

CITY OF JERSEY CITY

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



DATE: August 8, 2022
TO: Board of Adjustment Commissioners
FROM: Francisco Espinoza, Assistant Planner
Matthew Ward, Supervising Planner, PP, AICP
RE: Case #Z20-028 131 Prospect Street
'C' & 'D' Variance(s)

Site Location:



Application Background and Proposal:

The subject property, known as Block 4905, Lot 15 is located at 131 Prospect Street in the R-1, One and Two Family Housing District. The R-1 zone allows for 3 story buildings and is governed by 35 units per acre density. The site is oversized when compared to the typical 25 x 100 R-1 Lot and is comprised of one (1) parcel with a total area of 5,674SF. The site currently includes a

three (3)-story, three (3) unit dwelling and a detached one (1) story garage with a density of 23 units per acre.

The Applicant proposes to legalize an existing 4th unit by converting the basement floor into a 958 SF 2 bedroom unit. The other three (3) legal residential units are to remain and no changes are proposed. The legalization of the 4th unit will be still remain below the density standard in the R-1 District at 31 units per acre.

The proposed site plan includes landscaping in the front and rear yard as well as upgrading the chain-link fence in the rear yard to a new vinyl fence.

The Applicant is proposing to legalize an existing fourth (4th) unit which is not a permitted Use in the R-1 one and two family district, therefore a D(1) Use Variance is required. In addition, the application is requesting relief for maximum lot coverage that is a preexisting condition.

Table 1: R-1 Standards			
Standard	Required	Proposed	Conforming (Y / N)
Permitted Uses	One and Two Family	Four Family	N
Min. Lot Size	2500 SF	5674 SF – No Change	Y
Min. Lot Width	25 FT	28.25 FT	Y
Min. Lot Depth	100 FT	200.5 FT	Y
Front Yard	Predominant	10 FT – No Change	Y
Side Yard	2 FT- One side 5 FT 1IN- Both sides	4 FT 1IN – No Change	Y
Rear Yard	30 FT	130' to Bldg.– No Change	Y
Max. Height	4 Stories	3 Stories – No Change	Y
Max. Building Coverage	60%	32.3%– No Change	Y
Max. Lot Coverage	85%	97.7%	*N
*pre-existing condition, no change			

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.

D(1) Variance:

Tax records from 1938 indicate the building was constructed in 1895. The building was and continues to be three (3) stories and contain three legal (3) units.

When evaluating a D (1) Use Variance to permit an additional unit in the R-1, site suitability is evaluated. With 5,674 SF, the lot is considered oversized. The overall bulk of the structure is also applicable when evaluating site suitability. The rear, front yard, and side yard setbacks are conforming or pre-existing conditions.

Unit sizes are considered when evaluating site suitability. With the average SF of the units being 1,111SF, the building layout provides for appropriate unit sizes.

The proposed improvements to the front and rear yards promotes a desirable visual environment.

'c' Variance:

The Existing building has a non-conforming maximum lot coverage. The proposed action will continue this condition thus requiring a variance.

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 relief.
2. The Applicant's expert witnesses shall provide testimony on the proposed building improvements and site improvements.
3. 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.

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 (if any) shall be installed in accordance with 345-66 and the City's Forestry Standards, prior to an issuance of a Certificate of Occupancy.
4. The Architect of record shall be retained during construction and shall submit a signed and sealed letter representing and nothing that site construction was consistent with work approved before the issuance of the Certificate of Occupancy.
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.**

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.**

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

- 3) **without substantial detriment to the public good, and**
- 4) **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