

CITY OF JERSEY CITY

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



DATE: 8/10/2023

TO: Board of Adjustment Commissioners

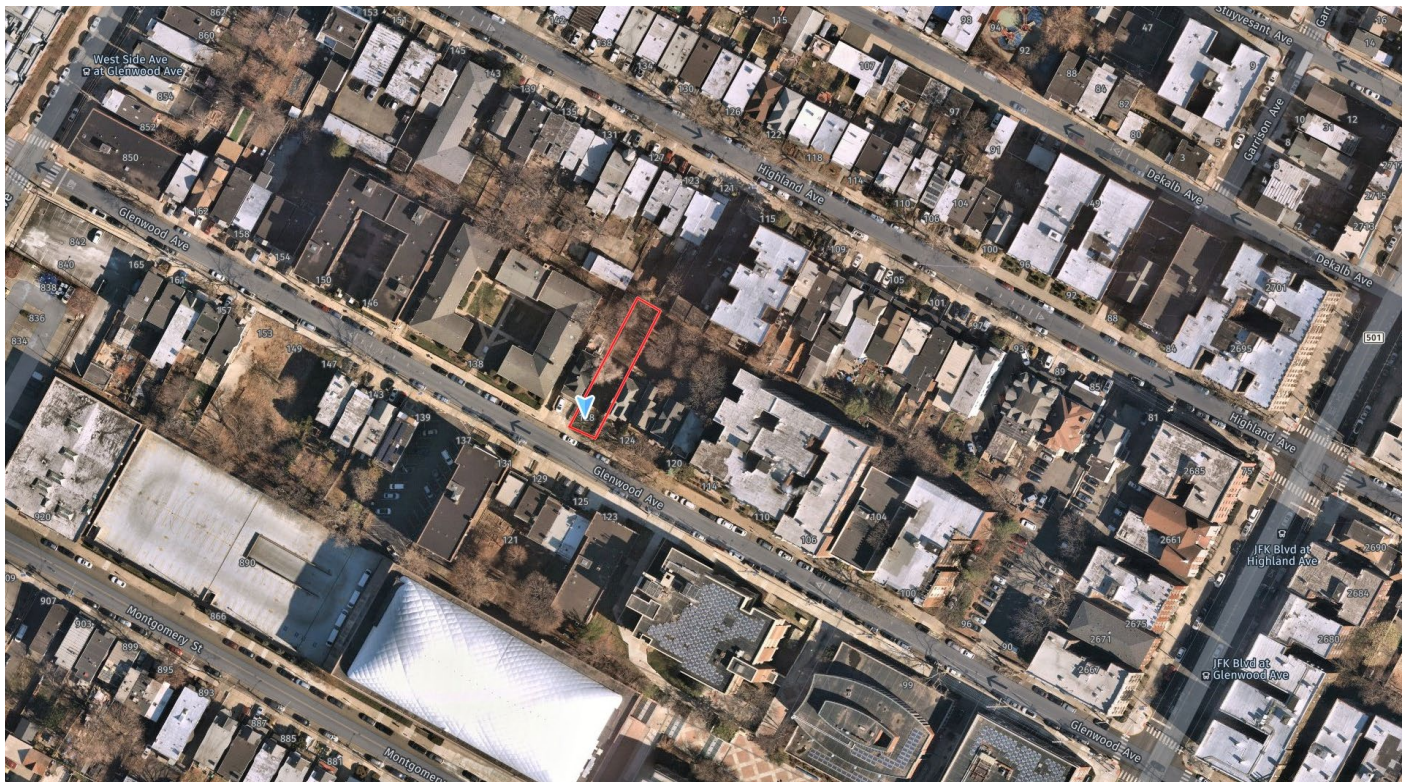
FROM: Tanya R. Marione, PP, AICP, Director

RE: Case #Z22-089

128 Glenwood Avenue

Minor Site Plan with 'd' and 'c' variances

Site Location:



Site Zoning:



Application Background and Proposal:

The Applicant is proposing a 4-story building, 4-unit building in the U- University Zone. Permitted uses in the U – Zone are : 1) Colleges and universities, 2) Parks and playgrounds, 3) Dormitories, fraternities and sorority houses, and 4) Meeting halls. Therefore a d(1) use variance is required for a multi-unit residential building. The remaining variances are highlighted below in the lot and bulk standards chart.

Table 1: U- University Zoning			
Standard	Required	Proposed	Variance (Y / N)
Min. Lot Size	None	3,581 sq ft	-
Min. Lot Width	None	25 sq ft	-
Min. Lot Depth	None	143 ft	-
Density	None	48.7 units/acre	-
Front Yard	None	25.8 ft	-
Side Yard	None	3.3 ft/2ft	-
Rear Yard	None	44.5 ft	-
Max. Height	4 Stories/40 ft	4 Stories / 38 FT	N
Max. Building Coverage	60%	40%	N
Max. Lot Coverage	80%	67%	N
Minimum Buffer to residential	10 ft	2.9 ft	Y
Parking	10 spaces for each classroom plus 1 space per 10 seats for each auditorium	None	-

Staff Comments:

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

Relevant Ordinance Sections:

345-6. Definitions:

Dormitory - A building to provide sleeping and living accommodations with sanitary and general living facilities designed and used to accommodate students of a university or college.

Multi-family — A building containing three or more dwelling units that share common horizontal and vertical separations.

345-51. University District. A. Purpose

The purpose of this district is to accommodate existing colleges and universities while preserving neighborhood stability and residential quality of life, especially in areas bordering institutions of higher education.

Jersey City Master Plan – Land Use Element 2021, page 169

Jersey City is a regional center of higher education with three colleges and universities – Hudson County Community College, New Jersey City University, and Saint Peter’s University – that attract students from the City, Hudson County, and northern New Jersey. The City’s colleges and universities are a unique land use that have special needs and can create planning challenges in the neighborhoods where they are located.

This Land Use Element supports policies that promote student housing and other facilities in and around the City’s colleges and universities. This requires balancing the expansion plans of the institutions to maintain their viability in an increasingly competitive higher education environment, with the desire to preserve residential stability. The U district should be reviewed to assess whether its provisions, such as maximum height, are consistent with the universities’ vision for future improvements. In addition, the use requirements for the U zone should be assessed to determine whether they provide sufficient flexibility to accommodate modern accessory uses at a college or university, such as cafes, convenience retail, co-working space, or arts and cultural uses.

Beyond revisions to the U district, another zoning mechanism to explore would be the creation of an University Overlay Zone. The existing U district sets up a “line” where the campus is and where residential areas are. An overlay zone would allow the universities to continue to grow and improve facilities within a defined area surrounding the existing campus without rendering existing residential or other non-university uses non-conforming. It is conceivable that university uses could be mixed with other uses on the same site (i.e. student housing above a grocery store). This could help to create more dynamic and mutually beneficial communities by locating students in areas where they can support local businesses and by providing commercial uses which can be used by residents.

The overlay zone should include provisions to prevent disruption of the neighborhood fabric. For example, university uses would be allowed if other conditions are met, potentially including the following:

- Property is within walking distance to a campus center (0.5 miles), so as to limit the extent of sprawl from the main campus.
- Property is indicated in a campus expansion plan, pre-approved by the Planning Board. This provision encourages the City’s colleges and universities to explore the manner in which they will connect their facilities into the neighborhoods, and provides an opportunity for public review.
- Underlying bulk regulations of the existing zoning district would apply, so that any development is consistent with the surrounding built environment.



Properties Adjacent to 128 Glenwood Avenue. 128 Glenwood is outlined in red.



Staff Recommended Conditions:

Should the board make a motion to approve, staff recommends the following conditions:

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 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. That the applicant complies with all Jersey City review agent comments and shown on final signature plans.
4. All street trees and landscaping shall be installed in accordance with 345-66, prior to an issuance of a Certificate of Occupancy.
5. Architect of record shall provide an affidavit confirming the development is built in accordance with the approved plans prior to the issuance of the first certificate of occupancy.
6. 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.

APPENDIX

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.

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.**

Required Findings for “d(6)” Height Variances (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 of 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.

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