



PLANNING MEMORANDUM

To: John Candelmo, Land Use Administrator
Edgewater Zoning Board of Adjustment
From: Kathryn M. Gregory, PP, AICP
Principal
Re: Matthew Perasso
Block 32 Lots 4 and 1.01
1124 & 1150 River Road
Date: November 2, 2021

INTRODUCTION

The applicant, Matthew Perasso, has submitted an application for a minor subdivision for the properties known as 1124 and 1150 River Road, which will require “d” and “c” variances and subdivision approval. The property in question (PQ) is located in the R-3 Residential Zoning District.

“D” Variances required include:

- D(5) density variance (Lot 1.03)

“C” Variances required include:

Lot 4.01:

- Lot Width
- Side Yard Setback
- Rear Yard Setback

Lot 1.03:

- Lot Depth
- Impervious Coverage

Design Waivers include:

Lot 1.03:

- Parking Setback – Side Lot Line (§240-166B(1))

The application consists of the following:

1. Application for Preliminary and/or Final Site Plan Approval and Variances.
2. Statement for Variance Relief
3. Application Checklist - General Requirements for all Development Applications.
4. Form 3 Minor Subdivision Plat Details and Requirements.
5. Form 8 “D” Variance Application Details and Requirements.

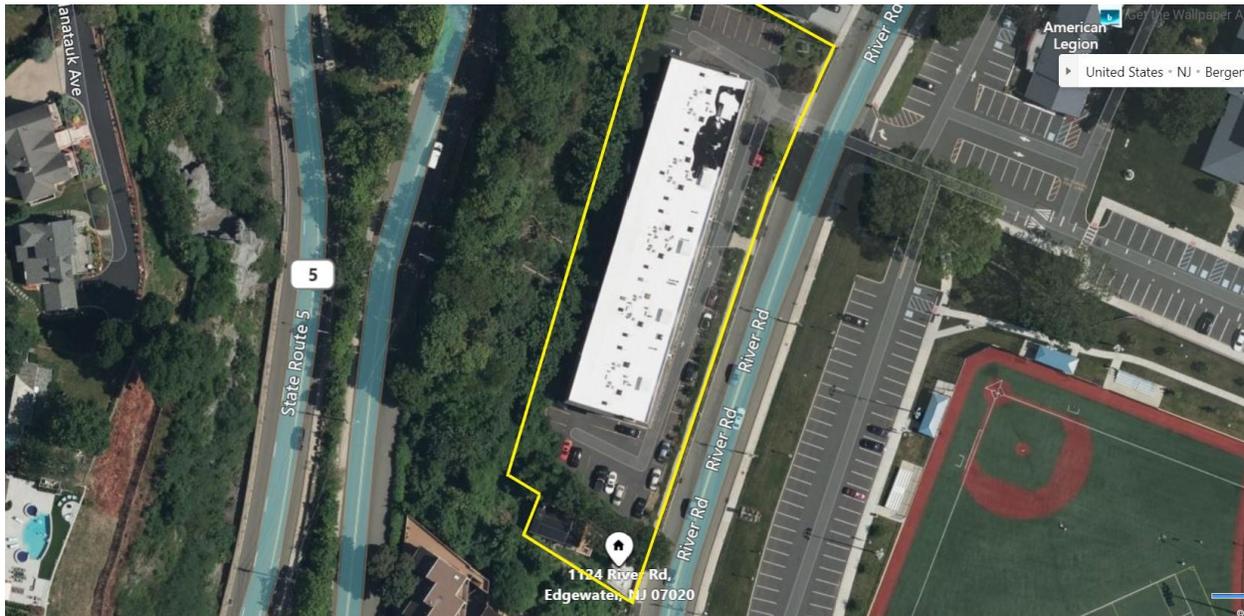
6. Form 9 "C" Variance Application Details and Requirements.
7. Authorization to inspect premises
8. Certification of Ownership
9. Exhibit A
 - A. Contract of Sale
10. 200' Property Owner's List
11. Minor Subdivision Drawing, 1 Sheet, prepared by Hubschman Engineering, dated 7-26-21.

The applicant is subject to the following:

1. Application Checklist - General Requirements for all Development Applications.
2. Form 3 Minor Subdivision Plat Details and Requirements.
3. Form 8 "D" Variance Application Details and Requirements.
4. Form 9 "C" Variance Application Details and Requirements.

EXISTING CONDITIONS

The site is located on the west side of River Road, across from Veteran's Park. The overall site is 51,040 SF and is currently occupied by an existing single-family home as well as a multi-family building. The site slopes upward from east to west. The surrounding uses include residential uses, the American Legion Hall, and a Borough Park. An aerial of the site is found below.



Source: Bing Maps
Outline of property is approximate

PROPOSED DEVELOPMENT

The applicant is proposing to re-subdivide the properties to enlarge existing Lot 4 by 16.17' in width.

ZONING ORDINANCE

The property is located in R-3 Multi-Family District. Both uses are permitted, however, a D(5) Density and bulk or “c” variances are required.

D(5) Variances

Proposed Lot 1.03:

- 12 du/ac permitted
- 38.1 du/ac proposed

N.J.S.A. 40:55D-70(d) permits a Board of Adjustment “in particular cases for special reasons” to grant a variance to permit “a use or principal structure in a district restricted against such use or principal structure.” This represents the Positive Criteria of the statute. In addition, a showing of the Negative Criteria is necessary to obtain a “d” variance. The applicant must demonstrate that the proposed variance can be granted “without substantial detriment to the public good and will not substantially impair the intent and the purpose” of the Master Plan and Zoning Ordinance.

When considering the granting of a “d” variance, an applicant must demonstrate that special reasons are satisfied by either showing that the proposed use “inherently serves the public good” or that it promotes the general welfare because the proposed site is particularly suited for that use. It was held in *Medici v. B.P.R. Co.*, 107 NJ 1 (1987) that the only “special reasons” which can be considered are those which promote the general purposes of zoning, as listed in N.J.S.A. 40:55D-2. The court emphasized in *Burbridge v. Mine Hill Twp.*, 117 NJ 376 (1990), however, that the MLUL includes all the zoning purposes listed in N.J.S.A. 40:55D-2, not only the promotion of the general welfare. Therefore, each of these listed purposes may support an application for a “d” variance.

However, in the case of a d(5) Density variance, the use is already permitted in the zone. Therefore, the particular suitability of the use does not apply. When considering a d(4) FAR or d(5) Density variance it is the *Randolph Town Center* case and not the *Medici* case that is utilized when analyzing the request for a variance. Instead of showing that the site is particularly suited for more “intensive” development the applicant must show that the site can accommodate the potential problems associated with a FAR and/or density greater than that permitted by the ordinance. In other words, can the problems that the ordinance, by restriction intended to address, be accommodated in this particular location?

In addition, a showing of the Negative Criteria is necessary to obtain a “d” Variance. The applicant must demonstrate that the proposed variance can be granted “without substantial detriment to the public good and will not substantially impair the intent and the purpose” of the Master Plan and Zoning Ordinance.

“C” variances

N.J.S.A. 40:55D-70c sets forth the criteria for a board of adjustment to grant variance from bulk requirements of zoning ordinance. Two types of “c” variances can be granted:

- 1) (c)1: in cases of hardship, such as “exceptional narrowness, shallowness or shape of specific piece of property,” or by reason of exceptional or unique topographic conditions, physical features, or an exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.

- 2) (c)2: where the purposes of zoning would be advanced and the benefits derived by the variance would outweigh any detriments.

The applicant must also meet the negative criteria of the statute for the granting of a “c” variance, wherein a variance can be granted only “without substantial detriment to the public good” and where it “will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.”

Lot 4.01:

- Lot Width
 - 50’ required
 - 33.06’ existing
 - 48.82’ proposed

- Side Yard Setback
 - 8’ required
 - .42’ proposed/existing

- Rear Yard Setback
 - 20’ required
 - 2.2’ proposed/existing

Lot 1.03:

- Lot Depth
 - 150’ required
 - 126.42’ proposed/existing

- Impervious Coverage
 - 75% permitted
 - 80.25% proposed*
 - 5.25% variance

* The site plan indicate this is an “existing condition” but it is not since the lot is being made smaller. Applicant to confirm the existing and proposed lot coverage.

Design Waivers:

MLUL C.40:55D-51 Exception in application of subdivision or site plan regulation

- b. The planning board, when acting upon applications for preliminary site plan approval shall have the power to grant such exceptions from the requirements for site plan approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval of an ordinance adopted pursuant to this article, is the literal enforcement of one or more of the provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.

Lot 1.03:

- Parking Setback – Side Lot Line (§240-166B(1))
 - Off-street parking shall not be located closer than 15 feet from any front yard lot line, nor closer than five feet from any side or rear lot line, nor within a required buffer area.
 - Subdivision causes the side parking (along the southernly boundary) to be within 5’ of the side lot line. Applicant to confirm the exact distance since it is not dimensioned on the plans.

GENERAL COMMENTS:

1. The site plan table for Lot 1.03 is incorrect; the required lot area for an apartment development is 40,000 SF, not 5,000 SF. This should be corrected on the table.

KMG

Cc: Denise Travers, Esq. Zoning Board of Adjustment Attorney
Frank Dobiszewski, PE, Zoning Board of Adjustment Engineer
Brian Chewcaskie, Esq., Applicant's Attorney