CITY OF JERSEY CITY

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



DATE: 1/25/2022

TO: Planning Board Commissioners

FROM: Cameron Black, AICP, PP, Senior Planner

RE: 21 & 23 Highland Avenue

Case # Z21-005 Case # Z20-105 Case # Z20-106

Block 13303, Lot 15, 16, and 17

Minor Site Plan/subdivision with "c" and "d" variances

BACKGROUND

The 4,519 square foot lot (16.01) and the 3,569 square foot lot (15) is located in the R-1 zone and currently consists of two single family homes on each lot. In its place, the applicant is proposing to construct two four-story multifamily buildings with 8 residential dwelling units total (4 units in each building) 8 off-street parking spaces for the tenants of both buildings, and 1 off street parking space for residents (9 total parking spaces). In addition, the subdivision proposed as part of this application will remedy the issue of a gore between the Church and lot 16 where there is a fence and driveway that encroaches onto Church property. The new boundary will move the existing property line to align with the existing fence and driveway line and to account for the gore between the two properties.

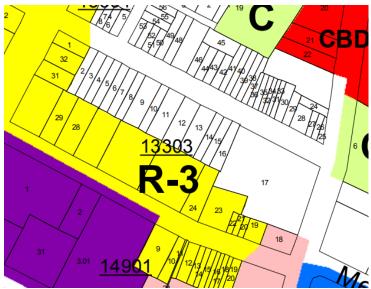
The proposal for the multi-family use triggers the "d-1" variance for use. There are "c" variances associated with the property: parking buffer of 3' and number of stories that are subsumed by the use variance. The new construct at 21 and 23 Highland Avenue will have the following layout:

- Cellar: with 690 square feet including a water/sprinkler room, electric and gas meter room, and storage.
- Ground floor: off-street parking (5 spaces on 21 Highland and 4 spaces on 23 Highland), main entry to residential use, and Units 1 (lot 15 and 16) containing 2 beds/2 baths
- Second floor: Units 2 (lot 15 and 16) containing 3 beds/2 baths with balconies
- Third floor: Duplexes for Units 3 and 4 two bed rooms and two baths
- Fourth floor: Duplexes for Units 3 and 4 two bed rooms and two baths

The applicant's site has a density of **43 units per acre** on a block that has a density of **15 units per acre** The R-1 Zone has a planned density of 35 units per acre in the Jersey City Master Plan. (See Appendix A - page 7).

The units are broken down accordingly:

21 Highland Aver	nue		23 Highland Avenue			
Unit 1	2 bed/2 bath	1,018 sq. ft.	Unit 1	2 bed/2 bath	999 sq. ft.	
Unit 2	3 bed/2 bath	1,365 sq. ft.	Unit 2	3 bed/2 bath	1,340 sq. ft.	
Unit 3	2 bed/2 bath	875 sq. ft.	Unit 3	2 bed/2 bath	964 sq. ft.	
Unit 4	2 bed/2bath	1,047 sq. ft.	Unit 4	2 bed/2bath	1,034 sq. ft.	



Map Above shows the Zoning of Block 13303



Map Above indicates unit count and shows R-3 as yellow and R-1 as white transparent



Site Photos taken in 2021:

Photo A

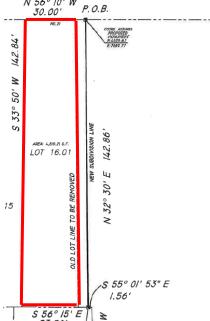
Photo B

I. **SUBDIVISION SUMMARY:**

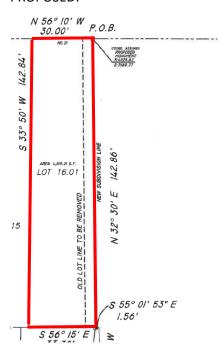
The proposed subdivision plat shows a new configuration as shown below in the right-hand image outlined in red. The lot depth of lot 16.01 will not change (142'), only the width will change (25' to 30') to incorporate the land that has been used as a driveway, which is a 5' increase in width. The subdivision will remedy the issue of a gore between the Church and lot 16 where there is a fence and driveway that encroaches onto Church property. The new boundary will move the existing property line to align with the existing fence and driveway line and to account for the gore between the two properties. The applicant is proposing the subdivision as part of and contingent on approval of the proposed preliminary and final major site plan for the entirety of the project area.

N 56° 10' W 30.00' P.O.B.

EXISTING:



PROPOSED:



II. STAFF COMMENTS REGARDING SUBDIVISION:

- 1. Plat bulk requirements table needs to be incorporated and updated with regards to all variances requested.
- 2. Resolutions of the subdivision and site plan are filed with the deeds for these new lots.
- 3. All comments made by the Jersey City Engineering Department and Tax Assessor must be incorporated in the final signature plans.

Staff Comments Regarding Use Variance:

Staff acknowledges that a use variance subsumes bulk standards. Case law, however, has determined that the bulk standards should still be used for reference in deciding the positive and negative criteria.

"c" VARIANCES/DEVIATIONS

#	REQUIREMENT	PROPOSED
1	Maximum Building Height: Three stories	Four stories
2	3' minimum parking buffer	2.1 feet at rear end of property

SEE APPENDIX B FOR FINDINGS NEEDED FOR "c" VARIANCE RELIEF - page 9

REQUIRED "d" VARIANCES

#	PERMITTED	PROPOSED				
1	One or two family home	- Multi-Family (8 units)				

SEE APPENDIX C FOR REQUIRED PROOFS FOR USE AND HEIGHT VARIANCE – page 10

Staff Comments Regarding Use Variance:

Site Suitability:

The applicant's site is unique, oversized, and irregular for the R-1 Zone [4,519 square foot lot (16.01) and the 3,569 square foot lot (15)]. The standard lot size for the R-1 zone is 2,500 square feet.

The proposed development would be on a lot that is excess of over 1,000 square feet, which is nearly 50% larger.

Lot 16.01 and 15 have had single family homes onsite since the 1923 tax assessment and illegal existing nonconforming parking has been modified onsite sometime between the 1930s and early 2000s. The proposal will bring the property back into conformity for circulation and parking (see image below with front yard parking circled in red).



The overall purpose of the R-1 district does not appear to be jeopardized by this development. That purpose is to accommodate existing housing and encourage compatible in-fill development with one- and two-family homes that preserve the streetscape, utilize on-street parking where the frontages are narrow and maintain the low-rise character of the area.

Positive Criteria:

- The proposal will bring the property back into conformity for parking and create larger units meeting purpose "E" "H", and "I" 40:55D-2 Purposes of the act in the MLUL:
 - "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;"
 - "To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight;"
 - o "i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement;"
- Street tree improvements and landscaping will be part of the application, which meet purpose "N"
 40:55D-2 Purposes of the act in the MLUL:
 - o "To promote utilization of renewable energy resources; and"

Negative Criteria:

Staff believes that the applicant would have to address the following to address the negative criteria:

- Can the increased density be accommodated?
- Is the use appropriate for the neighborhood?
- Is 4 stories appropriate?

Comments regarding Bulk:

• The C (2) justification for a height variance does appear to be allowable without substantial detriment to the public good considering it is still within the permissible height.

Staff Supports the Application Based on the Ability of the Applicant to Satisfy the Negative Criteria

Staff Comments:

- 1. Applicant's experts shall provide testimony justifying the d(1) variance for use.
- 2. Is 9 parking spaces for the use appropriate and will the traffic created by the use negatively influence the public's general health, welfare, morals, and/or well-being.
- 3. Staff reserves the ability to supplement this report through testimony before the Board.

Staff recommended conditions

In the event a motion is made to approve this application, staff recommends 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. Engineer of record shall submit a signed and sealed affidavit confirming that the final building's storm water detention was constructed as approved, prior to issuance of the Certificate of Occupancy.
- 4. All testimony given by the applicant and their expert witnesses in accordance with this application shall be binding.
- 5. 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 – Median density per R-1 portion of block

					1			
	23	MAGALDI,						
3568.55822	HIGHLAN	VINCENT &	1			2.5S-F-		
9	D AVE.	MARGARET	5	25X142X28X142	25	D-1U-H	2.5	1
9	D AVE.	CARTER,	3	25/142/26/142	25	D-10-H	2.5	
	25	LESLEY &						
3568.86713	25 HIGHLAN	HOM,	1			2.5S-F-		
5	D AVE.	ALAN	4	25X142.71	25	D-1U-H	2.5	1
3	DAVE.	ALAIN	4	23/142./1	23	2.5S-	2.3	
	29					FD-		
7138.62889	HIGHLAN	INTROCAS	1			1UH-		
7138.02889	D AVE.	O, JOAN	3	50X142.74	50	BG2	2.5	1
3	DAVL.	DINDWALL,	3	30/142.74	30	DUZ	2.5	
	55	VICASH &						
4023.76417	HIGHLAN	HANCOCK,			28.1	2.5S-F-		
4023.70417	D AVE.	KEREN	3	28.15X142.92	5	D-1U-H	2.5	1
4	DAVL.	KLIKLIN	3	28.13/142.32		2.5S-	2.5	<u> </u>
	21					FD-		
	HIGHLAN	CROUZEL,	1			1UH-		
4507.30911	D AVE.	BERNARD	6	25X142X28X142	25	MG1	2.5	1
4507.50511	57	BEINIAND	0	23/142/28/142	23	1S-BT-	2.5	
3573.79748	HIGHLAN	MCHARGU				B-1U-G-		
1	D AVE.	E, JULIE	2	25X142.95	25	H	1	1
1	DAVL.	L, JOLIL		23/142.33	23	2.5S-		
	31					FD-		
	HIGHLAN	PARIKH,	1			1UH-		
7139.88772	D AVE.	DIPAL V.	2	50X142.77	50	BG2	2.5	1
7133.00772		JOHNSON,	_	30X112.77	30	502	2.3	
	39	ALAN &						
3571.02874	HIGHLAN	KUITE,	<u>1</u>			2.5S-F-		
4	D AVE.	ANNE E.	0	25X142.80 ETC.	25	D-1U-H	2.5	1
-		KWON,						
		KYUNG						
	49	YOUNG &						
3583.96643	HIGHLAN	YEONG IM,			25.0	2S-F-D-		
4	D AVE.	WHYO	6	25.08X142.88	8	2U-H	2	2
		LUGTU,	_					
		HERMO						
	51	Z.&						
3578.80157	HIGHLAN	CHRISTINE				2S-F-D-		
6		1		1	1	I .	1 1	2

	53							
3424.30171	HIGHLAN	BHIKAM,				2.5S-F-		
7	D AVE.	JAMES	4	24X142.90	24	D-2U-H	2.5	2
	41	OWEN,				2.5S-		
7142.96141	HIGHLAN	GEORGE P.,				FD2UH-		
3	D AVE.	JR.	9	50X142.84	50	CBG2	2.5	2
	45	OWEN,						
3449.05239	HIGHLAN	GEORGE P.,			24.1	2.5S-F-		
4	D AVE.	JR.	<u>8</u>	24.14X142.87	4	D-2U-H	2.5	2
	47							
3695.16086	HIGHLAN	NALLY,			25.8	2S-F-D-		
3	D AVE.	EDWARD	<u>7</u>	25.86X142.87	6	2U-H	2	2
	35							
7141.10844	HIGHLAN	HADDAD,	<u>1</u>			2.5S-F-		
6	D AVE.	LELIA	<u>1</u>	50X142.80	50	D-3U-H	2.5	3
69107.1943								
3								23
1.5 acres								
15.33 units								
per acre								

APPENDIX B

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

No relief may ever be granted unless it can be done

- 1) without substantial detriment to the public good, and
- 2) <u>without substantially impairing the intent and purpose of the zone plan and zoning ordinance</u>

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 C

Required Proofs for Use Variances:

Positive Criteria:

The accepted standard for reviewing a 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.

Sica v. Board of Adjustment of Tp. Of Wall, 127 N.J. 152 (1992) states:

The statute requires proof of both positive and negative criteria. Under the positive criteria, the applicant must establish "special reasons" for the grant of the variance. The negative criteria require proof that the variance "can be granted without substantial detriment to the public good" and that it "will not substantially impair the intent and the purpose of the zone plan and zoning ordinance. (This is called the enhanced standard of proof established in Medici v. BPR Co. 107 N.J.1 (1987)"

(Emphasis and parenthesis added by staff)

OR

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

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

- 1 without substantial detriment to the public good, and
- 2 <u>without substantially impairing the intent and purpose of the zone plan and zoning</u> 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.

In North Bergen, the Court further noted that,

"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.

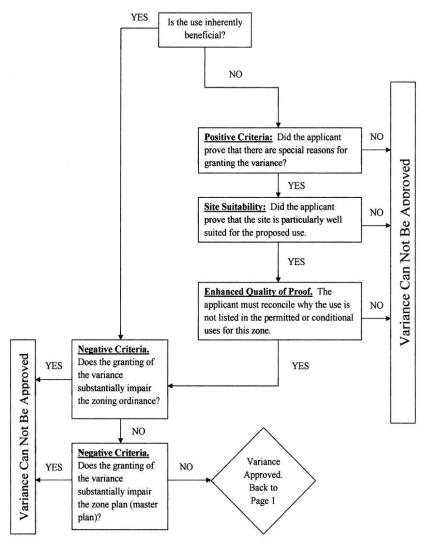
The focus of this second prong of the negative criteria is on the power to zone based on ordinance and not variance. The MLUL requires an annual zoning board report and a re-examination of the Master Plan every 6 years to address zoning decisions. NJSA 40:55 D-89 and 40:55D-89.1

"The added requirement that boards of adjustment must reconcile a proposed use variance (in this case any d or c variance) with the provisions of the master plan and zoning ordinance will reinforce the conviction...that the negative criteria constitute a 'safeguard' to prevent the improper exercise of the variance power." Medici v. BPR Co., 107 NJ 1,5 (1987) (parenthesis added by staff)

Finally, Cox adds:

"It should be noted that, with particular regard to concern about preserving the zone plan, the negative criteria have been likened to the standards applied by courts in determining that the grant of a variance amounted to an arrogation of the governing body's power to zone."

"Judge Wolfson in a carefully argued opinion found that it was a zoning board's obligation to hear all variance applications but to refuse the grant of a variance on negative criteria grounds where it believes the variance request would amount to an arrogation of authority" Cox 8-2.3



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Height "c" Variance

In instances where a variance for intensity of use is being applied, Courts have held that <u>Coventry</u> <u>Square v. Westwood Zoning Board of Adjustment 138 N.J. 285 (1994)</u> and then <u>Grasso v. Spring</u> <u>Lake, 375 N.J. Super 41 (App. Div. 2004)</u> are the controls, and not <u>Medici V. BPR Co., 107 N.J. 1 (1987)</u>. 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 form strict application of regulation so as to relieve such difficulties or hardship." NJSA 40:55D-70 c(1)

CACRES	ParcelAddr	LOT_12_13	BLDG_D 3S-B-43U-	STORIES	UNITS
0.488293		25		3	43
0.453334		26		9	69
0.133331		20	5S-B-D-51U-	J	03
0.261757		27	H(1)	5	51
0.327501		30	CELLULAR ANT.	0	0
0.081923	23 HIGHLAND AVE.	15	2.5S-F-D-1U-H	25	1
0.08193	25 HIGHLAND AVE.	14	2.5S-F-D-1U-H	25	1
			2.5S-FD-1UH-		
0.163881	29 HIGHLAND AVE.	13	BG2	25	1
0.082277	49 HIGHLAND AVE.	6	2S-F-D-2U-H	2	2
0.447005	2600 ((5) () (5)	24	4S-BT-B-A-19U-		40
0.117235		31		4	19
0.082158		5	2S-F-D-2U-H	2	2
0.128242	2 GLENWOOD AVE. 12-14 GLENWOOD	18	5S-B-C-32U-H	5	32
0.070377		19	2S-F-D-1U-H	2	1
0.070377	16 GLENWOOD AVE.	20	2S-F-D-2U-H	2	2
0.023137	10 GLLINWOOD AVL.	20	2S-BT-F-D-1U-	2	۷
0.023181	16A GLENWOOD AVE.	21	Н	2	1
0.02356	18 GLENWOOD AVE.	22	2S-F-D-1U-H	2	1
0.078611	53 HIGHLAND AVE.	4	2.5S-F-D-2U-H	25	2
0.092373	55 HIGHLAND AVE.	3	2.5S-F-D-1U-H	25	1
			2S-BT-BC6U-		
0.241057	22 GLENWOOD AVENUE	23	COOP	2	6
0.179019	32 GLENWOOD AVE.	24	2.5S-F-D-1U-H	25	1
1.203681	801 BERGEN AVE	17	CHURCH	0	0
			2.5S-FD-1UH-		
0.103474	21 HIGHLAND AVE.	16	MG1	25	1
U U83U43	57 HIGHLAND AVE.	2	1S-BT-B-1U-G- H	1	1
0.082043			4S-B-A-19U-H	4	19
0.123632	2004 KLININLDT BLVD.	32	2.5S-B-O-1U-	4	19
0.087149	2690 KENNEDY BLVD.	1	HG2	25	1
0.217239	60 GLENWOOD AVE.	28	5S-B-A-45U-H	5	45
			2.5S-FD-1UH-		
0.16391	31 HIGHLAND AVE.	12	BG2	25	1
0.161479	64 GLENWOOD AVE.	29	4S-B-A-18U-H	4	18
0.163938	35 HIGHLAND AVE.	11	2.5S-F-D-3U-H	25	3
0.08198	39 HIGHLAND AVE.	10		25	1
<u>.</u>			2.5S-FD2UH-		
0.16398			CBG2	25	2
0.07918	45 HIGHLAND AVE.	8	2.5S-F-D-2U-H	25	2

0.08483 47 HIGHLAND AVE. 7 2S-F-D-2U-H 2 2 5.720581 332

