

CITY OF JERSEY CITY

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



Interdepartmental Memorandum

DATE: 8/31/2021
TO: Board of Adjustment Commissioners
FROM: Matt Ward, AICP, PP, Supervising Planner
RE: Z20-081
500-510 Communipaw Ave and 22 Park St
Preliminary and Final Major Site Plan with "c" and "d" variances
Staff Memo

I. Site Location:

The subject site, inclusive of Block 17003, Lots 8, 36, 37, 38, 39, and 40, is located at 500-510 Communipaw Avenue and 22 Park Street is **split zoned** and partially within the **NC** Neighborhood Commercial District and the **R-1** One- and Two-Family District.

The property consists of a two-story mixed-use structure (Longo Building) with accessory garage structure, one-story commercial structure (which once operated as a daycare), and an associated surface parking area accessible from Park Street and Communipaw Avenue.

Altogether the site is 28,787 square feet and irregularly shaped. The first 75' to 95' of lot depth from Communipaw Avenue is zoned NC while, the large surface parking area is zoned R-1.



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

 Subject Site Parcels  Parcels

II. Application Proposal

The Applicant is proposing a development on a split zoned lot for a 5- and 4-story mixed use building with 4,377 square feet of ground floor commercial, a 325 square foot community meeting room, 71 dwelling units (6 of which are proposed as affordable housing), 47 parking spaces and a widened sidewalk. The vehicular access is from Park Street. Existing access points from Communipaw Avenue are being removed and the sidewalk is to be widened within the subject site property line.

The variances requested are for use, maximum permitted stories, maximum permitted curb cut width, minimum rear yard setback, and parking aisle width.

The Applicant is proposing to demolish the existing buildings including the building at 500 Communipaw once owned by the family of John Ralph Longo. A permission to demolish the existing buildings on the subject site was clarified by the decision of the Board under case Z20-084. However, the Applicant is proposing a 325 square foot community meeting room in honor of Mr. Longo and his family and testimony should be put on the record regarding their plans for that space.

III. Variances Requested

Citation	Category	Permitted / Ordinance	Proposed
345-40 B	Permitted Use	One family dwellings, two family dwellings, houses of worship, parks/playgrounds, essential services, schools, governmental uses, assisted living residences, nursing homes, senior housing, public utilities	Multi-Family Residential and structured parking (R-1 Area)
345-40 E(7)	Minimum Rear Yard Setback	- 20 feet minimum - Sum of front and rear yards must equal at least 35 feet	Rear Yard Setback: 14'-9" to 18'-6"
345-40 E(8)	Maximum Stories	3 stories	4 stories (R-1 Area)
345-70 A(9)	Automobile Zoning Standards	90 degree angle of parking space, 9'-0" width of parking space, 22'-0" drive aisle width required	90 degree angle of parking space, 8'-6" width of parking space, 19'-9" & 19'-9" drive aisle width proposed, typical all parking.
345-70 A(10)	Curbscut / Driveway Standards	10'-0" max width	22'-7" wide curb cut at parking entry and 22'-7" wide at loading / ramp

IV. Staff Comments

General Comments:

The applicant shall provide testimony regarding the design, materials, bulk, proposed uses, unit mix, affordability, community room, parking and circulation, and variances. Applicant shall provide testimony regarding the intensity of the use and suitability of the proposed density.

The Applicant is proposing 6 affordable units for households of moderate income. The length and affordability and unit mix (bedroom counts) shall be coordinated with the Division of Affordable Housing should the Zoning Board of Adjustments approve this project.

Applicant should clarify that the street trees and tree pits and in compliance with the forestry standards and are designed as 5x10 pits.

This application meets the positive criteria through promoting the following purposes of zoning as specified in N.J.S. 40:55D-2:

- N.J.S. 40:55D-2.c. To provide adequate light, air, and open space.
- N.J.S. 40:55D-2.e. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of person, neighborhoods, communities and regions and preservation of the environment;
- N.J.S. 40:55D-2.i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement;

Comments regarding 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.

The Applicant's proposal shows that considerations were made regarding the split-lot zoning. All onsite commercial uses are within the NC Neighborhood Commercial portion of the subject site. The D(1) variance request is limited to Multi-Family Residential in the R-1 district. Regarding the intensity of the multi-family use, while NC Neighborhood Commercial Zone does not have a density standard, 40 of 71 dwelling units (56%) are within the NC Neighborhood Commercial Portion of the subject site. While the majority of the units of are in the NC District, 65% of lot area in R-1 and only 35% of lot area is in NC. The density or dwellings units per acre for the R-1 portion of the subject site is 72 units per acre and the density overall is 108 dwelling units per acre. This density is reasonable and in many cases lower than developments in the NC district. An example of the intensity of the NC district in the Junction is across the street at 503-509 Communipaw Ave, which was approved by the Planning Board and is under construction. That example project is on a 6,705 square foot lot with 233 dwelling units per acre.

When assessing the special reasons or positive criteria of this proposal, it is important to keep in mind the subject site is split zoned. The Supreme Court declared split-lot zoning a legitimate hardship in *AMG Associates v. Tp. of Springfield*, 65 N.J. 1010 (1974). In that case a variance was sought for a property that fronted in a business zone and the rear of its property was in a residential zone. The Court stated:

We think it would be quite unreasonable to require preliminarily a split lot owner to attempt to sell the unusable portion in the residence zone to his abutting residential neighbor with a relief only if the latter declined to buy it at a fair price...nor in this case do we think it would be reasonable to require plaintiff to utilize so much of its more valuable property in the O zone to combine with a portion in the residence zone to make a conforming residential lot.

See addendum of this memo for more information.

Comments Regarding 'C' Variances – Minimum Rear Yard Setback and Maximum Stories:

The proposal is for a 5-story and 4-story building. The building height decreases to 4 stories when the zoning of the subject site shifts to the R-1 district. The applicant may argue that the hardship created by the split lot nature results in the appropriateness for four stories. In addition, the applicant is proposing to mitigate the height in the R-1 district by setbacks and stepbacks. These setbacks and stepbacks are dimensioned on sheet Z-3 "Site Impact Plan" of the architectural plans, but are also described below.

The subject site is oversized and irregularly shaped. The lot shoehorns into the interior of the block sharing lot lines with many neighbors. The majority of its neighbors share a rear lot line with the subject site, which means that setbacks its side yards provide more light and air to the neighbors than setting back 20 or 35 feet from the rear lot line. Along the side yard lot line closest to Park Street side yard, the proposed building in the R-1 district is setback from the lot line (rear lot lines of properties fronting on Park Street) by distances of at least 14'-1" with an average setback closer to 24 feet. Along the side yard lot line closest Prescott Street, the applicant is mitigating height through stepbacks and setbacks. On the ground floor, where parking is located, a majority of the building goes right up to the lot line and then steps back above the parking by a distance of 22'-5" to 25'-8". As the lots along Prescott become shallower, the proposed building includes a setback of 8' from the side yard lot line and the building above the ground floor has a stepback of 20'-11" at its closest point. These sideyard setbacks and stepbacks are combined with a front yard setback to widen the narrow sidewalk along Communipaw Avenue when no front yard setback is required and rear yard setbacks of 14'-9" to 18'-6".

See addendum of this memo for more information.

The applicant shall provide testimony regarding these variances.

Comments Regarding 'C' Variances – Maximum Curb Cut Width and Minimum Parking Aisle Width:

Applicant shall provide testimony regarding these variances.

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 widened sidewalk along Communipaw Avenue which is to be accessible but privately-owned, the applicant shall enter into an 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.

-OR-

- 4) The application must show and prove that an extreme or undue hardship exists, still meeting the enhanced burden of proof.

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

CC: Charles Harrington