can be a sufficient special reason to justify an expansion of a nonconforming use. From *Burbridge v. Mine Hill Tp.*, 117 N.J. 376 (1990) “a municipality’s ability to insist on specific changes as a part of the expansion safeguards the general welfare”.

The Applicant is proposing to restore the facades of 64-66 Storms Ave, repair existing windows and doors, repair existing enclosed front porch, repair existing front yard fencing, reestablish the fence line along the front lot lines, and improve the façade in a manner that preservation sensitive. Therefore, the restoration of the existing three-family structures would satisfy this justification.

The Applicant's experts shall address the following:

1. The Applicant's experts shall address through testimony the positive and negative criteria required to D(2) Variance relief.
2. The Applicant's experts shall address through testimony the positive and negative criteria required to grant relief from R-1 bulk standards.
3. The Applicant's experts shall provide testimony regarding the means and methods proposed to restore the existing structures in a manner sensitive to the existing historic fabric.
4. The Applicant's experts shall provide testimony regarding the means and methods proposed to restore the existing fence and proposed improvements to the front yard landscaping.
5. The Applicant's expert witnesses shall provide testimony on the proposed façade elements and create a verbal record of the materials to be used on the project.

IV. Staff Comments Regarding 199 Summit Ave (2 larger multi-family and mixed-use buildings and public open space):

Regarding the 199 Summit Ave component of these applications, the Applicant requires a D(1) use variance and a D(6) height variance as part of the Site Plan Application. While subsumed under the Use Variance, there are a number of nonconforming bulk standards. Lastly, the project requires C Variances for exterior loading space, curb cut width, minimum drive aisle width, and signage.

The Site Plan application includes 10 units of income-restricted housing for moderate income households which amounts to 5% of all proposed units and considered to be inherently beneficial. The location and unit mix of the income-restricted units is not yet finalized and if approved the applicant would have to work with the Division of Affordable Housing on the final assignment of units. This application was deemed substantially complete prior to the Inclusionary Zoning Ordinance taking effect. Despite the inherently beneficial use proposed, the applicant should provide proof that the proposed use can meet the purposes of zoning, the site is particularly suited for the use, and the proposal meets the enhanced burden of proof. Additionally, the applicant must demonstrate the variances can be granted without substantial impairment to the intent and purpose of the zone plan and zoning ordinance but can also be granted without substantial detriment to the public welfare.

The Applicant is proposing two, multi-family 5-story apartment buildings, one of which is mixed-use. In this memo, the two larger multi-family buildings are referred to as 199 Summit Ave and further specified as the Summit Building and the Crawford Building. Between the two buildings there are 166 new residential units, 1,045 square feet of ground floor retail, and 105 off-street parking spaces.

The **Summit Building** fronts on Summit Avenue near the intersection of Clifton Place, includes the ground floor retail, and vehicular entry for the two 199 Summit buildings. The Applicant is also incorporating a small plaza with tables and chairs at the north end of the Summit Ave frontage which serves the public and allows the design of the building to adjust to the streetwall of their neighbors. Above the parking levels and access areas the building stepbacks off lot lines 10 and 20 feet in most areas.

The **Crawford Building** has limited street frontage with a secondary lobby entrance at the stub end of Crawford Street. The main lobby entrance for the Crawford building is off of Ingwerson Place which is a narrow 10-foot wide public right-of-way. The applicant is proposing to develop and maintain Ingwerson Place and privately-owned open space that fronts along Ingwerson Place as public open space for use by the general public. In addition there is a pad transformer incorporated into the open space. Due to the Ingwerson Place, the main lobby of the Crawford Building is accessible by pedestrians and bicyclists from Storms Ave and setback 150 feet from Storms Avenue. This causes some concerns with regards to loading and deliveries for the Crawford Building which the applicant should address on the record. The Crawford building along north and west elevations is setback at the ground floor on average 10 feet. Along the south elevation is setback 20 feet inclusive of Ingwerson Place. Along the east elevation, most of the building is setback 20 feet above the parking level and a shorter length is setback and the ground floor 10 feet.

The vehicular circulation between the 199 Summit Ave buildings are interconnected with all access and in and out of Summit Ave near the Clinton Place intersection and utilizes a small portion of Ingwerson Place.

D(1) Use Variance – Multi-family Residential:

For a Use Variance, the project should be evaluated in terms of intensity of use. Mainly, site suitability of the proposed density should be considered. Findings must show that the site can accommodate issues that may be associated with the increased density and bulk of the building.

With 51,737 SF, the site of the 199 Summit Ave buildings is oversized, therefore the proposed use is suited to the property. Beyond the use itself, the proposed density should be considered. The implied density of a 2-family on a conforming R-1 lot of 2,500 SF is **35 units/acre**. The proposed density for this project is nearly **140 units/acre**. The Applicant's prepared the principal points which addresses existing densities in the surrounding area and zones. The Applicant shall testify to any conclusions of their principal points regarding average densities in the area.

Unit sizes are also considered when evaluating site suitability. The average unit size is 966 SF which are adequately sized. In addition, the building design also includes several at-grad setbacks and upper story stepbacks ranging in distance from 10 to 20 feet on average.

It is the opinion of staff that this proposal advances the following purposes of Zoning, per NJSA 40:55D-2 of Municipal Land Use Law:

b. To secure safety from fire, flood, panic and other natural man-made disasters;
The applicant is proposing a green roof (combined to be 7,324 sf) and a below grade detention system.

It is the opinion of staff that the applicant meets the following intent of the Land Use Objectives of the Jersey City Master Plan:

“Continue efforts to stabilize and upgrade residential neighborhoods:

- Protect and preserve residential neighborhoods from intrusion by non-residential uses”

D(1) Use Variance – Retail:

For a Use Variance, the project should be evaluated in terms of intensity of use. Mainly, site suitability should be considered. Findings must show that the site can accommodate issues that may be associated with the increased intensity of the proposed retail use.

Existing context of non-conforming uses in the immediate areas should be considered when evaluating site suitability. The Summit Building fronts on Miralla Triangle, a small open space at the convergence of Summit Avenue, Clifton Place, and Baldwin Avenue. Fronting on Miralla Triangle are several non-conforming uses including a pizza restaurant and a bodega market, and in addition there is a medical offices building which is a permitted use in the Beacon Redevelopment Plan.

D(6) Height Variance:

To justify a Height Variance the applicant must show that the proposed height will be consistent with surrounding neighborhood and will not have a detrimental effect on the neighborhood.

The Applicant’s experts shall address the following:

6. The Applicant’s experts shall address through testimony the positive and negative criteria required to grant use and height relief.
7. The Applicant’s experts shall address through testimony the positive and negative criteria required to grant relief from R-1 bulk standards.
8. The Applicant’s experts shall provide testimony regarding the detention capabilities of the below grade stormwater detention.
9. The Applicant’s expert witnesses shall provide testimony on the proposed façade elements and create a verbal record of the materials to be used on the project.
10. The Applicant’s experts shall provide testimony regarding improved public open space, improvements and maintenance of Ingwerson Place, and create a verbal record of the materials and design of the open spaces.
11. The Applicant’s experts shall provide testimony regarding circulation, loading, deliveries, and trash removal.
12. Deliveries for the Crawford Building should not be delivered at the secondary entrance on Crawford Street.
13. The Applicant’s experts shall provide testimony regarding the phasing of the buildings and improvements.

V. Staff Recommended Conditions:

In the event a motion is made to approve this application, staff recommends 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. The Applicant shall address and comply with all Jersey City Review Agent comments as part of resolution compliance.
4. 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.
5. Copies of the memorialized resolutions with amended deeds shall be filed with the Hudson County Register's Office with proof of such filing to be submitted to the Division of City Planning prior to application for construction permits.
6. With the exception that all affordable units shall be affordable to households of moderate income, the Applicant shall comply with the rules and regulations of Jersey City Municipal Code, Chapter 188 – Housing Accommodations and Affordable Housing Compliance.
7. The Applicant shall enter into an Affordable Housing Agreement, as approved by the Division of Affordable Housing, prior to the issuance of the first certificate of occupancy.
8. Regarding the improvements to Ingwerson Place right-of-way, the applicant shall apply for a franchise ordinance prior to an issuance of a certificate of occupancy. The details of the franchise ordinance shall include the continued maintenance of the Ingwerson Place improvements.
9. Regarding the public accessible but privately-owned open space, the applicant shall enter into a written easement, access and maintenance agreement in favor of the City of Jersey City prior to an issuance of a certificate of occupancy. The details of the rights of access to the easement area and other rights and limitations shall be provided in the agreement and the agreement shall be in the form of a Deed and recorded with the Register of Deeds of Hudson County.

ADDENDUM

A. Required Findings for “D” Variances (NJSA 40:55D-70d):

Positive Criteria

NJSA 40:55D-70d states that “in particular cases and for special reasons....” the types of variances already identified may be granted by the Board of Adjustment. These “special reasons” also are referred to as the positive criteria. The Applicant must demonstrate that a project advances the purposes of zoning listed in the MLUL.

I. Special Reasons/Positive Criteria for D(1) Use Variance

The 1975 Municipal Land Use Law lists the purposes of zoning in N.J.S.A. 40:55D-2. A-O. “Special reasons” is more generally referred to as the positive criteria for a use variance.

NJSA 40:55D-4 defines an inherently beneficial use as a use that is universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare. If a use is held to be inherently beneficial, it presumptively satisfies the positive criteria.

The accepted standard for reviewing use variance application is set forth in Medici v. BPR, 107 NJ 1 (1987).

The application must show:

- 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.**

II. Special Reasons/Positive Criteria for D(2) Expansion of a Non-conforming Use Variance

All legal non-conforming uses and structures are protected under N.J.S.A 40:55D-68. However, in no instance is an owner allowed to enlarge or modify a non-conforming use without seeking a D(2) variance for the expansion of a non-conforming use. The first burden of proof is to determine that the non-conforming use was legal at the time it was created.

III. Special Reasons/Positive Criteria for D(6) Height Variance

The purpose of a height restriction is to limit intensity. To benefit the public welfare through limiting the impact of traffic congestion, fire hazards, and public health. Additionally, it is to provide adequate light, air, open space, and promote a desirable visual environment.

Special reasons are not defined by statute, generally, so judicial interpretations have guided the standards. All “D” Variance applications must meet heightened standards for establishing the special reasons.

Height variance applications must show reasons/proofs to establish the variance that are tailored specifically to the purpose of the height restrictions in the zoning ordinance.

The Applicant must demonstrate that the proposed height will not offend the purpose of the height limitation.

Negative Criteria

NJSA 40:55D-70 states that no Variance or other relief may 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.**

B. Required Findings for “C” Variances (NJSA 40:55D-70c):

The following findings are required for “c” Variance Relief:

- 1) Hardship “C1” Variance Standard under N.J.S.A. 40:55(D)-70(c)(1):
 - a. Pertinent information: Exceptional narrowness, shallowness, or shape of the property, exceptional topographical conditions, and/or other exceptional situations.
 - b. Based on this information, the strict application of the Ordinance would result in exceptional difficulties to, and undue hardships upon, the developer of such property.
 - c. The conditions causing hardship are peculiar to the subject property, and do not apply generally to other properties in the same district.
 - d. Other means to cure the deficiency (such as purchase or sale of property) do not exist, or are unreasonable or impracticable.
 - e. The variance requested is the reasonable minimum needed.
- 2) Flexible “C2” Variance Standard under N.J.S.A. 40:55D-70(c)(2):
 - a. The justifications must relate to a specific piece of property;
 - b. The purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirement;
 - c. The variance can be granted without substantial detriment to the public good;
 - d. The community benefits of the deviation would substantially outweigh any detriment and;
 - e. The variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

NEGATIVE CRITERIA

The language for negative criteria is first introduced in 1948 through a legislative amendment to the state land use laws.

“...provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.”

No relief may ever be granted unless it can be done WITHOUT:

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.

In *North Bergen Action Group v. Planning Board (1991)*, the Court noted:

“the greater the disparity between the variance granted and the ordinance's restriction, the more compelling and specific the proofs must be that the grant of the variance”

“Because zoning restrictions are enacted to further municipal planning and zoning objectives, it is fundamental that resolutions granting variances undertake to reconcile the deviation authorized by the Board with the municipality's objectives in establishing the restriction.”

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