

CITY OF JERSEY CITY

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



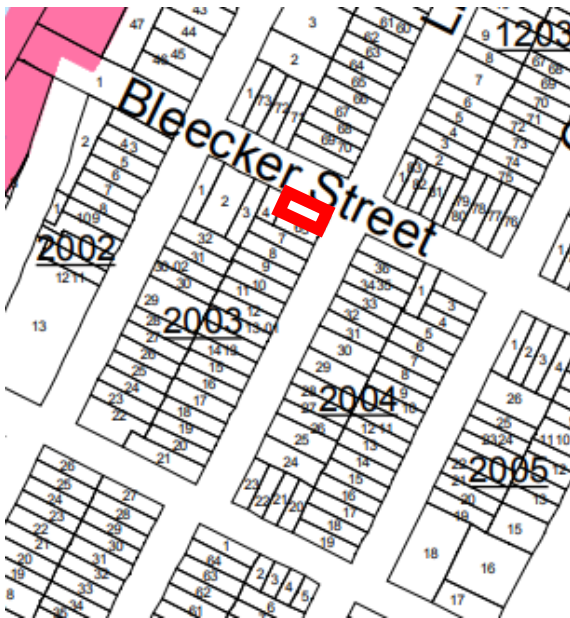
DATE: 9/19/22
TO: Zoning Board Commissioners
FROM: Cameron Chester Black, PP, AICP
RE: 475 Liberty Avenue
Case #Z19-094 Block 16802, Lot 5
"d6" variance application

BACKGROUND

The site consists of an existing one family building located in an R-1 Zone and the applicant is proposing to expand the existing foot print of the home and add a unit making two units with a 3rd and 4th story addition triggering a D6 variance. The lot is undersized with a width of 23.73' and a lot length of 70'. Anil & Reshma Patel (the Applicant) is proposing a (2) story addition of the existing 2 story one (1) family dwelling structure, roof deck area, landscaping and other streetscape improvements are included. The purpose of this application is to renovate the existing building while constructing additions to extend the width of the building to the side property line along Bleecker Street and adding two vertical stories. The maximum height permitted for a structure with ten foot (10') ceiling heights and a flat roof is thirty-three feet (33') and the applicant is proposing a two story addition with a basement that has 6' ceilings and a 3rd floor with 8' ceiling heights and a total building height of forty feet (42.3'). The existing driveway with two surface parking spaces in the rear is to remain. The new expansion will result in larger units (3 bedrooms each) with the following breakdown in square footage:

Unit 1 – 1,982 square feet 3 bedrooms with 3 baths

Unit 2 – 2,080 square feet 3 bedrooms with 3 baths



Applicant's site is outlined in red in the R-1 Zone

Site Photos A, B, & C

A.



C.



B.



REQUIRED “c” VARIANCES/DEVIATIONS

#	REQUIREMENT	PROPOSED
1	Maximum Building Height: Three stories with a 10' floor to ceiling height is 33'	6'4" floor to ceiling in the basement and 8' on the 3 rd floor (building height is 42.44')
2	Required 2' minimum side yard	0'
3	Rear yard of 20' minimum	17'
4	Landscaping 60% (92sq. ft.)	19 sq. ft.
5	Lot coverage 85%	98% (existing)
6	Building coverage 60%	62.5%

REQUIREMENTS AND STANDARDS FOR CONSIDERATION

Side Yards:

Detached Buildings:

Minimum setback for one side: Two feet.

Minimum setback for both sides: Five feet one inch.

Attached Buildings:

- a. If adjacent building has zero side yard setback (i.e., is built to the side lot line), a zero feet side yard may be permitted (i.e., new house may also be built to the side lot line).
- b. In the instance the adjacent building has a zero side yard setback but also has an existing window that is either directly on the side lot line or setback less than three feet, the new building may still build to the zero side lot line, starting at the front building line, but shall be required to setback the new building three feet, starting from one foot in front of the existing window, to the rear building line.
- c. All side yard setback three feet or greater: The side yard starting at the front of the building shall be enclosed with a fence constructed in compliance with the design standards in 345-67.B.

7. Minimum Rear Yard:

a. The rear yard setback shall be added to the front yard setback (as determined above) to produce a total of not less than thirty-five (35) feet, provided however, that in no case shall a rear yard be less than twenty (20) feet. The mathematical formula for this calculation is as follows.

X = required front yard setback

Y = required rear yard setback

X + Y = at least 35 feet

“8. Maximum Building Height: Three stories with a minimum floor to ceiling height of nine feet, a maximum floor to ceiling height of twelve (12) feet, and a maximum of five additional feet between the top of the third

floor and the topmost point of any peaked roof (where a peaked roof is deemed appropriate under the design standards), provided that a minimum of two adjacent floors must be connected solely by means of a staircase internal to the unit, and provided that only one of the two internally connected floors may have a kitchen and/or a full bath.

For the purposes of calculating the maximum allowable building height an additional twelve (12) inches is assumed between the ceiling of each story and the floor above in accordance with the chart below:

Fl. to Ceiling ht	Fl. to fl. ht	Total bldg ht with flat roof	Total ht with peaked roof
9 ft	10 ft	30 ft	35 ft
10 ft	11 ft	33 ft	38 ft
11 ft	12 ft	36 ft	41 ft
12 ft	13 ft	39 ft	44 ft

In the case of varied floor to ceiling heights, the total permitted building height with a flat roof shall be the sum of the floor to ceiling heights of each floor plus twelve (12) inches per floor. The total permitted building height with a peaked roof is five (5) feet higher than with a flat roof."

FINDINGS NEEDED FOR “c” VARIANCE RELIEF

See Appendix A on Page 6

REQUIRED “d6” VARIANCE

#	REQUIRED	PROPOSED
1	3 stories 39' (w/flat roof)	4 stories 42.33'(w/flat roof)

Required Proofs for D6 variance:

See Appendix B Page 7

Staff Comments Regarding Height/Bulk Variances:

Comments regarding Height:

Grasso v. Bor. Of Spring Lake Hghts examples:

- The proposed height is not completely out of character with the surrounding area, which has buildings with the 3-story maximum in the R-1 Zone.

Staff Comments Regarding Variance:

Staff Comments:

1. Applicant’s expert shall provide testimony that the height variance (d6) can be permitted without impairment of light, air, context, and view infringement.
2. Staff recommends to the board that the applicant provide testimony for addressing the proofs necessary to meet the negative criteria for the bulk variances and height. Specifically, that the addition of the third and fourth story is an appropriate build out of the land, and the proposed project will not substantially affect any neighbors, nor will the variances cause any substantial detriments to the public good, nor impairment to the intent and purpose of the Jersey City Zone Plan and Zoning Ordinance.

Staff opinion:

The proposed improvements appear not to negatively influence the air, light, and/or space or the quality of life and general welfare/wellbeing of the public. The height deviation is 3.33' greater than what a flat roof with 12' floor to ceiling heights would be permitted and the topography of the site makes a strict interpretation of the basement a first floor which creates the number of stories to increase. The improvements in greenery and the street tree will reduce the impervious surface. The larger unit sizes will diversify the housing stock in this part of the City.

Staff recommends approval with the following conditions:

1. Architect of record shall submit a signed and sealed affidavit confirming that the final building was constructed as approved, prior to issuance of the Certificate of Occupancy.
2. 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.
3. All testimony given by the applicant and their expert witnesses in accordance with this application shall be binding.
4. All street trees and landscaping shall be installed in accordance with 345-66 and the City's Forestry Standards, prior to an issuance of a Certificate of Occupancy.

Appendix A:

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

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

Appendix B:

Height d(6)

Special reasons for d(6) height variances, are not the same as for use variances. In instances where a variance for intensity of use is being applied, Courts have held that **Coventry Square v. Westwood Zoning Board of Adjustment 138 N.J. 285 (1994)** and then **Grasso v. Spring Lake, 375 N.J. Super 41 (App. Div. 2004)** are the controls, and not **Medici V. BPR Co., 107 N.J. 1 (1987)**. In practical terms, this means that the applicant does not need to prove that the site is particularly suited for more intensive development, rather that the site can accommodate the intensity. Height restrictions are established to primarily deal with light, air, provide a context, views and sometimes density, therefore, the special reasons must address those concerns.

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.

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

Some examples provided in Grasso v. Bor. Of Spring Lake Hghts, are:

- The proposed height will be consistent with surrounding neighborhood
- Proposed structure will not be out of place in neighborhood
- The appearance of the neighborhood will not be degraded by blocking viewsheds
- Will not give the appearance of being out of character
- Permitted height/structure would have a detrimental effect on the neighborhood than the proposed height/structure

Or

Undue Hardship – stated clearly the property for which the 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. They are:

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

“the strict application...would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, grant, upon an application or an appeal relating to such property, a variance from strict application of regulation so as to relieve such difficulties or hardship.” NJSA 40:55D-70 c(1)