

CITY OF JERSEY CITY

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



DATE: 11/08/24

TO: Board of Adjustment Commissioners

FROM: Francisco Espinoza, Senior Planner

RE: Case # Z22-021

443-447 Jersey Ave

Preliminary & Final Major Site Plan with 'c' & 'd' variance(s)

Site Location:



Application Background and Proposal:

The Applicant is proposing to rehab the existing Church as well as add a story to the already existing 3 story Vestry Building to make it a 4 story, 45'-2" residential building. In total the Church along with the Vestry will provide 10 units and no parking. The applicant is required to seek a 'd' variance for use and several 'c' variance(s) which are listed in the table below.

Table 1: H- Historic Zoning (Van Vorst Historic District)			
Standard	Required	Proposed/Existing	Variance (Y / N)
Permitted Principal Use	Townhouses (1-4 Family)	Multi-Family (10 Dwelling unit)	Y
Min. Lot Size	1,800 S.F	7,841.1 S.F	N
Min. Lot Width	18 Ft.	75 Ft.	N
Min. Lot Depth	100 Ft.	105 Ft.	N
Front Yard	Match Adjacent, 10 Ft Max.	0 Ft.	N
Rear Yard	30 Ft.	12.17 Ft.	Y
Max. Height	4 Stories, 40 Ft.	Vestry Bldg - 45.25'	Y
Max. Building Coverage	60 %	Existing 80.9% Proposed 96.4%	Y
Max. Lot Coverage	80%	Existing 100% Proposed 86.2%	Y
Parking	.5-1 space per unit	0	Y
*Pre-Existing			

Staff Comments:

**** See attached appendix outlining the criteria for deliberating a c variance. Which should consider both the positive and negative criteria.

Applicant sought and received approval from the Historic Preservation Commission at its October 21, 2024 meeting under application H-23-0188.

D(1) Use Variance:

Permitted principal uses in the H District, at the time of submission, include Townhouses, Schools, Governmental uses, Houses of worship, Mortuaries, Parks and playgrounds, Home occupations. The applicant is seeking a use variance for the project because they are proposing a multi-family use with 10 residential dwellings where multi family use is not listed as a permitted use.

The Historic District has a maximum of 75 units/acre. The proposed density for this project is approximately **56 units/acre**. The Applicant prepared the principal points and 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 lowest size for a unit is a 2 bed, 3 bath duplex at 1,425 Sf while the largest size is a 3 bed, 3 bath +den at 2,181 SF. The Applicant's experts shall testify to the unit sizes, the suitability of the design of the structure as related to the property lines and the adjacent neighboring properties at the rear and side yards.

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 enhance residential neighborhoods" – (Jersey City Master Plan Land Use Element, Chapter 3, 85)
- "Ensure the City's available housing is balanced and meets the needs of all current and future city residents" – (Jersey City Master Plan Land Use Element, Chapter 3, 85)
- "Recognize and promote the richness of the City's historic assets and cultural diversity" - (Jersey City Master Plan Land Use Element, Chapter 3, 90)

It is also 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 new landscaping in the rear and front yard.
- A 383 SF green roof will be added.
- Renovation of the existing structure will bring it up to current building and fire code standards.

e. "To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment."

- The subject property no longer serves as a Church, the adaptive re-use of the property as a multi-family dwelling is consistent with some of the current uses in the H District and would not impair the intent of the zoning ordinance. Especially since there are existing non-conforming uses like the one proposed.
- The proposed unit count is appropriate for the oversized nature of the lot and the proposed bulk associated with the multifamily use is consistent with the character and scale of the surrounding context.

J. To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land;"

- The applicant is proposing an element of Historic Preservation and will continue to work with City Planning and Historic by adaptively re-using the existing structure, which was formerly a Church and vestry building.

The applicant will not be providing parking. The current structure will be rehabilitated and cannot be demolished or significantly altered due to its architectural significance in the

neighborhood and City. Thus, there is no way the applicant would be able to accommodate for parking. Additionally, the property is within a half mile (11 min walk) of the Grove Street Path Station, with multiple bus lines to travel throughout Jersey City, Bayonne, and Union City.

In Staff 's opinion, the existing building can handle the proposed amount of intensity on the existing lot. Therefore, Staff sees no substantial impairment of the intent of the nearby zone and master plan should the variances be granted.

Staff Recommends Approval, provided that the applicant complies with all conditions imposed by the Historic Preservation Commission under its approval of H-23-0188.

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 facade and site design, including materials as well as any changes that may be required by the Office of Construction Code, shall be permitted without consultation with planning staff and approval by the zoning board.
2. Applicant shall provide an affidavit from the architect of record representing that the constructed project is consistent with final approved plans.
3. Green roof shall be installed prior to an issuance of a TCO.
4. A copy of the memorialized resolution with amended deed 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.
5. The applicant shall comply with all the conditions imposed by the Historic Preservation Commission as well as in the COA issued by the Senior Historic Preservation Specialist Maggie O'Neill on 10/21/24.

APPENDIX

FINDINGS NEEDED FOR “C” VARIANCE RELIEF

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

- D(1) USE VARIANCE (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.

A. 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.

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.