

# CITY OF JERSEY CITY

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



## Interdepartmental Memorandum

**DATE:** March 25, 2021  
**TO:** Zoning Board of Adjustment  
**FROM:** Erica Baptiste, Senior Planner  
Matt Ward, PP, AICP, Supervising Planner  
**SUBJECT:** Staff report re Z20-069, 130 Summit Avenue  
Preliminary and Final Major Site Plan

### DOCUMENTS REVIEWED

- General Development Application and accompanying application documents
- Architectural and Civil Plans prepared Inglese Architecture + Engineering; signed and sealed by Jak Inglese, R.A

### PROPOSED ACTION

BLDGup Management LLC ("the applicant") seeks preliminary and final major site plan approval with "d" and "c" variances to rehabilitate and restore an existing church to adaptively re-use it for residential use and the construction of two (2) new five-story residential buildings that will be connected to the existing church. The project is located at 130 Summit Avenue (Block 15305, Lot 11.02) located within the R-1, one- and two-family zoning district of the City of Jersey City.

### SITE & PROJECT DESCRIPTION

The project site is located on the east side of Summit Avenue bounded by Fairmount Avenue to the north and Belmont Avenue /Clifton Place to the south. The project site's lot area is irregularly shaped and approximately 28,233 square feet. The existing structure is known as St. John's Episcopal Church, constructed in 1870 and is listed on NJDEP's Historic Preservation Office's Register of Historic Places. The church has been vacant since 1994

The applicant proposes to adaptively re-use the existing structure for residential use and construct two (2) five-story residential buildings connected to the church. The project proposes 82 units and thirty (30) parking spaces.

### BACKGROUND

Under Case No. Z15-045 and Z15-046, the owner Garden State Episcopal Community Development Corporation, was approved for a preliminary and final major site plan to subdivide the property and construct two (2) five-story additions interconnected with the church. The three (3) buildings associated with the project, the existing church and two (2) new buildings will be connected. The conjoined buildings will contain eighty-two (82) residential units (66 in the newly constructed buildings and 16 in the existing church), thirty (30) ground floor parking spaces, a rooftop amenity space, and bicycle parking.

### VARIANCES

The applicant requests four variances: use, height, curb cut width, and drive aisle width.

	REQUIRED	PROPOSED
USE	ONE- AND TWO-FAMILY	MULTI-FAMILY (82 UNITS)

HEIGHT	35'	76.33'
CURB CUT WIDTH	10'	28'
DRIVE AISLE WIDTH	10'	28'

#### STAFF COMMENTS

- 1) Applicant's experts shall provide testimony regarding the proposal and variances sought;
- 2) Applicant's experts shall provide a verbal record of the materials and colors to be used on the project.

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.

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

In terms of housing development:

- Acknowledges the need for a balance of housing options and encourages the continued development of a variety of housing ranging from affordable to middle income and market rate units.
- To promote the conservation of historic sites and districts..
  - The applicant has received a Certificate of Appropriateness from the Historic Preservation Commission for the proposed Site Plan. HPC Staff found that the church is being rehabilitated in accordance with the Secretary of the Interior's Standards for Rehabilitation and the City's general standards.

#### STAFF RECOMMENDED CONDITIONS IN AN EVENT A MOTION IS MADE TO GRANT APPROVAL

- 1) All testimony given by the applicant and their expert witnesses in accordance with this application shall be binding;
- 2) All material and color selections shall be shown on the final plans. No change to the façade and site design, including materials as well as any changes that may be required by the Construction Code Official, shall be permitted without consultation and approval by the Planning staff.
- 3) Architect of record shall submit a signed and sealed affidavit confirming that the building was constructed as approved, prior to issuance of the Certificate of Occupancy.
- 4) All conditions provided by HPC staff in their report dated February 8, 2021 shall be shown on final signature plans.
- 5) The Applicant shall enter into an Affordable Housing Agreement with the Division of Affordable Housing. Documentation of the Agreement shall be submitted to the Division of City Planning prior to the issuance of a Certificate of Occupancy.

## APPENDIX:

### d(1) Use

The applicant is seeking a d(1) use variance to permit multi-family building in a R-1 district, which only permits one- and two-family housing.

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. Borough of Spring Lake Heights, 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.

Prior to the 1948 land use law amendments, a use variance could only be granted if an undue hardship was proven. The prerequisite of proving "unnecessary hardship" was substituted with the authority to grant a variance "in particular cases and for special reasons." Therefore, the board of adjustment had the authority to grant a variance with the proof of special reasons, including, but not limited to, undue hardship.

In 1952, *Ward v. Scott* N.J. 117, clarified that "special reasons" was circumscribed by the general purposes of zoning. 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.

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.

*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.

An undue hardship may be:

- 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)

## **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 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

Regarding all other “c” and bulk variances:

**Puleio v. North Brunswick Township BoA, 375, NJ Super, 613,** cites “If the application is for a use not permitted in the zone, the bulk regulations designed for that zone cannot be applicable to the intended use...A Zoning Board, in considering a use variance, must then consider the overall site design.”