

DEVELOPMENT APPLICATION REVIEW | STAFF REPORT

DATE : 10.13.2021
TO : Zoning Board Commissioners
FROM : Mallory Clark-Sokolov, PP, AICP, Senior Planner
Tanya Marione, PP, AICP, Division Director
CASE : P20-001
PROJECT : 184 Summit Ave
Minor Site Plan with 'd' and 'c' Variances

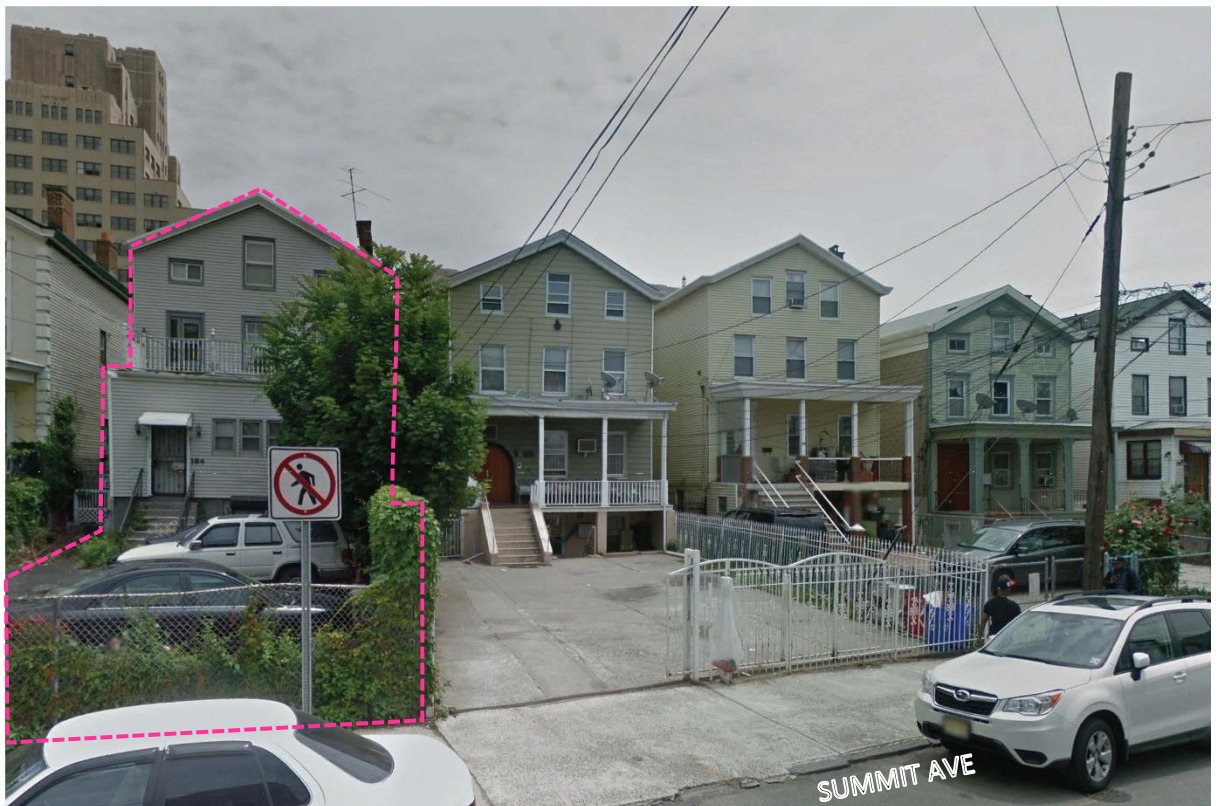
I. DOCUMENTS REVIEWED

- General Development Application Form dated 01.07.21
- Survey by Pronesti Surveying, Inc. dated 04.01.2019
- Architectural Plan Set by Kurv Architecture dated 07.20.21
- Principle Points Statement by Dresdner Robin received 09.15.21

II. APPLICATION BACKGROUND + PROPOSAL

- **Existing Conditions:** The site is an oversized 5,797sf lot in the R1 zone. The lot is particularly deep for the R1 at 181ft. The lot currently houses a three (3) story, two (4) family structure which is vacant. The block has a unique condition of an angled street creating an atypical gradual increase in front yard setback among the adjacent properties.





- **Proposed Conditions:** The applicant proposes to demolish the existing structure and construct a new three (3) story, four (4) unit structure with four (4) onsite parking spaces. The proposed structure is compliant with R1 height standards but seeks to address the irregular front yard setback condition and step the building closer to the front property line to restore the street wall.
- **Variances**
 - **D(1) Use**
Required/Permitted: One and Two Family Homes
Proposed: Multifamily (4 units proposed where a nonconforming 4 unit property is recorded today)
 - **Front Yard Setback**
Required: Match Predominant Setback of the Block (varies)
Proposed: 15ft
 - **Rear Yard Setback**
Required: 61.25ft (20ft min +50% of lot depth over 100ft)
Proposed: 39ft 9in

III. STAFF COMMENTS

- **d(#) Variance**
 - Though the application qualifies for a use variance through the demolition of the existing structure, the use of the property is not changing from the pre-existing nonconforming use as

it exists today. The property has been recorded as a four (4) unit building for multiple years and therefore it is clear that the use and unit count as proposed do not pose substantial detriment to public safety and welfare. The proposal meets the positive criteria of a d(1) variance through promoting E and I of 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;
> As previously stated, the project proposes to continue the existing density of the site. A nonconforming multifamily use is in fact consistent with the character of the overall block and neighborhood, as over 1/3 (36%) of the block is composed of multifamily properties, as recorded in the table below. Additionally, the lot is substantially oversized for the R1 zone and actually proposes a density **lower** than that of the R1 Zoning at 30 du/acre (whereas the density standard implied within the R1 is 35 du/acre). It is clear that the site can support the proposed density without detriment to the intent of the R1 zone plan.

| EXISTING NON-CONFORMING PROPERTIES | | | |
|------------------------------------|-----|-------------------|------------|
| BLOCK | LOT | ADDRESS | UNIT COUNT |
| 15302 | 2 | 150 Summit Ave | 12 |
| 15302 | 3 | 154 Summit Ave | 8 |
| 15302 | 4 | 156 Summit Ave | 4 |
| 15302 | 5 | 158 Summit Ave | 7 |
| 15302 | 9 | 166 Summit Ave | 35 |
| 15302 | 10 | 174 Summit Ave | 3 |
| 15302 | 11 | 176 Summit Ave | 4 |
| 15302 | 12 | 178 Summit Ave | 4 |
| 15302 | 14 | 182 Summit Ave | 3 |
| 15302 | 19 | 6 Baldwin Ave | 3 |
| 15302 | 21 | 133 Clifton Place | 3 |
| 15302 | 24 | 127 Clifton Place | 3 |
| 15302 | 29 | 101 Clifton Place | 25 |
| 15302 | 30 | 99 Clifton Place | 4 |
| 15302 | 32 | 95 Clifton Place | 3 |
| 15302 | 44 | 67 Clifton Place | 3 |
| 15302 | 83 | 69 Clifton Place | 3 |

- **I:** To promote a desirable visual environment through creative development techniques and good civic design and arrangement;
>The project proposes to move the new structure forward toward the front property line, breaking the consistent front building line that exists today. Though non-conforming with the R1 front yard standards, Planning sees this as a positive step in line with the overall intent of urban zoning standards to activate the street and scale development within a parcel in a way that promotes good urban design and an urban-oriented streetwall. The current configuration that exists today results in increasingly large front yard which by default are utilized for front yard parking. This is both prohibited within new development under the LDO and is also detrimental to the quality of the public realm and visual environment of the surrounding neighborhood. Restoring a typical front yard setback to be treated with landscaping where a large asphalt parking area exists today is a substantial improvement and therefore the benefits outweigh the detriments of the front yard variance.

▪ **'c' Variances**

- Front Yard Variance: See Comments under MLUL Purpose I.
- Rear Yard Variance: The R1 zone requires a minimum 20ft rear yard setback and combined 35ft front and rear yard setback. For lots over 100ft, as is the case on the relevant site, there is an increased minimum rear yard setback equal to 50% of the lot depth beyond 100ft. For this property, the 182.5ft depth therefore results in a minimum setback of 61.25ft ($.5 \times 82.5 + 20$). The project proposes a 39ft 9in rear yard setback. Staff sees no detriment to the zone plan as the proposed setback still exceeds the typical required 20ft and 35ft combined standards of the R1. The proposed configuration preserves light and air to the surrounding properties, and the rear building line as proposed is actually further from the rear property line than that of the adjacent southern property at 182 Summit Ave, therefore posing no threat to public health, safety, or welfare.

IV. STAFF RECOMMENDED CONDITIONS

All testimony given by the applicant and their expert witnesses in accordance with this application shall be binding. The staff recommends the following conditions to mitigate the negative criteria:

1. 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 planning staff and approval by planning board.
2. Applicant shall provide an affidavit from the architect of record representing that the constructed project is consistent with final approved plans.
3. The plans will be revised prior to signature sets to include one (1) street tree in the public right of way consistent with the Jersey City Forestry Standards.
4. All street trees and landscaping shall be installed in accordance with the Jersey City Forestry Standards prior to the issuance of a Certificate of Occupancy (CO) or Temporary Certificate of Occupancy (TCO).

APPENDIX : REQUIRED PROOFS FOR VARIANCES

▪ D(1) USE VARIANCE (NJSA 40:55D-70D):

▫ Hardship

Prior to the 1948 Land Use Law amendments, a use variance could only be granted if an undue hardship was proven. NJSA 40:55D-70d states that “in particular cases for special reasons.” certain variances may be granted by the Board of Adjustment. These “special reasons” are also often referred to as positive criteria.

- In 1952, Ward v. Scott NJ 117 clarified that “special reasons” was bound by the purposes of general zoning.

▫ Positive Criteria

Medici v BPR, 107 NJ 1 (1987) sets forth the standard for reviewing a use variance, with the positive criteria requiring that the application shows;

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.

▫ 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

▪ D(6) HEIGHT VARIANCE (NJSA 40:55D-70D):

▫ Hardship

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;

1. By reason of exceptional narrowness, shallowness or shape of a specific piece of property, or
2. By reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or
3. By reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon...

▫ **Positive Criteria**

In the case of a d(6) height variance, Courts have held through Coventry Square v. Westwood Zoning Board od Adjustment 138 NJ 285(1994) and later Grasso v. Spring Lake, 375 NJ Super 41 (App. Div 2004) that the special reasons for height variances vary from that of use differences in that the Applicant needs to prove that the site can accommodate the intensity of the proposal.

- Height restrictions are established with the intent of
 1. Limiting intensity in order to preserve light and air of the adjacent structures
 2. Maintaining a contextual density within the zone.
 3. Advance the purposes of zoning
- The Applicant must demonstrate that the proposed height will not offend the purpose of the height limitation, and in turn that granting the deviation will not disrupt the purposes of zoning.

▫ **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

▪ **'C' VARIANCE**

Required Findings for 'C' Variance Standard/Deviations under N.J.S.A. 40:55D-70(c)(2):

1. The justifications must relate to a specific piece of property;
2. The purposes of the Municipal Land Use Law would be advanced by the deviation from the zoning ordinance requirement;
3. The deviation can be granted without substantial detriment to the public good;
4. The community benefits of the deviation would substantially outweigh any detriment and;
5. The deviation 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