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MEMO TO: City of Bayonne Zoning Board

FROM: Malvika Apte, PP/AICP 
Consulting Planner

DATE: April 16, 2021

RE: **187 Broadway, LLC
Site Plan and Use variance
Planning Report # 1
Block 381 Lot 18
187 Broadway
Bayonne, New Jersey
Our File: PBYZ0318.03
Application # Z-20-014**

The applicant has plans in connection to the aforementioned application. We are in receipt of the following document:

- Eleven (11) sheets of architectural plans titled “187 Broadway Block 318 Lot 18- Broadway Flats” prepared by Malerba Architects dated January 14, 2021 and latest revised February 27, 2021
- Application forms and additional items.

We offer the following comments for the Board’s consideration:

1. Summary of Application

The applicant, 187 Broadway LLC, is seeking a use variance and site plan approval to propose a three story six (6) unit multifamily residential development on the subject site. Subject site identified as Block 318 Lot 18 is located on the western side of Broadway between West 6th and West 7th Street. The subject site is currently developed with a 2.5 sty residential building. There is currently no on- site parking.

With this proposal applicant is proposing to demolish the existing structure and propose a three story multifamily residential building comprising of six (6) units. Two (2) units on first floor are proposed to be studio and the other four (4) units are one-bedroom units on second and third floor. Two units per floor are proposed. A basement of approximately 551 square feet is also proposed. Applicant is proposing 4 off-site parking spaces on lot to the rear of the property

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identified as Block 318 Lot 11.02. Access to these parking spaces is to be provided via Block 318 Lot 15. It is not clear if currently Lot 15 is utilized as public pathway or is a vacated right of way. We defer to Board Engineer to confirm the access of public to use Lot 15.



Aerial View Source: Bayonne myidv accesses April 13, 2021

2. Zoning and Bulk Variances:



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- (a) **Use:** The subject site is located 8th Street Rehabilitation Plan – Broadway Business District with underlying C-1 Neighborhood Commercial District. Per the Rehabilitation Plan (Pg. 36), the requirements of Chapter 35(Zoning) of City of Bayonne shall control except as specifically altered or otherwise modified by the Subject Rehabilitation Plan. Given that the applicant is seeking use variance before the City ZBA, it is seeking relief and applying underlying C-1 zone district requirement.

With this proposal applicant is proposing ground floor residential units that are not permitted within the underlying zone C-1 District. A use variance commonly known **as d (1) variance is required**. The Applicant must seek “Special Reasons” Use Variance pursuant to NJSA 40:55D-70d. Per the State Supreme Court’s decision in the case of *Medici v. BPR Co.*, the Applicant must be prepared to provide testimony demonstrating that there are special reasons to permit the nonconforming use and that the site in question is particularly suited to the use. In the case of *Price v. Himeji, LLC*, the Supreme Court of New Jersey, the Court held that a Zoning Board should not determine that a property is particularly suited to the use simply because it is the most suitable site in the municipality for the use. The use should be appropriate and especially beneficial based on the unique conditions of the site and its surrounding area. The Applicant shall provide testimony demonstrating the following:

Positive Criteria

- i) There are special reasons that allow a departure from the zoning regulations in this particular case. In general, to show special reasons, the grant of a variance must be shown to implement one or more of the purposes of the Municipal Land Use Law (NJSA 40:55D(2)), and should promote the purposes of the municipality’s Master Plan and the State Development and Redevelopment Plan.

Negative Criteria

- ii) That the variance can be granted without substantial detriment to the public good. This requires an evaluation of the impact of the proposed use on surrounding properties and a determination as to whether or not it causes such damage to the character of the neighborhood as to constitute a substantial detriment to the public good.
- iii) That the variance can be granted without substantially impairing the Master Plan, Zone Plan or Zoning Ordinance.



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Additionally, the applicant for a use variance is obligated to address the planning issues raised in the New Jersey Supreme Court case *Medici V. BPR. Co.*, 1071 NJ (1987). In accordance with the guideline set forth in *Medici*, an applicant for a use variance must demonstrate that special reasons are satisfied by either showing that the proposed use is one which “inherently serves the public good” or that the proposed use promotes the general welfare because the proposed site is particularly suitable for that use. The *Medici* decision provides that in conjunction with the demonstration of the negative criteria, an enhanced quality of proof must be demonstrated to indicate that the grant of the requested use variance is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance.

(b) Bulk regulations:

The following table notes the proposed development’s compliance/non-compliance with the zone regulations:

Bulk and Yard Standards: C-1 Neighborhood Commercial District			Not applicable if seeking use variance
	Requirements	Proposed	Broadway Business District
Minimum Lot Area (sq. ft.)	No requirements	2,500	No requirements
Minimum Lot Frontage (ft.)	30	25	30
Minimum Lot Width (ft.)	30	25	-
Minimum Front Yard Setback (ft.)	0	0	0
Minimum Rear Yard Setback (ft.)	20	20	20
Minimum Side Yard Setback (ft.)	10 *	0 (V)	10*
Maximum Height (ft./ sty)	35/2	3 (V)/ 31.5	55/5
Maximum Lot Coverage	60%	80 (V)	90
Max. Floor Area Ratio	1.5	2.4 (V)	4.5

**except 10 feet when abutting residential use or district*



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(v) variance (e) Existing Non-conformity

(c) Parking:

Type of Use	Requirement	Required Number	Proposed
Residential - 1 sp/ studio and One-bedroom units	1 parking spaces/unit =6	6	
Total		6	4 (V)

(V) Variance

- (i) Per section 35-17.6b, a parking variance is required for the number of parking spaces. Applicant is proposing 4 spaces off site whereas 6 spaces will be required. Applicant should confirm how these spaces shall be distributed.
- (ii) Per section 35-17.2, all parking spaces required herein shall be located on the same lot with the building or use served. The proposed parking spaces are off site. A variance is required.
- (iii) Applicant should provide deed restriction or easement agreement for the locating 4 parking spaces on Block 318 Lot 11.02. The location of these spaces should be provided. Additional details on the existing use on the property, the number of spaces it uses and the impact on parking due to 4 spaces being used by this use should be discussed in detail. Consent of Property owner of Lot 11.02 should be submitted to the Counsel.

3. Review:

- (a) **Unit size:** The proposed studio units on first floor range from 607 square feet to 626 square feet. Details on unit size for first floor units should be provided. Applicant should discuss in detail what design features have been proposed in order discourage conversion of study area in to another bedroom.
- (b) **Useable Open Space:** Per § 35-5.26 k, the proposed developed would require 1,100 square feet of open space. Applicant has indicted the rear yard of the lot as usable open



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space. Applicant should provide details on how this area is being used as viable useable open space. A trash receptacle is located in this area. **A variance is required.**

- (c) **Signage:** An address sign is noted along the front elevation however, no details to determine its compliance is provided. Signage cannot be considered part of this application.
- (d) **Trash and Recycle:** Applicant should provide details on trash removal and storage on site. This should include how trash shall be removed from each unit and brought to the rear trash area and then brought to the curb. Who will be responsible for the entire operation?
- (e) **HVAC system:** Applicant should discuss how the HVAC system is to be provided for the site. Where the utilities are to be placed and how are they buffered.
- (f) **Architectural façade:** From the elevation, it appears applicant is proposing a significantly modern façade for the development. Applicant should discuss in detail the proposed development façade and its compliance with Broadway Business District Design standards.
- (g) **Street Trees:** Per §33-10.17 c, street trees shall be approximately 40 feet apart. One tree is required. We defer to Board Engineer to determine placement of the tree.
- (h) The applicant should be prepared to discuss whether any additional permits/approval are required by outside agencies.

4. Statutory Criteria: The site requires several bulk variances commonly known as c variances for parking, useable open space, number of stories and impervious coverage . The Board has the power to grant a c (1) hardship variance or a c (2) benefits vs. detriments variance.

An applicant requesting a c(1) variance must show that (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 structure lawfully existing thereon, the strict application of any would result in particular and exceptional practical difficulties or undue hardship upon the developer of such property.



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An applicant requesting a c (2) variance must prove that granting of the variance will advance the intent and purposes of the Municipal Land Use Law and that benefits of granting of the variance will substantially outweigh the detriments.

With both, negative criteria must be addressed. No variance may be granted without showing that such a variance can be granted without substantial detriment to public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

Additionally, applicant also requires a d(4) FAR variance. Appellate Division has held that d(4) variance is more akin to d(3) variance so that Board's focus must be on whether the site will accommodate the problems associated with the proposed use but with larger floor area than permitted by ordinance.

If you should have any questions with regard to the above matter, please do not hesitate to call.

cc: Land Use Administrator
Board Attorney
City Engineer
Zoning Officer