

## CITY OF JERSEY CITY

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

DATE: May 10, 2021

TO: Board of Adjustment Commissioners

FROM: Lindsey Sigmund, AICP, Environmental Planner

RE: Case #Z19-069 91-93 Paterson Street

Preliminary & Final Major Site Plan with D and C Variances

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### **Documents Reviewed:**

- City of Jersey City General Development Application, received by City Planning June 28, 2019, revised March 2020 and November 2020;
- Plans entitled "Proposed 9 Unit Multi-family Building", prepared by Jeffrey V. Lewis, dated November 15, 2020, revised March 8, 2021;
- Statement of Principal Points, undated;
- Density Analysis, prepared by Dresdner Robin, dated January 16, 2020;
- HPC Determination of Significance, dated January 31, 2019;
- Memo from Jersey City Engineering, dated April 9, 2020

### **Site Location:**



### **Application Background and Proposal:**

The subject property, known as Block 2102, Lots 15 and 16 is located at 91-93 Paterson Street in the R-1 One and Two Family Housing District. The site is comprised of two (2) parcels amounting to 5,000 SF. In a report dated January 31, 2019, Historic Preservation Staff determined that the existing one and a half story residential structure on the property does not meet the criteria for historic or cultural significance.

The Applicant is proposing to demolish the existing structure to construct a four (4)-story residential building containing nine (9) dwelling units and nine (9) ground floor parking spaces. The proposal includes 7,316 SF of residential space distributed as five (5) 2-bedroom units and four (4) 1-bedroom units. The ground floor includes nine (9) compact parking spaces, bicycle storage, a trash room, and utilities. Access to the parking area is provided through a 10 FT wide access easement. One (1) 2-bedroom unit is located on the ground floor. The three upper floors include a 20 FT rear yard step-back. Private roof terraces are proposed on the second floor above the parking level. The fourth floor includes a 9.7 FT front yard step-back, side yard step-backs, and a 29.7 FT rear yard step-back. The residential space on the fourth floor provides a duplex style design for the four (4) units on the third floor therefore the enclosed residential space on the fourth floor is minimal. The roof plan includes private roof terraces, raised planters, and 950 SF of green roof area.

The Applicant is proposing a multi-family building in the R-1 Zone, therefore a D(1) Use Variance is required. In addition, the permitted height is three (3) stories whereas four (4) stories and 41.8 feet is proposed. Therefore, a D(6) Height Variance is required.

In addition, the applicant is requesting relief from minimum parking stall requirements. The proposed parking spaces are compact therefore a "c" Variance is required. While subsumed under the Use Variance, there are a number of nonconformities based on R-1 standards, which can be found in Table 1 below.

<b>Table 1: R-1 Bulk Standards</b>			
<b>Standard</b>	<b>Required</b>	<b>Proposed</b>	<b>Conforming (Y / N)</b>
<b>Min. Lot Size</b>	2,500 SF	5,000 SF	Y
<b>Min. Lot Width</b>	25 FT	50 FT	Y
<b>Min. Lot Depth</b>	100 FT	100 FT	Y
<b>Front Yard</b>	Predominant	1 FT	N
<b>Side Yard</b>	One Side: 2 FT Both Sides: 5'-1"	0 FT / 0 FT	N
<b>Rear Yard</b>	20 FT	0 FT	N
<b>Max. Height</b>	3 Stories	4 Stories / 41.75 FT	N
<b>Max. Building Coverage</b>	60%	87.7%	N
<b>Max. Lot Coverage</b>	85%	98%	N

### **Staff Comments:**

The applicant is not proposing an inherently beneficial use, therefore the applicant is required to provide proof that the proposed use can meet the purposes of zoning, the site is particularly suited for the use, and the proposal meets the enhanced burden of proof. Additionally, the applicant must demonstrate the variances can be granted without substantial impairment to the intent and purpose of the zone plan and zoning ordinance but can also be granted without substantial detriment to the public welfare.

The Applicant is proposing a multi-family building, which is not a permitted use in the R-1 Zone, thus requiring a D(1) use Variance. The proposed height is four (4) stories, thus requiring a D(6) Height Variance. While subsumed under the Use Variance, there are a number of nonconforming bulk standards. Lastly, the project requires a “c” for the compact parking spaces.

### **D (1) Variance:**

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.

With 5,000 SF the site is oversized, therefore the proposed use is suited to the property. Beyond the use itself, the proposed density should be considered. The implied density of a 2-family on a conforming R-1 lot of 2,500 SF is **35 units/acre**. The proposed density for this project is **79 units/acre**. The Applicant’s planner conducted a density analysis of Block 2101 in which the subject property is located in addition to Block 1405 across the street. The analysis concluded that the average density for their study area is 43 units/acre. The area includes 20 multi-family buildings with densities ranging from 50 units/acre to 196 units/acre. Therefore, a building with 79 units/acre is not out of character for this neighborhood.

Unit sizes are also considered when evaluating site suitability. The average unit size is 812 SF, which are adequately sized. In addition, the building design includes a 20 FT rear yard setback above the first floor and an additional rear yard step-back of 9 FT above the third floor. The duplex-style for the fourth floor provides multiple step-backs therefore; there is minimal enclosed residential space on the fourth floor. A 9 FT front yard step-back, side yard step-backs, and the additional rear yard step-back on the fourth floor provides light and air to surrounding properties.

It is the opinion of staff that this proposal advances the following purposes of Zoning, per NJSA 40:55D-2 of Municipal Land Use Law:

### **b. To secure safety from fire, flood, panic and other natural man-made disasters;**

The applicant is proposing a green roof and a below grade detention system.

It is the opinion of staff that the applicant meets the following intent of the Land Use Objectives of the Jersey City Master Plan:

“Continue efforts to stabilize and upgrade residential neighborhoods:

- Protect and preserve residential neighborhoods from intrusion by non-residential uses”

#### **D(6) Height Variance**

To justify a Height Variance the applicant must show that the proposed height will be consistent with surrounding neighborhood and will not have a detrimental effect on the neighborhood. The proposed building design includes multiple step-backs for the front, side, and rear yards, providing light and air to surrounding properties.

The Applicant’s experts shall address the following points:

1. The Applicant’s experts shall address through testimony the positive and negative criteria required to grant use and height relief.
2. The Applicant’s experts shall address through testimony the positive and negative criteria required to grant relief from R-1 bulk standards.
3. The Applicant’s experts shall provide testimony regarding the detention capabilities of the below grade stormwater detention.
4. The Applicant’s expert witnesses shall provide testimony on the proposed façade elements and create a verbal record of the materials to be used on the project.
5. The Applicant’s experts shall provide testimony regarding the access easement.

#### **Staff Recommended 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. 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.
4. All comments from JC Engineering shall be addressed and shown on final signature plans.
5. A copy of the memorialized resolution with amended deed 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.

## **APPENDIX:**

### **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.

#### ***A. 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.**

#### ***B. Special Reasons/Positive Criteria for D(6) Height Variance***

The purpose of a height restriction is to limit intensity. To benefit the public welfare through limiting the impact of traffic congestion, fire hazards, and public health. Additionally, it is to provide adequate light, air, open space, and promote a desirable visual environment. Special reasons are not defined by statute, generally, so judicial interpretations have guided the standards. All “D” Variance applications must meet heightened standards for establishing the special reasons.

**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.**

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

#### ***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.**