

**D(1) USE, "C", AMENDED PRELIMINARY AND FINAL SITE PLAN, PARKING, AND BULK
VARIANCES APPLICATION
#13-15 JFK CONDO DEVELOPERS, LLC
FOR PROPERTY LOCATED AT
5711 KENNEDY BOULEVARD
TOWNSHIP OF NORTH BERGEN, NEW JERSEY
BLOCK 195, LOTS 68 & 60B**

WHEREAS, an application has been made by Applicant, JFK Condo Developers, LLC to construct a 128-unit multi-family residential complex with ancillary off-street parking, located at 5711 Kennedy Boulevard, Block 195, Lots 68 & 60B in the Township of North Bergen, New Jersey; and

WHEREAS, the Board of Adjustment has reviewed the application for "c", amended preliminary and final site plan, parking, and bulk variances at the subject premises at a special meeting on September 30, 2015; and

WHEREAS, it appears that due notice of a hearing in the above application before the Board of Adjustment of the Township of North Bergen on September 30, 2015, at or around 7:00 P.M., at the Municipal Building of the Township of North Bergen, was duly served upon the property owners within a two hundred (200) foot radius of the above described premises as prescribed by the Municipal Land Use Law; and

WHEREAS, the Applicant has submitted proof that it has complied with the applicable procedural requirements including payment of fees and public notices; and

WHEREAS, the Board did consider the testimony of the Applicant's architect, Conrad Roncati, and the Applicant's engineer, Calisto Bertin, and received Exhibit ZB-1, a four-page Mayo Lynch report including one-page of pictures from Jill A. Hartmann dated September 29, 2015, received Exhibit ZB-2, a seven-page Boswell Engineering report from McGrath dated May 29, 2015, received Exhibit A-1, a Colored Rendering dated September 30, 2015, received Exhibit A-2, a Colored Landscape Rendering dated September 30, 2015, and other such information as presented to the Board by Applicant's Attorney, Marc E. Leibman, Esq. After careful consideration of this application the Board of Adjustment has made the following findings of fact and reached the following conclusions:

- (1) The instant application is for the construction of a 128-unit multi-family residential complex with 244 ancillary off-street parking spaces located in the C-1C District. Please be advised that the Applicant has amended the preliminary and final site plan twice since submitting the original application for this project. On June 7, 2006, the Board approved the Applicant's original application proposing a 128-unit multi-family residential complex with 241 off-street parking spaces. On July 11, 2007, the Board approved the Applicant's amended preliminary and final site plan proposing a 128-unit multi-family residential complex with 242 off-street parking spaces. The Applicant's current application maintains the 128-unit multi-family residential complex, but proposes 244 off-street parking spaces, and other modifications.

The instant application proposes to construct two separate buildings with a total of 128 units allocated between the two buildings as follows: 8 studio units, 52 one-bedroom units, and 68 two-bedroom units. No dens are proposed. Please be advised that the original application approved on June 7, 2006 proposed 79 one-bedroom units and 49 two-bedroom units. Also, please be advised that a third, smaller building included in prior applications for the 128-unit residential complex has been eliminated from the project.

- (2) The subject site consists of two lots totaling 95,083 square feet, and is located in the C-1C District. This instant application does not propose a subdivision; the two lots will be merged. The proposed multi-

family residential complex is not permitted in the C-1C District, however, the Board approved the proposed use, a 128-unit multi-family residential complex in 2006 and 2007. Therefore, the proposed use with respect to the instant application does not require additional variance relief.

Additionally, in the C-1C District, the maximum permitted height is 30'. In 2007, the Board approved the Applicant's amended preliminary and final site plan application proposing a height of 70'. The instant application proposes a height of 62.5', which is less than the height approved by the Board in 2007. Therefore, the proposed height with respect to the instant application does not require additional variance relief.

(3) Zoning Requirements C-1C District

In the C-1C District, the permitted minimum lot area is 10,000 square feet. The proposed lot area is approximately 95,083 square feet.

In the C-1C District, the maximum permitted height is 30'. In 2007, the Board approved the Applicant's amended preliminary and final site plan application proposing a height of 70'. The instant application proposes a height of 62.5', which is less than the height approved by the Board in 2007. Therefore, the proposed height with respect to the instant application does not require additional variance relief.

In the C-1C District, the required lot width is 100'. The proposed lot width is 183'.

In the C-1C District, the required lot depth is 100'. The proposed lot depth is 320'.

In the C-1C District, the required front yard setback is 10'. The proposed front yard setback is 3.71' at 58th Street, requiring variance relief.

In the C-1C District, the required rear yard setback is 30'. The proposed rear yard setback is 12.45' requiring variance relief.

In the C-1C District, the required side yard setback is 15'. The proposed side yard setback is 6.27', requiring variance relief.

In the C-1C District, the permitted maximum lot coverage is 65%. The proposed lot coverage is 78.4%, requiring variance relief.

In the C-1C District, the permitted maximum building coverage is 35%. The proposed building coverage is 37.9%, requiring variance relief.

Under RSIS, the instant application requires 244 off-street parking spaces. The Township Ordinance permits 25% of the required off-street parking spaces to be compact spaces. In the C-1C District, the permitted maximum number of compact parking spaces is 61 compact parking spaces. The proposed number of compact parking spaces is 76 spaces, requiring variance relief for 15 compact spaces.

- (4) The Board heard testimony from the Applicant's architect, Conrad Roncati, and the Applicant's engineer, Calisto Bertin. Their testimony with respect to the instant application is summarized below.**

The Board expressed concern with the proposed project's impact to surrounding community with respect to a number of items including but not limited to storm water drainage and runoff from the subject site, improvements to 58th Street, off-street parking, traffic, DEP clearance, fire safety, and other additional items.

The Applicant's architect, and additionally, the Applicant's engineer, addressed the Board's concerns. They will work with the Board's Engineer to satisfy various conditions of approval stipulated to in the special meeting on September 30, 2015.

The Municipal Land Use Law ("MLUL") authorizes a municipality's Zoning Board of Adjustment ("the Board") the power to grant "d" variances "in particular cases or for special reasons . . ." *NJSA 40:55D-70d*. There are six "d" variances falling within Board's purview; d(1) use, d(2) expansion of a nonconforming use, d(3) nonconforming conditional use, d(4) floor area ratio, d(5) density, and d(6) height. *NJSA 40:55D-70d*.

A zoning application triggers the d(1) use variance when the proposed use is not permitted as per the municipality's zoning ordinance. Therefore, the Applicant must satisfy both the "positive criteria" or "special reasons", and additionally, the negative criteria for the grant of the d(1) use variance. Specifically, the positive criteria requires a showing by the Applicant that the granting of the variance will effectuate the intents and purposes of the MLUL and advance the goals and objectives of the municipal master plan. The negative criteria requires a showing that the variance can be granted without substantial detriment to the public good, that the benefit outweigh the detriments, and that granting of the variance will not substantially impair the intent and purpose of the zone plan and ordinance.

Additionally, under *Medici v. BPR. Co.*, 107 N.J. 1, 1986, the Applicant must demonstrate that "special reasons" are satisfied to grant of the d(1) use variance. The "special reasons" are established where the Applicant demonstrates: 1) that the proposed use is on which, "inherently serves the public good"; or 2) that the proposed use, promotes the general welfare because the site is particularly suited for that use. Further, under *Medici*, in addition to establishing the negative criteria, an enhanced quality of proof indicating that the grant of the d(1) use variance is not inconsistent with the intent and purpose of the master plan or zoning ordinance must also be established.

Moreover, under *Puleio v. North Brunswick Zoning Board of Appeals*, when application proposes a use that is not permitted in the zone, the municipality's zoning ordinance bulk requirements for a permitted use in the zone cannot be applied to the non-permitted, proposed use. Therefore, when considering the grant of a d(1) use variance, the Board must consider the overall design of the subject site, subsuming the "c", or bulk and area variances, into the d(1) use variance.

Further, as with all "c" variance applications, the Applicant must establish the following statutory requirements under N.J.S.A. 40:55D-70c(1) hardship; or (2) that the variances requested benefit the community as they represent a better zoning alternative for the property. "C" variance applications also require the Applicant to establish the negative criteria, which is that the variance can be granted without substantial detriment to the public good, that the benefit outweigh the detriments, and that granting of the variance will not substantially impair the intent and purpose of the zone plan and ordinance.

The Board is fully satisfied that the Applicant has demonstrated the requisite proof as required by the MLUL, *Medici v. BPR. Co.*, and additionally, the requirements of the Township of North Bergen Master Plan. The record amply shows that proposed construction of a 128-unit multi-family residential complex is not an inconsistent use within the C-1C District. The Board specifically finds that there is no detriment to the surrounding area by allowing for the proposed 128-unit multi-family residential complex. Further, the Board finds that the proposed use will be beneficial to the community because the vacant site is particularly suited for that use when considering the surrounding area.

In addition, the Board finds that there is no harm to the master plan or zoning ordinance with respect to the proposed multi-family residential complex even though it is not permitted in the C-1C District. Further, the proposed multi-family residential complex is consistent with the surrounding uses of the area. The Board finds

that the Applicant has sustained his burden of establishing the enhanced proofs and further finds that there will be no detrimental impact to the master plan and the surrounding area. Specifically, the Applicant addressed the Board's concerns in regards to storm water drainage and runoff from the subject site, and additionally, the proposed project's impact on the local sewer system.

Finally, the Board finds the variances requested benefit the community as they represent a better zoning alternative for the property. Specifically, although "c" variance relief is requested for building coverage, the proposed building coverage is a minor increase from what is permitted by ordinance. Additionally, the overall design of the proposed buildings allow for better circulation of traffic on and around the subject site, and for better ingress and egress from the site.

Please be advised that the Board's approval of the instant application and associated variance relief is conditioned upon the following agreements entered into on September 30, 2015.

- (1) The Board conditions approval of the instant application upon the Applicant's submission of a proposed plan including but not limited to a retention system (storm water drainage), manhole cover, scour hole, and sewage system to the Board's Engineer for review, and additionally, to comply with any further requirements and or recommendations of the Board's Engineer regarding site runoff and drainage.
- (2) The Board conditions approval of the instant application upon the Applicant's submission of a recorded agreement with the adjacent cemetery as evidence that the cemetery agrees to accept the flow of runoff from the subject site, and additionally, that the parties have come to an agreement on maintenance of the slope associated with the runoff and scour hole.
- (3) The Board conditions approval of the instant application upon the Applicant's submission of a proposed plan for lighting in the dog run area complying with all requirements and or recommendations of the Board's Engineer.
- (4) The Board conditions approval of the instant application upon the Applicant's submission of a proposed plan screening the cell tower(s) within the proposed multi-family residential complex.
- (5) The Board conditions approval of the instant application upon the Applicant making improvements to 58th Street including but not limited to widening 58th Street, milling and resurfacing all of 58th Street to the end, and installing new curbs and sidewalks on 58th Street, and additionally, complying with all requirements and or recommendations of the Board's Engineer.
- (6) The Board conditions approval of the instant application upon the Applicant obtaining approval from Hudson County regarding the apron on Kennedy Boulevard.
- (7) The Board conditions approval of the instant application upon the Applicant's submission of a revised plan for parking displaying the numeric designation of 244 off-street parking spaces to the Board's Engineer for review, and to comply with any further requirements and or recommendations of the Board's Engineer regarding off-street parking.
- (8) The Board conditions approval of the instant application upon the Applicant's compliance with ADA parking requirements.
- (9) The Board conditions approval of the instant application upon the Applicant's submission of plans to North Hudson Regional Fire, and the Township's fire department, for review and approval of the proposed plans for: (1) fire vehicle access; and (2) fire department connections.
- (10) The Board conditions approval of the instant application upon the Applicant's removal of the above ground tanks located at the northwest corner of the property.
- (11) The Board conditions approval of the instant application upon the Applicant obtaining DEP clearance including but not limited to underground tanks, and additionally, obtaining a DEP clean site letter.
- (12) The Board conditions approval of the instant application upon the Applicant's submission of certification that existing walls including but not limited to the rock wall located at the southwest portion of the subject site are in stable condition.

- (13) The Board conditions approval of the instant application upon the Applicant's submission of a revised plan displaying aisle widths of 24' on the parking levels, and additionally, displaying the widths of off-street parking spaces.
- (14) The Board conditions approval of the instant application upon the Applicant's submission of a proposed plan for fencing including but not limited to the trash enclosure, and the fence that will be installed above the wall.
- (15) The Board conditions approval of the instant application upon the Applicant's submission of a proposed plan eliminating a two-inch gap, and installing a wire T-fitting with a rodent screen as per the Board's Engineer.


Now, therefore, be it resolved, that the Board of Adjustment of the Township of North Bergen approves the issuance of d(1) use, "c", amended preliminary and final site plan, parking, and bulk variances:

- (1) Applicant's final site plan is consistent with the changes, amendments, and adjustments testified to;
- (2) Applicant complies with all adjustments requested by Board professionals, Derek McGrath, the Engineer; and Jill A. Hartmann, the Planner;
- (3) Subject to Applicant entering a Developer's Agreement with the Township of North Bergen; and
- (4) Subject to compliance with any federal, state, county or other agency approval exercising jurisdiction over the premises.

Subject further to all statements, representations, reports, plans and material offered and/or reviewed by the North Bergen Board of Adjustment.

CERTIFICATION

I certify that this Resolution is a true copy of a Resolution GRANTED by the Board of Adjustment on September 30, 2015, and memorialized on October 27, 2015.



 Anthony Vainieri, Chairman of the Board
 FRANK PESTANA