

## CITY OF JERSEY CITY

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



DATE: 3/22/2023  
TO: Planning Board Commissioners  
FROM: Cameron Black, AICP, PP, Senior Planner  
RE: 29.5, 31 and 33 Irving Street  
Case # Z22-037  
Case # Z22-048  
Block 804, Lot 10, 11 and 12 (Proposed Lots 10.01 and 10.02)  
Minor Site Plan/subdivision with "c" and "d" variances

### **BACKGROUND**

The Applicant's (Irving Street Commons LLC) newly proposed 2,913 square foot lot (10.01) and 2,893 square foot lot (10.02) is located in the R-1 zone and currently consists of vacant land. In its place, the applicant is proposing to construct two three-story multifamily buildings with 3 residential dwelling units in each building and 6 off-street parking spaces for the tenants of both buildings. The proposal for the multi-family use triggers the "d-1" variance for use. There are "c" variances associated with the property: Required front yard setback (subsumed into the use variance) and Parking spaces above maximum permitted (subsumed into the use variance). The applicant's site has a density of **45 units per acre** on a block that has a density of **50 units per acre (Note lot 30 is in the NC – See Map 1 p. 2)**. The R-1 Zone has a planned density of **42 units per acre** in the 2021 Jersey City Master Plan.

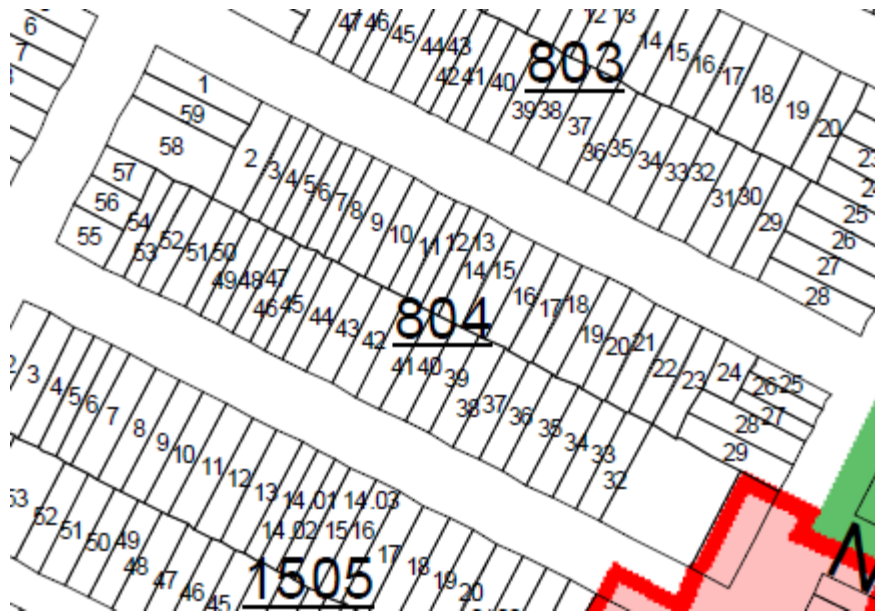
(See Appendix A - page 7).

The units are broken down accordingly:

<b>33 Irving St. (10.01)</b>			<b>31 Irving St. (10.02)</b>		
Unit 1	3bed/2 bath	1,267 sq. ft.	Unit 1	3bed/2 bath	1,267 sq. ft.
Unit 2	3 bed/2 bath (Balcony)	1,293 sq. ft. (115 sq. ft.)	Unit 2	3 bed/2 bath (Balcony)	1,293 sq. ft. (115 sq. ft.)
Unit 3	3 bed/2 bath (Roof deck)	1,350 sq. ft. (940 sq. ft.)	Unit 3	3 bed/2 bath (Roof deck)	1,350 sq. ft. (940 sq. ft.)

Total: 4,611 SF

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**Map 1** - Above shows the Zoning of Block 804 (predominantly R-1, with one lot in the NC)

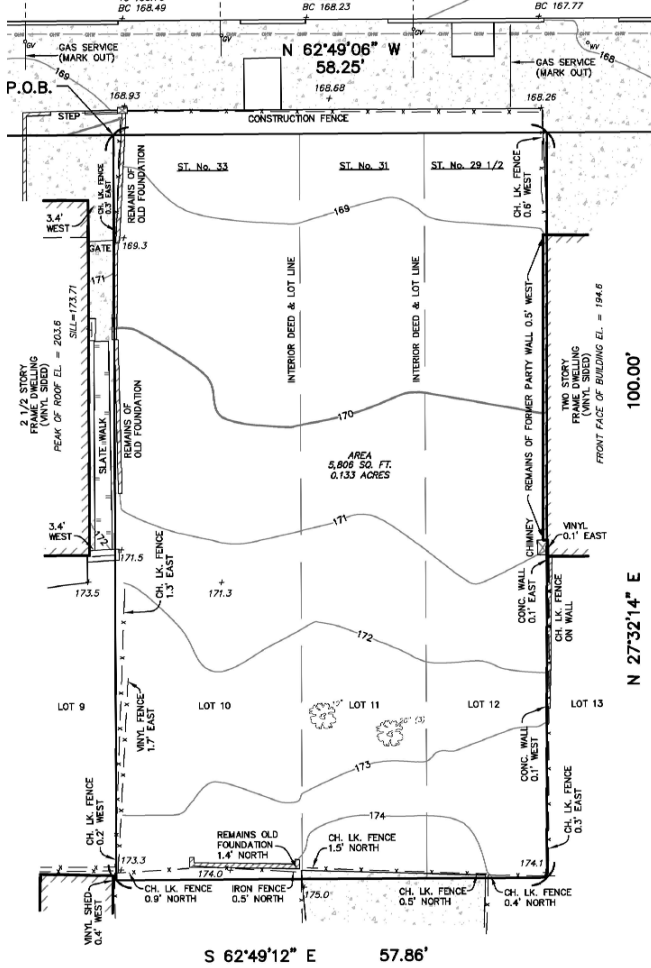


**Aerial 1** - Above shows the applicant's vacant land as of 3.2023

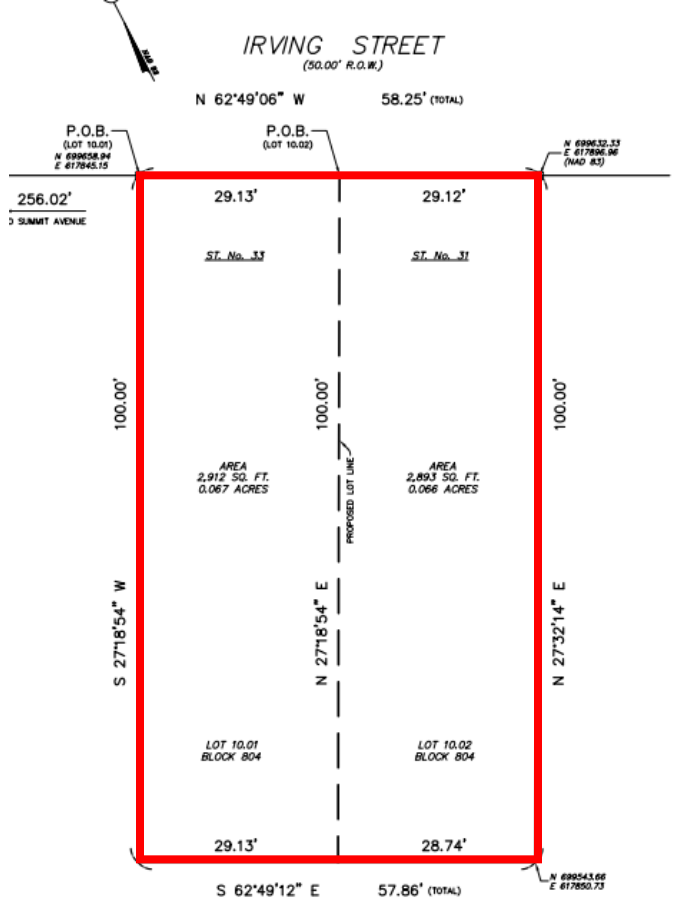
## I. SUBDIVISION SUMMARY:

The proposed subdivision plat shows a new configuration as shown below in the right-hand image outlined in red. The lot depth of lot 33 Irving to the West will not change (100'), only the width will change (25' to 29.13') to incorporate the land that has been used as a driveway, which is a 4.13' increase in width. The subdivision will consolidate 29.5 Irving Street (lot 12) with address 31 Irving Street (lot 11) to make a newly created 29.12' lot. The new lots will have areas of 2,912 square feet on lot 10.01 and 2,895 square feet on lot 10.02.

### EXISTING:



### PROPOSED:



## II. STAFF COMMENTS REGARDING SUBDIVISION:

1. Plat bulk requirements table needs to be incorporated.
2. 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	Front Yard Setback: Most frequently occurring setback (14.5')	9'

**Excerpt from R-1 for the Board’s Consideration:**

“5. Front Yard Setback: Front yard setback shall match the setback of the Front Primary Façade (see Article I for definition of Front Primary Façade) of the closest permitted use on either side of the subject parcel, provided that the building setback to be matched shall be closest to the predominant (most frequently occurring) setback on the block front. A current signed and sealed survey of the subject property showing adjacent building setbacks on both sides along with photos showing the entire block front to the left and right of the subject property must be provided to the Zoning Officer as part of the application for a building permit.”

**SEE APPENDIX B FOR FINDINGS NEEDED FOR “c” VARIANCE RELIEF - page 8**

**REQUIRED “d” VARIANCES**

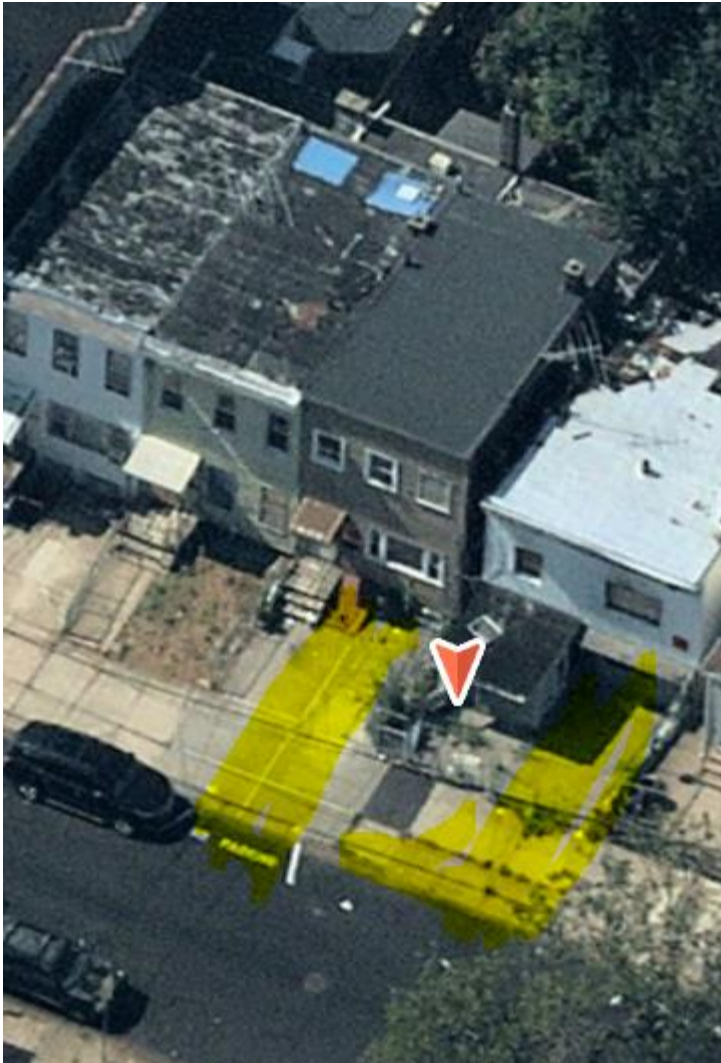
#	PERMITTED	PROPOSED
1	One or two family home	- Multi-Family (3 units)

**SEE APPENDIX C FOR REQUIRED PROOFS FOR USE AND HEIGHT VARIANCE – page 9**

**Staff Comments Regarding Use Variance:**

**Site Suitability:**

The applicant’s site is oversized for the R-1 Zone by 413 square feet. The old homes on these lots had illegal front yard parking, undersized, and blighted. The proposal will bring the property back into conformity for circulation and parking (see image below with front yard parking).



**Aerial 2** - The yellow highlighted areas identify areas used for illegal parking (Aerial from 2017 taken from Near Map)

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 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 create new and larger units meeting purpose “E” “H”, and “I” 40:55D-2 Purposes of the act in the MLUL:
  - “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;”
  - “h. 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;”
  - “i. To promote a desirable visual environment through creative development techniques and

- good civic design and arrangement;”
- Street tree, rain garden, and permeable paver improvements and landscaping will be part of the application, which meet purpose “N” 40:55D-2 Purposes of the act in the MLUL:
  - “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 the front yard setback variance going to impede on the public’s air, light, and space.

**Comments regarding Bulk:**

- The C (2) justification for a front yard setback variance does appear to be allowable without substantial detriment to the public good.

**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. 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. Address in the Zoning Table Must be corrected on the architect’s plans.
6. Landscaping in the front yard shall function as a rain garden and be labeled as a rain garden on the site plan.
7. 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** – density study for block 804

LOT	Shape_Area	ParcelAddr	UNITS
1	2668.407128	51 IRVING ST.	6
2	3121.646863	45 IRVING ST.	6
3	1666.989472	43 IRVING ST.	1
4	1666.989031	41.5 IRVING STREET	1
5	1666.988729	41 IRVING ST.	2
6	1666.989398	39 IRVING ST.	2
7	1666.989767	37.5 IRVING STREET	1
8	1666.988508	37 IRVING ST.	1
9	2499.983343	35 IRVING ST.	2
10	2499.980634	33 IRVING ST.	1
11	1666.988769	31 IRVING ST.	1
12	1666.988582	29.5 IRVING STREET	1
13	1666.988287	29 IRVING ST.	1
14	2441.965293	27 IRVING ST.	2
15	2437.991095	25 IRVING ST.	2
16	2439.984967	23 IRVING ST.	2
17	2439.973487	21 IRVING ST.	3
18	2439.971199	19 IRVING ST.	2
19	2439.972469	17 IRVING ST.	3
20	2439.988242	15 IRVING ST.	2
21	2379.981941	13 IRVING ST.	3
22	2499.630071	9 IRVING ST.	3
23	2416.953751	11 IRVING ST.	2
24	1630.005514	7 IRVING ST.	4
25	1225.404537	531 CENTRAL AVE.	2
26	1220.984527	529A CENTRAL AVE.	2
27	1253.581364	529 CENTRAL AVE.	1
28	2612.694941	527 CENTRAL AVE.	2
29	2719.999634	525 CENTRAL AVE.	2
30	4095.237883	519 Central	16
31	9036.87054	96 North Street	24
32	2490.042657	100 NORTH ST.	2
33	2493.400093	102 NORTH ST.	2
34	2493.852206	104 NORTH ST.	2
35	2494.309861	106 NORTH STREET	2
36	2494.755543	108 NORTH ST.	2
37	2495.198756	110 NORTH ST.	2
38	2495.640351	112 NORTH ST.	2
39	2496.08399	114 NORTH ST.	2
40	2496.539605	116 NORTH ST.	2

41	2496.969683	118 NORTH ST.	2
42	2497.424765	120 NORTH ST.	2
43	2497.866494	122 NORTH ST.	2
44	2498.322812	124 NORTH ST.	2
45	1685.970278	126 NORTH ST.	2
		126.5 NORTH	
46	1662.322609	STREET	2
47	1649.66397	128 NORTH ST.	2
		128.5 NORTH	
48	1686.853935	STREET	1
49	1666.131135	130 NORTH ST.	1
50	1646.766195	132 NORTH ST.	1
51	2500.536162	134 NORTH ST.	2
52	2115.60018	136 NORTH ST.	2
		136.5 NORTH	
53	1580.215816	STREET	1
54	1904.37203	138 NORTH ST.	2
		1122 SUMMIT	
55	1860.323574	AVENUE	2
56	1565.881285	1126 SUMMIT AVE.	4
57	1616.441555	1128 SUMMIT AVE.	3
58	5323.176141	1130 SUMMIT AVE.	6
59	2662.939234	1134 SUMMIT AVE.	3
	137531.7109		163

3.2 acres

50 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) **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 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 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.

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

