

## CITY OF JERSEY CITY

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



DATE: 2/7/2023  
TO: Planning Board Commissioners  
FROM: Cameron Black, AICP, PP, Senior Planner  
RE: 131-133 Clifton Place  
Case # Z22-084  
Block 15302, Lot 21 and 22  
Preliminary and Final Major Site Plan with 'd' and 'c' variances

### BACKGROUND

The Applicant proposes to construct a new four- (4) story, five- (5) family residential building at the vacant lot at 131 Clifton Place as a "sister house" to the existing historically significant mansard Italianate building with its associated addition at 133 Clifton Place; to connect the driveway access, parking and outdoor space between the properties; and to rehabilitate the existing building at 133 Clifton Place. The applicant (131-133 Clifton, LLC) has two lots that they are proposing improvements on; Lot 21 (address 133 Clifton Pl.) with an existing 3 family home and Lot 22 (address 131 Clifton Pl.) an existing vacant lot with 5 units proposed. Both lots are in the R-1 zone and have conforming lot dimensions and lot areas:

Lot 21 - 50'x94' (irregular 4,175 sq. ft.)

Lot 22 - 25'x114' (2,859 sq. ft.).

The applicant proposes a historic rehabilitation of the existing 3 family home at 133 Clifton Place with an addition and a new construct of a 5-family 4-story home on the adjacent lot 22 (131 Clifton Pl.), 7 off-street parking spaces, rain garden, and landscaping/streetscape improvements. The proposal for multi-family use on lot 22 triggers the "d-1" variance for use, and the proposed building height of 41' 8" and 4 stories on lot 22 in height triggers a "d-6" variance. There are multiple "c" variances associated with the property: Combined side yard, maximum lot coverage, minimum front yard setback, maximum building height, and combined front and rear yard setback that are subsumed by the use variance.

The applicant's site for new construction (lot 22 address 131 Clifton) has a density of **74 units per acre** on a block that has a density of **42 units per acre**. The R-1 Zone has a planned density of **42 units per acre** in the 2021 Jersey City Master Plan. When you combine lot 22 and 21 and view them as one entity the two properties have a density of **48 units per acre**. (See Appendix A - page 7-8).

The units are broken down accordingly:

#### 133 CLIFTON – (EXISTING REHAB.)

UNIT # 1 3 BDRM + 2.5 BATH (1,247 SQ. FT.)  
UNIT # 2 2 BDRM + 1.5 BATH + LIVE/WORK SPACE (1,189 SQ. FT.)  
UNIT # 3 3 BDRM + 2 BATH (1,210 SQ. FT.)

#### 131 CLIFTON – (NEW CONSTRUCT)

UNIT # 1 2 BDRM + 1 BATH (726 SQ. FT.)  
UNIT # 2 1 BDRM + 1 BATH (677 SQ. FT. + 50 SQ. FT. BALCONY)  
UNIT # 3 1 BDRM + 1 BATH (600 SQ. FT.)  
UNIT # 4 2 BDRM + 1 BATH (748 SQ. FT. + 50 SQ. FT. 253 SQ. FT.)  
UNIT # 5 2 BDRM + 2 BATH (1,161 SQ. FT. + 39 SQ. FT. 293 SQ. FT.)



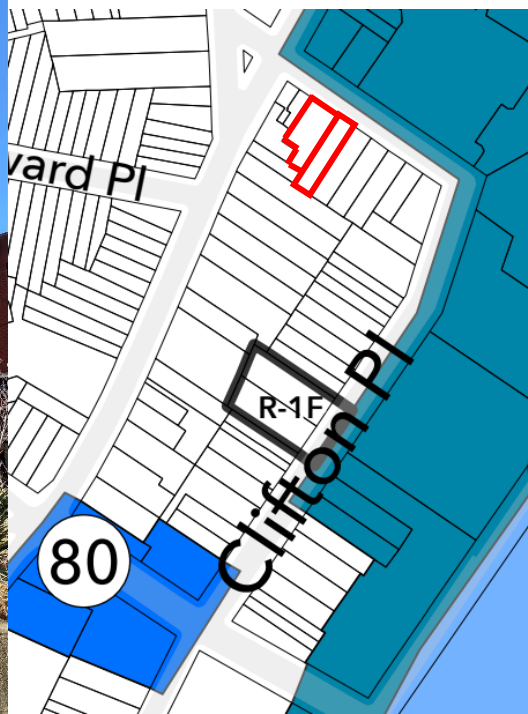
Photo A – Shows 129 Clifton Place (to the left), 131 Clifton Place (in the center), and 133 Clifton Place (to the right)



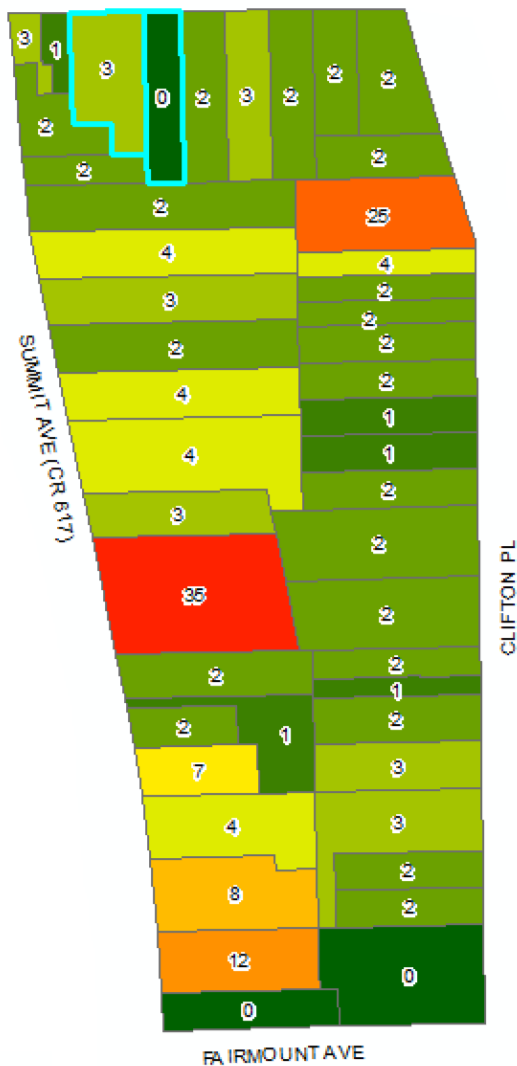
Photo B – 133 Clifton non-contributing addition (1937 Tax Card Photo)



Photo C – Shows 133 Clifton Place



Map A – applicant's lots outlined in red in the R-1 Zone



Map A - Unit counts are labeled on each lot and the applicant's lot is outlined in teal

#### **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	minimum front yard landscaping 60% w/o curb and 30% with curb	14.7% (lot 21) & 52.9% rain garden (lot 22)
2	Rear + Front Yard Setback of 35'	31' (lot 21)
3	Side Yard Combined 5' setback	3.1' (lot 22)
4	maximum building height 40' with peaked roof	41.75' mansard roof (lot 22)
5	Max Lot Coverage 85%	93.7% (lot 21)

**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 (5 units)
2	Maximum Height 35’ 3 Stories	- 41.75’ and 4 stories

## **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. The standard lot size for the R-1 zone is 2,500 square feet. The proposed development would be on a lot that is 2,850 square feet (350 sq. ft. larger than normal). Additionally, a conforming buildout of the lot would give a standard 2 family home a larger than normal backyard. Lot 21 has had a 3 family home onsite since the 1974 tax assessment and there has been onsite surface parking on the lots since the 1937 tax assessment. The applicant’s site for new construction (lot 22 address 131 Clifton) has a density of **74 units per acre** on a block that has a density of **42 units per acre**. The R-1 Zone has a planned density of **42 units per acre** in the 2021 Jersey City Master Plan. However, when you combine lot 22 and 21 and view them as one entity the two properties have a density of **48 units per acre**.

#### **Positive Criteria:**

- There are larger unit types (two 3-bedrooms and four 2-bedrooms) associated with the application. This meets purpose “E” 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;”
- Storm water mitigation will be part of the application with the creation of a rain garden, which meet purpose “N” 40:55D-2 Purposes of the act in the MLUL:
  - “To promote utilization of renewable energy resources; and”
- The new construction will upgrade fire safety measures, which meets purpose “B” 40:55D-2 Purposes of the act in the MLUL:
  - “b. To secure safety from fire, flood, panic and other natural and man-made disasters;
- The new construction is taking into consideration the historical context and aesthetics that the community wishes to see which meets purpose “I” 40:55D-2 Purposes of the act in the MLUL:
  - “i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement;”
- The new construction will incorporate historic preservation as part of their project scope, which meets purpose “J” 40:55D-2 Purposes of the act in the MLUL:
  - “j. To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land;”

**Master Plan Reconciliation:**

The Goals and Objectives of the 2021 Jersey City Master Plan identify strategies for future growth, which prioritize the needs and ideas of current residents. This project has taken into consideration the communities needs with the implementation of historic rehab, parking, and greenery. The masterplan advocates for future development to prioritize a diverse and affordable housing stock. The project incorporates a diverse unit type. The plan also prioritizes taking opportunities for improving the built environment by adapting aging and legacy infrastructure in a creative and sometimes unprecedented manner, which is being accomplished here.

**Negative Criteria:**

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

- Traffic created from the new building cannot be accurately foreseen and there is no way of confidently knowing how this may influence the quality of life for the community.
- Can the proposed density be accommodated without negatively influence the public's general health, welfare, morals, and/or well-being.

**Staff Comments Regarding Height/Bulk Variances:****Comments regarding Height:**

Grasso v. Bor. Of Spring Lake Heights examples:

- The proposed height is consistent with the neighboring property at 133 Clifton, additionally there are structures higher than 3-stories on this block: 101 Clifton Place is 5-stories and 166 Summit Avenue is 5-stories.

**Comments regarding Bulk:**

- The C(1) Hardship for permitting a bulk variance on an irregular lot states that the variance should be "the reasonable minimum needed", but a 93.7 percent lot coverage is nearly the maximum needed.

**Staff Recommends Approval Based on the ability to Fully Satisfy the Negative Criteria****Staff Comments:**

1. Applicant's experts shall provide testimony justifying the d(1) variance for use and the d(6) variance for height.
2. Is 7 parking spaces for the use appropriate and will the traffic created 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. Revised plans shall be submitted showing incorporation of the Jersey City's Traffic Planning Comments, and Division of Engineering's Comments.
2. 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.
3. 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.

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.
6. The applicant shall install the rain garden prior to approval of a Certificate of Occupancy.
7. All work at the exterior of the historic building is to follow the Secretary of the Interior's Standards and Guidelines for Rehabilitation.
8. Material samples of all exterior materials on both the historic construction as well as the proposed, new construction shall be submitted to HPC Staff for review before the submission of construction documents for permitting.
9. Details, specifications, and materials, as well as means and methods of restoration, repair and construction must be fully noted on the construction drawings and must be reviewed by, and signed by, HPC Staff before the submission of construction documents for permitting.
10. Mock ups of exterior masonry, carpentry, and exterior finishes are to be approved by HPC Staff Historic Preservation Office before they are implemented on the building.
11. Shop drawings for the windows, window frames, doors and door frames, roofing materials, cast stone, and exterior ironwork are to be approved by the Historic Preservation Office before purchase and installation.
12. Details, Specifications, and Material Submissions not currently shown on the drawings, or submitted to and approved by the Historic Preservation Office are remanded back to the Historic Preservation Office and are to be resolved before the submission of construction documents for signature and permitting.

## **Appendix A** – density analysis per block 15302

LOT	CACRES	Shape_Area	ParcelAddr	UNITS
29	0.13116	5713.291679	101 CLIFTON PL.	25
28	0.061398	2674.477119	105 CLIFTON PL.	2
27	0.08621	3755.284303	121 CLIFTON PL.	2
26	0.059081	2573.568869	123 CLIFTON PL.	2
25	0.079777	3475.07389	125 CLIFTON PL.	2
24	0.080029	3486.05768	127 CLIFTON PL.	3
23	0.080282	3497.050871	129 CLIFTON PL.	2
22	0.067094	2922.600862	131 CLIFTON PL.	0
21	0.099032	4313.802144	133 CLIFTON PL.	3
20	0.0223	971.40025	135 CLIFTON PL.	1
1	0.071775	3126.526941	146 SUMMIT AVE.	0
2	0.103846	4523.511159	150 SUMMIT AVE.	12
3	0.121098	5275.014387	154 SUMMIT AVE.	8
4	0.120404	5244.756063	156 SUMMIT AVE.	4
5	0.062332	2715.175613	158 SUMMIT AVE.	7
6	0.043667	1902.125969	160 SUMMIT AVE.	2
7	0.081372	3544.553628	162 SUMMIT AVE.	1
8	0.088245	3843.931734	164 SUMMIT AVE.	2
9	0.230111	10023.6048	166 SUMMIT AVE.	35
10	0.087273	3801.588643	174 SUMMIT AVE.	3
11	0.182657	7956.527257	176 SUMMIT AVE.	4
12	0.119354	5199.02682	178 SUMMIT AVE.	4
13	0.123709	5388.753949	180 SUMMIT AVE.	2
14	0.128064	5578.4251	182 SUMMIT AVE.	3
15	0.129365	5635.127486	184 SUMMIT AVE.	4
16	0.132217	5759.344275	186 SUMMIT AVE.	2
17	0.038639	1683.116917	2 BALDWIN AVE.	2
18	0.055342	2410.705505	4 BALDWIN AVE.	2
47	0.166156	7237.730148	57 CLIFTON PL.	0
19	0.021207	923.792888	6 BALDWIN AVE.	3
46	0.057533	2506.128258	63 CLIFTON PL.	2
45	0.05782	2518.641685	65 CLIFTON PL.	2
44	0.124202	5410.235908	67 CLIFTON PL.	3
83	0.083332	3629.923203	69 CLIFTON PL.	3
42	0.083568	3640.214144	73 CLIFTON PL.	2
41	0.032856	1431.186438	75 CLIFTON PL.	1
40	0.050947	2219.253397	75A CLIFTON PL.	2
39	0.139856	6092.117795	77-79 CLIFTON PL.	2
38	0.14999	6533.548486	83 CLIFTON PL.	2
37	0.068641	2989.991265	85 CLIFTON PL.	2

36	0.068785	2996.260416	87 CLIFTON PL.	1
35	0.068929	3002.537136	89 CLIFTON PL.	1
34	0.069073	3008.799167	91 CLIFTON PL.	2
33	0.069217	3015.075236	93 CLIFTON PL.	2
32	0.046233	2013.919979	95 CLIFTON PL.	2
31	0.046298	2016.722569	97 CLIFTON PL.	2
30	0.046361	2019.491238	99 CLIFTON PL.	4

Total Acres:	4.136837	180199.9933	Total Units:	177
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4.1/177=42      Block density is 42 units per acre

<u>43560/2914= 14.9</u>	<u>Applicant's site has a planned density of 74 units per acre</u>
<u>10.4x5=74</u>	
<u>Density of lot 22</u>	



## **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

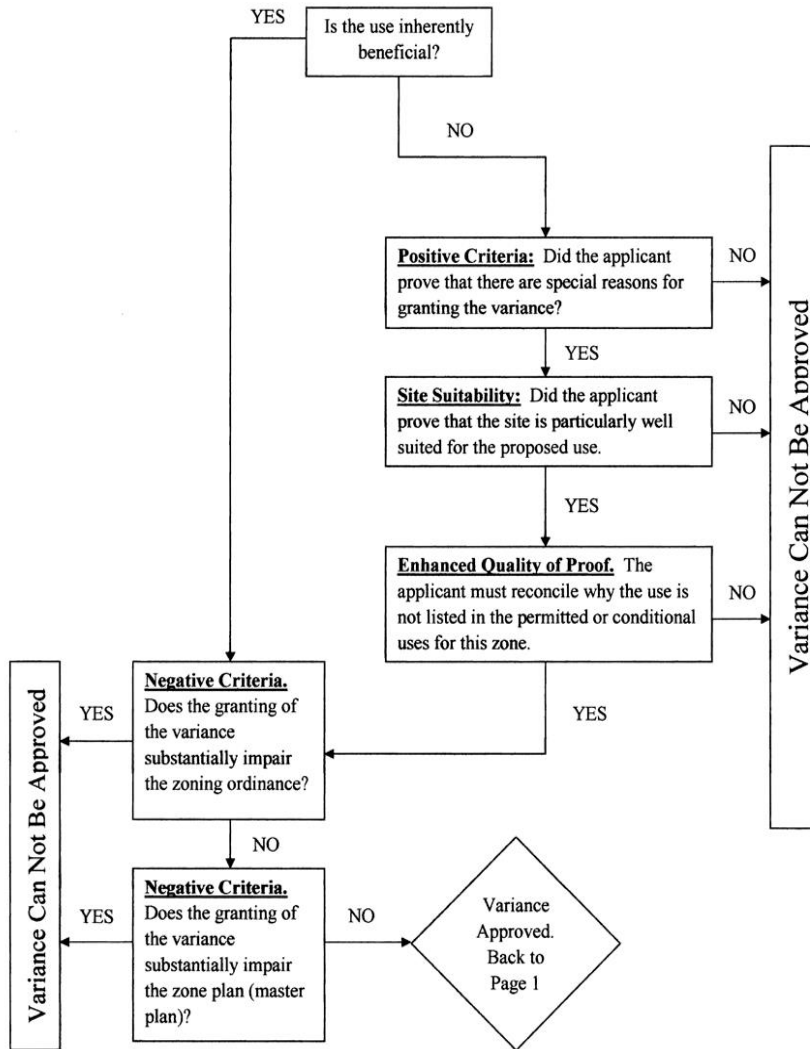
"The added requirement that boards of adjustment must reconcile a proposed use variance (in this case any d or c variance) with the provisions of the master plan and zoning ordinance will reinforce the conviction...that the negative criteria constitute a 'safeguard' to prevent the improper exercise of 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



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### 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 Hgts*, 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)