

# CITY OF JERSEY CITY

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



## Interdepartmental Memorandum

DATE: 4.7.21  
TO: Zoning Board Commissioners  
FROM: Cameron Black, Senior Planner, AICP, PP  
RE: Case #Z20-068 Block: 25304, Lot: 27  
192-194 McAdoo Avenue "d" and "c" Variance

### BACKGROUND

The applicant, 192-194 McAdoo Avenue, LLC, is proposing a three-family home with 3 surface parking spaces on a 40'x100' lot in an R-1 Zone. The proposal incurs a "d-1" variance for the use of a 3-family home where a 2-family is permitted. The applicant is proposing a rain garden as part of their application.

#### Unit Sizes:

Unit 1 (3 bedroom): 1,500 sq. ft.  
Unit 2 (3 bedroom): 1,511 sq. ft.  
Unit 3 (3 bedroom): 1,511 sq. ft.

The applicant's site has a density of **32 units per acre** on a block that has a density of **24 units per acre**. The R-1 Zone has a planned density of 35 units per acre in the Jersey City Master Plan.  
(See Appendix A - page 5-6).



Applicant's Site outlined in Red on Zoning Map (white area indicating R-1 Zone)



**Applicant's Site Photographed on March 23, 2021**



**Block 25304 Lot 27 (Applicant's lot identified with a teal outline)**



**“d” Variance**

**SEE APPENDIX B FOR REQUIRED PROOFS FOR USE AND HEIGHT VARIANCE – page 7-9**

**Use d(1)**

Applicant is seeking a use variance for a 3 family in an R-1 zone, which only permits one and two family housing.

**REQUIRED “d” VARIANCE**

#	REQUIRED PRINCIPAL USES R-1	R-1F (for comparison)	PROPOSED
1	1 and/or 2 Family	1 and/or 2 Family (conditional 3 family)	3 Family

**R-1F Conditional 3 family home standards for the board’s reference:**

“D. Conditional Uses.

1.Dwellings with three units.

E. Bulk Standards for One, Two, and Three Family Dwellings.

1. Minimum Lot Size: Four thousand (4,000) square feet.

2. Minimum Lot Width: Forty (40) feet.

3. Minimum Lot Depth: One hundred (100) feet.

4. Front Yard Setback: Predominant setback shall apply.

5. Side Yards: Minimum of five feet on both sides.

6. Minimum Rear Yard: Thirty (30) feet.

7. Maximum Building Height: three stories and thirty-five (35) feet; for three-family buildings, see conditional uses standards for height.

8. Maximum Building Coverage: Fifty-five percent (55%).

9. Maximum Lot Coverage: Seventy-five percent (75%).

10. Maximum Accessory Building Height: Fifteen (15) feet.

11. Minimum Accessory Building Setbacks:

Rear Yard: Three (3) feet;

Side Yard: Two (2) feet.

F. Parking Standards for One, Two, and Three Family Dwellings.

1. Minimum required parking: one space per dwelling unit.

2. No parking shall be permitted between the building line and the street line. Garage entrances must be on the rear wall of the building or as part of a detached or attached fully enclosed garage.

3. Maximum width of driveway: Ten (10) feet.

G. Conditional Use Standards for Three-family homes.

1. Homes must be designed to appear as single family dwellings. Three-family buildings must have only one front entry.

2. Three parking spaces must be provided on site. Garage entrances must be on the rear wall of the building or as part of a detached or attached fully enclosed garage.

3. Homes must be designed to include architectural elements such as gables, front porches, transoms, cornices, divided light windows, dormers, bay windows, oriels, turrets, and other elements found within the existing streetscape.

4. Roof pitches must be designed to be compatible with adjacent houses by using prevalent slopes and angles.
5. All exterior walls are to be treated with the same materials and architectural detail; although, the treatment of side and rear walls maybe simplified.
6. Design elements shall have compatible rhythm and repetition with an emphasis on materials and colors prevalent in the neighborhood.
7. Building height shall be visually compatible with adjacent buildings. The size, scale, and height of new construction shall relate to the prevailing pattern of the streetscape.
8. Buildings are to be sited on their lot so that their placement and relationship to surrounding property is equivalent to the existing pattern of development on the street.
9. Materials must reflect the predominant traditional building materials in use on existing homes. Where appropriate, the use of multiple materials maybe encouraged. However, use of EFIS, vinyl siding, light colored brick, stucco, brick-face, stone-face, and other inappropriate cladding materials is strictly prohibited.”

**Staff Opinion:**

The improvements to the site and the amelioration of existing non-conforming elements on the property create benefits.

**Staff Comments:**

1. Applicant’s expert shall provide testimony showing that the use variance can meet the positive and negative criteria for a use variance. This should include, but not in any way be limited to testimony addressing that the site is uniquely and particularly suitable for the proposed use, testimony reconciling the master plan and zone plan with the absence of the proposed use, and testimony confirming that there will not be any detriment to the zone or public good. The applicant must also demonstrate that the use promotes the general welfare because the proposed site is particularly suited for the proposed use.
2. Although there is no parking variance associated with this application the use of a three-family may result in homeowners or tenants with more vehicles than a two-family. Therefore, the applicant must demonstrate that the proposed site will not adversely affect the communities current ability to park.
3. Will this now create precedent for all these lots that are misshaped and oversized to create 3 units?

**Staff recommends the following conditions be added to meet the negative criteria:**

1. The architect of record shall be retained during construction and shall submit a signed and sealed letter representing that nothing during site construction was changed and the final construction is consistent with work approved before the issuance of certificate of occupancy.
2. All materials and color selections shall be shown on final plans. No change to the facade, site design, including materials, can be made without approval by the office of planning.
3. All testimony given by the Applicant and their expert witnesses in accordance with this application shall be binding.
4. 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.
5. Change street tree species to a yellowwood.

## Appendix A—density per block 25304

BLOCK	LOT	ParcelAddr	LAND_D	BLDG_D	UNITS	CACRES
25304	1	89 STERLING AVE.	30.43X79 AV.	2SFB-D-1UH-BT-G	1	0.053724
25304	22	9 GLEN LANE	36X94 AV.	1S-F&B-D-1UH-G1	1	0.080327
25304	27	192-94 MC ADOO AVE.	40X100	2S-F-D-1U-H	1	0.086687
25304	24	13 GLEN LANE	36X84 AV.	1S-F&B-D-1UH-G1	1	0.072686
25304	29	196 MC ADOO AVE.	35X100	2.5SFD2UH-CB-G1	0	0.074995
25304	30	198 MC ADOO AVE.	25X100	2.5SF-D-1U-H	1	0.053079
25304	26	17 GLEN LANE	44.33X74 AV.	1S-F&B-D-1U-H	1	0.079007
25304	28	21 GLEN LANE	44.33X60 AVG.	2S-F-D-1U-H	1	0.06742
25304	31	200-02 MC ADOO AVE.	50X100	3SF-D-6UNH-B-G5	6	0.104935
25304	32	25 GLEN LANE	72X50 IRR	1S-F-D-1U	1	0.084811
25304	33	206 MC ADOO AVE.	39X126.75 I	1.5SF-D-1U-G1	1	0.100923
25304	34	208 MC ADOO AVE.	39X126.75 I	2S-F-D-2U-H-G	2	0.103072
25304	36	210 MC ADOO AVE.	43.66X100 IRR.	1.5SF-D-1U-H-G1	1	0.076346
25304	35	GLEN LANE	26.33X9X27X17	VACANT LAND	0	0.014999
25304	37	GLEN LANE	61.56X92.31 IR	VACANT LAND	0	0.069235
25304	45	226 MC ADOO AVE.	28X97	2S-F-D-2U-H-BG2	2	0.063506
25304	46	228 MC ADOO AVENUE	28X97	2S-F-D-2U-H	2	0.063462
25304	47	230 MC ADOO AVE.	28X97	2S-F-D-2U-H	2	0.063416
25304	48	232 MC ADOO AVE.	28X97	2S-F-D-2U-H	2	0.063371
25304	49	234 MC ADOO AVE.	28X97	2S-F-D-2U-H	2	0.063326
25304	41	218 MC ADOO AVE.	28.14X97	2S-F-D-2U-H	2	0.063355
25304	42	220 MC ADOO AVE.	28X97	2S-F-D-2U-H-BG1	2	0.063643
25304	43	222 MC ADOO AVE.	28X97	2S-F-D-2UH-CBG1	2	0.063597
25304	44	224 MC ADOO AVE.	28X97	2S-F-D-2U-H	2	0.063552
25304	9	77 STERLING AVE.	18X75 AV.	2SFB-D-1UH-BT-G	1	0.030357
25304	19	182 MC ADOO AVE.	25X100	3S-B&F-D-3U-HG1	3	0.056339
25304	8	79 STERLING AVE.	18X75 AV.	2SFB-D-1UH-BT-G	1	0.030464
25304	7	79A STERLING AVE.	18X76 AV.	2SFB-D-1UH-BT-G	1	0.030572
25304	21	184 MC ADOO AVE.	25X100	3S-B&F-D-2U-HG1	2	0.055932
25304	6	81 STERLING AVE.	18X76 AV.	2SFB-D-1UH-BT-G	1	0.03068
			18X77 AV 1-			
25304	5	83 STERLING AVE.	6417	2SFB-D-1UH-BT-G	1	0.030787
25304	23	186 MC ADOO AVE.	25X100	2.5SFD-2UH-B-G2	2	0.055524
25304	4	85 STERLING AVE.	18X77 AV.	2SFB-D-1UH-BT-G	1	0.030895
25304	18	1 GLEN LANE	48.75X110 IRR	1S-F&B-D-1UH-G1	1	0.077479
25304	3	85A STERLING AVE.	18X78 AV.	2SFB-D-1UH-BT-G	1	0.031405
25304	2	87 STERLING AVE.	18X78 AV.	2SFB-D-1UH-BT-G	1	0.030708
		188-190 MC ADOO				
25304	25	AVE.	50X100	2S-F&B-2U	2	0.109826
25304	20	5 GLEN LANE	36X102 AV.	1S-F&B-D-1UH-G1	1	0.087968
25304	38	212 MC ADOO AVE.	25.07X97X28X92	2S-F-D-2U-H	2	0.06278
25304	39	214 MC ADOO AVE.	28X97	2S-F-D-2U-H	2	0.063129

25304	40	216 MC ADOO AVE.	28X97	2S-F-D-2U-H	2	0.063085
25304	50	236 MC ADOO AVE.	28X97.09	2S-F-D-2U-H	2	0.06328
25304	51	238 MC ADOO AVE.	21.50X97.09	2S-F-BD-1UH-BTG	1	0.048066
25304	52	240 MC ADOO AVE.	18X97.09	2S-F-BD-1UH-BTG	1	0.040221
25304	53	240A MC ADOO AVE.	18X97.09	2S-F-BD-1UH-BTG	1	0.040203
25304	54	242 MC ADOO AVE.	18X97.09	2S-F-BD-1UH-BTG	1	0.040185
25304	55	244 MC ADOO AVE.	24X97X28X97	2S-F-BD-1UH-BTG	1	0.059244
25304	13	172 MC ADOO AVE.	25X100	2S-F-D-2U-H	2	0.062701
25304	14	174 MC ADOO AVE.	25X100	3S-B+F-2U-G	2	0.057969
25304	15	176 MC ADOO AVE.	25X100	1S-B-D-1U-H	1	0.054843
25304	12	73 STERLING AVE.	34.52X74X13X76	2SFB-D-1UH-BT-G	1	0.041499
25304	16	178 MC ADOO AVE.	25X100	1SF-D-1UH-F-G-1	1	0.059873
25304	11	73A STERLING AVE.	18X74 AV.	2SFB-D-1UH-BT-G	1	0.030141
25304	10	75 STERLING AVE.	18X75 AV.	2SFB-D-1UH-BT-G	1	0.030248
25304	17	180 MC ADOO AVE.	25X100	2S-F-D-2U-H-G1	2	0.056747
					79	3.256624

24 units per

79/3.26= acre

Applicant's site is 4,000 sq.ft. with 3 units  
creating a density of 32.67 units per acre

## **APPENDIX B**

### **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



