

CITY OF JERSEY CITY

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



DATE: 1/27/2021
TO: Planning Board Commissioners
FROM: Cameron Black, AICP, PP, Senior Planner
RE: 847-849 Communipaw Avenue
Case # Z20-095
Block 18206, Lot 11
Preliminary and Final Major Site Plan with “c” & “d” variances

BACKGROUND

The 6,380 square foot lot located in the Commercial Automotive C/A zone currently consists of a vacant surface parking area. In its place, the applicant is proposing to construct a six-story residential building with 35 residential dwelling units and 12 off-street parking spaces. The proposal for the multi-family use triggers the "d-1" variance for use, and the proposed building at 67' in height triggers a “d-6” variance. There are “c” variances associated with the property: rear yard step back, lot area, lot width, building coverage, and lot coverage which is subsumed by the use variance.

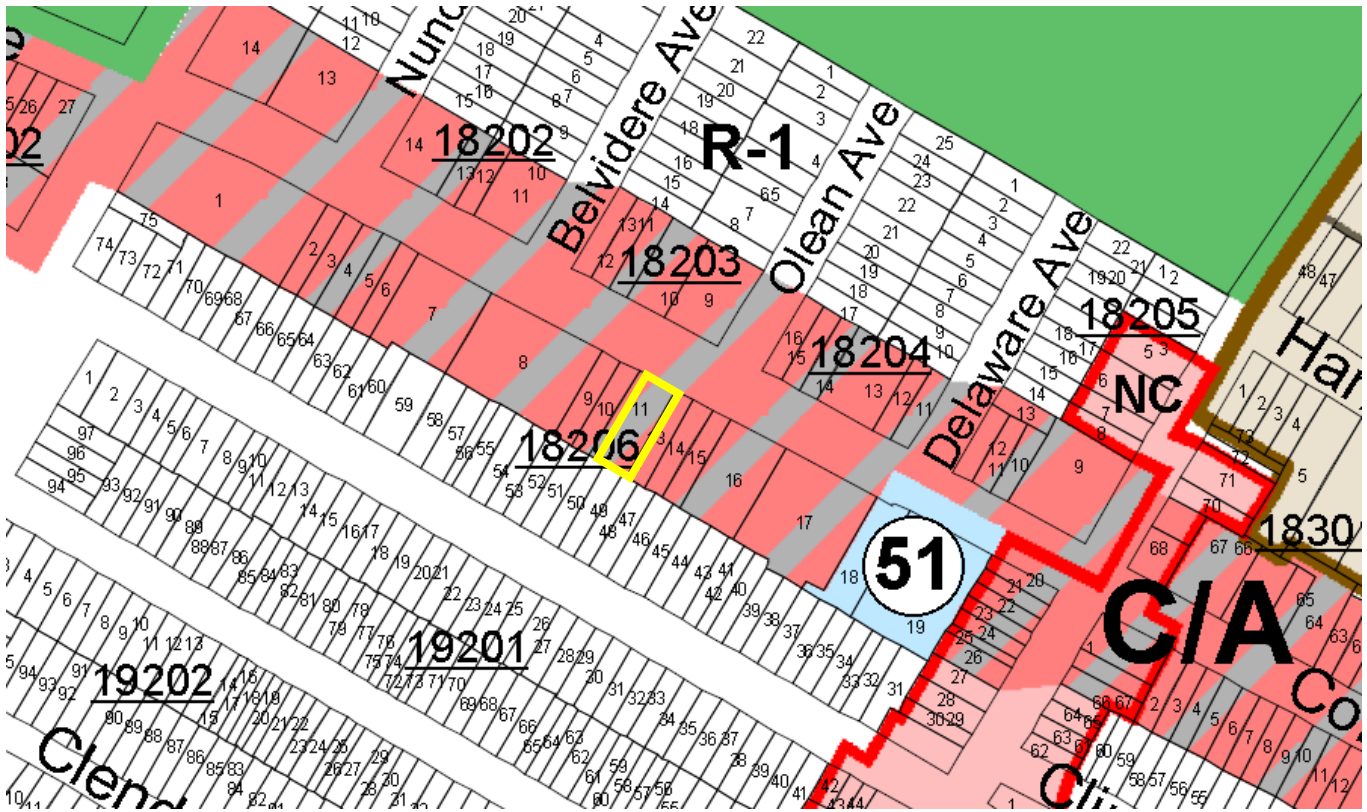
The building contains 29,564 square feet of residential area and 4,593 square feet of parking area with 100 percent lot coverage. There are 10 studios proposed, 20 single-bedrooms and 5 two-bedrooms. The ground floor of the proposed building consists of 12 off-street parking, a bicycle room (18 bike spaces), a trash compactor room, a utility room, and the main lobby area. The second floor contains 4 single-bedrooms, 2 studios, and 1 two-bedroom. The third floor through sixth floor contain 2 studios, 4 single bedrooms, and 1 two bedroom on each floor. The roof contains a green roof area of 424 sf and rooftop recreation of 1,600 square feet.

The applicant’s site has a density of **238.96 units per acre** on a block that has a density of **17 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 7**).

The units are broken down accordingly:

- studios (avg. 440 sf.)
- one bedrooms (avg. 629 sf.)
- two bedrooms (avg. 925 sf.)



Applicant's site outlined in yellow



Site Photograph A – Looking South West on Communipaw



Applicant's site outlined in yellow

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	Rear Yard Setback of 5’	0’ rear yard (ground floor)
2	Max. Building Coverage 90%	99.9%
3	Max Lot Coverage 90%	99.9%
4	Minimum lot area of 10,000 square feet	6,380 square feet
5	Minimum lot width 100’	50.03’

SEE APPENDIX B FOR FINDINGS NEEDED FOR “c” VARIANCE RELIEF - page 9

REQUIRED “d” VARIANCES

#	PERMITTED	PROPOSED
1	1.Retail sales of goods and services. 2.Auto sales. 3.Auto repair and services. 4.Service stations. 5.Auto body shops. 6.Financial institutions.	- Multi-Family (35 units)
2	Maximum Height 30’	67’

SEE APPENDIX C FOR REQUIRED PROOFS FOR USE AND HEIGHT VARIANCE – page 10

Staff Comments Regarding Use Variance:

Site Suitability:

This site feels appropriate for a mixed use residential building. For instance, on this same block, on Westside Avenue, there is the N/C zone where mixed use buildings can be found (i.e. New Park Tavern). The applicant’s site is undersized for the C/A zone where the standard lot is 10,000 square feet. The proposed development would be on a lot that is 6,380 square feet, which is nearly 4,000 square feet smaller than normal. However, even a conforming buildout of the lot would still incur bulk variances.

Lot 11 has been used as a surface parking lot for auto sales since the 1923 tax assessment (See Image Below).



Screen Grab from the 1938 Jersey City Tax Assessment

The applicant's current proposal is for 35 units and 12 parking, which creates a density of 239 units per acre on a block that has 17 units per acre.

Positive Criteria:

- Green roof and storm water mitigation will be part of the application, which meet purpose “N” 40:55D-2 Purposes of the act in the MLUL:
 - “To promote utilization of renewable energy resources; and”

Master Plan Reconciliation:

The Goals and Objectives of the Jersey City Master Plan identify a “lack of a diversity of housing (e.g. affordable, middle income, owner occupied)”. The Master Plan recognizes that more of these are needed. However, it specifically states that the increased recreational facilities should be an “efficient system of shared City-wide resources”.

Negative Criteria:

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

- The bedrooms are relatively small. How will this diversify the Jersey City housing stock?
- Traffic created from cannot be accurately foreseen and there is no way of confidently knowing how this may influence the quality of life for the community.
- How the proposed height of 67’ will not adversely influence the adjacent property owner’s air, light, and space.

Staff Comments Regarding Height/Bulk Variances:

Comments regarding Height:

Grasso v. Bor. Of Spring Lake Hghts examples:

- The proposed height is not consistent with the surrounding neighborhood and all other structures in the surrounding area have a height that is more consistent with the 3-story maximum in the R-1 Zone.

Comments regarding Bulk:

- There are no setbacks proposed anywhere for the ground floor of the new structure, which is an obstruction of air and light
- 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 99.9 percent lot coverage is essentially the maximum needed.

Staff Recommends Approval Contingent upon Applicant’s Ability to 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 12 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 Municipal Utilities Authorities’ 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. Engineer of record shall submit a signed and sealed affidavit confirming that the final building’s storm water detention was constructed as approved, prior to issuance of the Certificate of Occupancy.
5. All testimony given by the applicant and their expert witnesses in accordance with this application shall be binding.
6. The curb cut shall be restricted to the dimensions that the Engineering department specifies in their comments.
7. 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.

Appendix A – Median density per block

LOT	Shape_Area	ParcelAddr	UNITS	BLDG_D
36	2603.827088	22 ROOSEVELT AVE.	2	2S-F-D-2U-H
23	1735.231166	579 WEST SIDE AVE.	2	3S-B-C-2U-H
37	2614.362316	24 ROOSEVELT AVE.	2	2S-F-D-2U-H
22	1754.857283	581 WEST SIDE AVE.	2	3S-B-C-2U-H
38	2624.915926	26 ROOSEVELT AVE.	2	2S-F-D-2U-H
21	1729.48664	583 WEST SIDE AVE.	2	3S-B-C-2U-H
39	2598.736184	28 ROOSEVELT AVE.	2	2S-F-D-2U-H
20	1650.776582	585 WEST SIDE AVE.	2	3S-B-C-2U-H
40	2319.567996	30 ROOSEVELT AVE.	1	2S-F-D-1U
41	1840.048901	32 ROOSEVELT AVE.	1	2S-F-D-1U-H
42	2280.513152	34 ROOSEVELT AVE.	1	2S-F-D-1U-H
43	2990.147023	36 ROOSEVELT AVE.	2	2S-F-D-2U-H
44	2990.208409	38 ROOSEVELT AVE.	2	2S-F-D-2U-H
19	16306.62405	813-819 COMMUNIPAW AVENUE	0	AUTO SALES
45	2990.270304	40 ROOSEVELT AVE.	2	2S-F-D-2U-H
18	6318.457518	823 COMMUNIPAW AVENUE	0	VACANT LAND
46	2990.325253	42 ROOSEVELT AVE.	2	2S-F-D-2U-H
47	2645.317051	44 ROOSEVELT AVE.	1	2S-F-D-1U-H
48	2645.39414	46 ROOSEVELT AVE.	1	2S-F-D-1U-H
49	2645.432955	48 ROOSEVELT AVE.	0	VACANT LAND
50	2645.472443	50 ROOSEVELT AVE.	1	2S-F-D-1U-H
17	16337.29973	823 COMMUNIPAW AVE.	0	1S-CB-CHECKERS
51	3105.612842	52 ROOSEVELT AVE.	2	2S-F-D-2UH-CBG2
52	3105.655526	54 ROOSEVELT AVE.	2	2S-F-D-2UH-CBG2
53	2645.654444	56 ROOSEVELT AVE.	1	2S-F-D-1U-H
16	9284.624545	835-839 COMMUNIPAW AVENUE	0	1S-B-G-H
54	2645.659587	58 ROOSEVELT AVE.	1	2S-F-D-1U-H
15	3053.803726	841 COMMUNIPAW AVE.	0	VACANT LAND
55	2645.71629	60 ROOSEVELT AVE.	1	2S-F-D-1U-H
14	3033.27814	843 COMMUNIPAW AVE.	0	VACANT LAND
56	1495.416095	62 ROOSEVELT AVE.	2	2S-F-D-2U-H
13	3012.721177	845 COMMUNIPAW AVE.	0	VACANT LAND
57	3566.074977	64 ROOSEVELT AVE.	0	VACANT LAND
58	3566.156975	66 ROOSEVELT AVE.	6	3S-F-D-6U-H
11	5963.850754	847 COMMUNIPAW AVE.	0	VACANT LAND
10	2951.139996	851 COMMUNIPAW AVE.	0	1S-B-G
59	5752.014602	70 ROOSEVELT AVE.	5	2.5S-F-5U
9	2930.597991	853 COMMUNIPAW AVE.	0	VACANT LAND
60	2933.62901	72 ROOSEVELT AVE.	1	2S-F-D-1U-H
61	2572.503804	74 ROOSEVELT AVE.	1	2S-F-D-1U-H
62	2645.801085	76 ROOSEVELT AVE.	2	2S-F-D-2U-H-G1

63	2645.801084	78 ROOSEVELT AVE.	1	2S-F-D-1U-H
64	2645.801084	80 ROOSEVELT AVE.	2	3S-B+F-D-2U-G2
65	2645.83091	82 ROOSEVELT AVE.	2	2S-F-D-2U-G
8	17152.36692	859 COMMUNIPAW AVE.	0	1&2S-B-W-O
66	2645.806124	84 ROOSEVELT AVE.	2	2S-F-D-2U-H
67	2645.793926	86 ROOSEVELT AVE.	2	3S-B+F-D-2U-G
68	2645.793926	88 ROOSEVELT AVE.	2	2S-F-D-2U-H
69	2645.83595	90 ROOSEVELT AVE.	2	2S-F-D-2U-H-G2
7	11270.34747	869 COMMUNIPAW AVENUE	0	1S-CB-DINER
70	2645.801085	92 ROOSEVELT AVE.	2	2S-F-D-2U-H-G2
6	2979.275301	875 COMMUNIPAW AVE.	0	VACANT LAND
72	2805.000048	96 ROOSEVELT AVE.	2	2S-F-D-2U-H-G2
71	2623.032427	94 ROOSEVELT AVE.	2	2S-F-D-2U-H-G2
5	2958.451825	877 COMMUNIPAW AVE.	0	VACANT LAND
4	2937.661701	879 COMMUNIPAW AVE.	0	VACANT LAND
73	2804.997748	98 ROOSEVELT AVE.	2	2S-F-D-2U-H-G2
3	2916.85691	881 COMMUNIPAW AVE.	0	1S-CB-G-3
74	2884.71177	100 ROOSEVELT AVE.	5	2S-F-D-5U
2	2896.052119	883 COMMUNIPAW AVE.	0	VACANT LAND
75	1997.014535	228 MALLORY AVE.	2	3S-B&F-2U-G
30	3487.591566	565 WEST SIDE AVE.	4	3S-B-C-4UNH-BG3
29	1799.571232	567 WEST SIDE AVE.	2	3S-B-C-2U-NH
28	2788.961171	569 WEST SIDE AVE.	4	3S-B-4U-C-H
27	2788.482829	571 WEST SIDE AVE.	6	3S-F-D-6U-NH
31	3372.943738	12 ROOSEVELT AVE.	3	2.5S-F-D-3U
32	2624.634767	14 ROOSEVELT AVE.	2	2S-B-D-2U-H
26	2788.022021	573 WEST SIDE AVE.	0	VACANT LAND
33	1641.988031	16 ROOSEVELT AVE.	0	VACANT LAND
25	1065.196252	575 WEST SIDE AVE.	2	3S-B-C-2U-H
34	2624.711408	18 ROOSEVELT AVE.	2	2S-F-D-2U-H
35	2624.752473	20 ROOSEVELT AVE.	2	2S-F-D-2U-H
24	1748.01904	577 WEST SIDE AVE.	2	3S-B-C-2U-H
1	24353.86393	889 COMMUNIPAW AVE.	0	1S-B&M-C
	283268.155		111	
	283,268.155/43560=			
	6.5			
	BLOCK DENSITY	6.5/111=17		
	LOT DENSITY			
	6,380 SQ. FT. / 43560 = 6.8			
	35 units x 6.8 = 238.96			
	238.96 units per acre			

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

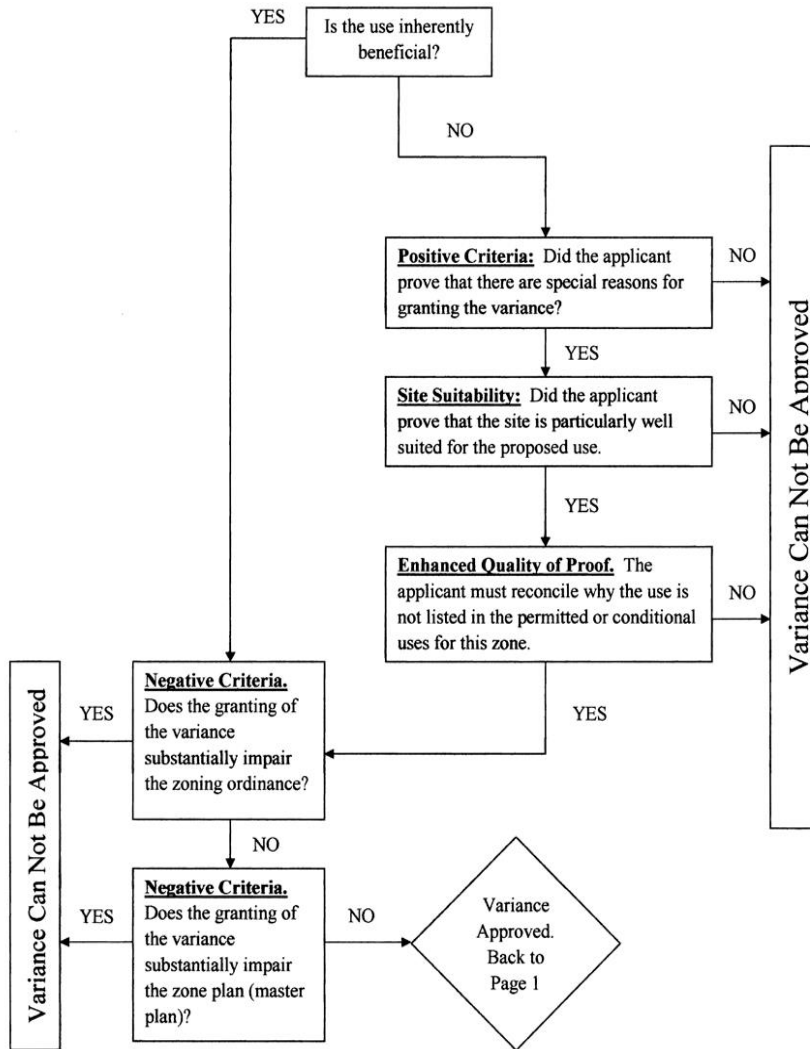
"The added requirement that boards of adjustment must reconcile a proposed use variance (in this case any d or c variance) with the provisions of the master plan and zoning ordinance will reinforce the conviction...that the negative criteria constitute a 'safeguard' to prevent the improper exercise of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