



MEMORANDUM

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To: City of Bayonne Zoning Board of Adjustment

From: Brian Slaugh, PP, AICP
James Clavelli, PP, AICP
Eric Harris, MCRP

Re: **Hudson Property Holdings, LLP**
Application Z-23-019
Bulk Variance for Two-Family Dwelling
Block 342, Lot 18
40 East 5th Street
R-2, Detached/Attached Residential District

Date: January 9, 2024

1. APPLICATION DESCRIPTION

1.1. Applicant's Proposal. The applicant is proposing to build a three-story detached two-family residence with approximately 3,000 sf. of habitable area. The first unit (approximately 2,000 sf.) occupies the first two floors and contains three bedrooms, three bathrooms, a one-car garage and a recreation room on the ground level. The second unit (approximately 2,000 sf.) contains three bedrooms and two bathrooms on the third floor. Both units contain exterior balconies facing E. 5th Street and also have access via a front-entrance staircase. Exterior improvements include a two-car paver driveway, a concrete walkway on the eastern side, two HVAC units at the rear of the building, and fencing surrounding the rear and side yards. The proposal requires bulk variances due to exceeding the maximum number of building stories, insufficient lot width and lot frontage, and the creation of an undersized parking stall.

1.2. Existing Site Conditions. The subject property currently consists of vacant land and previously contained a two-family home that was demolished in 2023 following a fire. The site topography gently slopes north towards E. 5th Street. A shed associated with the former site improvements is located on the rear end of the property and presumably will be removed, as it is not depicted on the site plan. **As a condition of approval, the shed should either be removed or relocated so that it conforms to the required setbacks.**

John Hatch, FAIA
George Hibbs, AIA
Brian Slaugh, AICP
Michael Sullivan, AICP
Michael Hanrahan, AIA
Mary Beth Lonergan, AICP



- 1.3. **Neighborhood Context.** The western adjoining property (38 E. 5th Street) also consists of a vacant lot that formerly contained a residence (destroyed in the same fire). The uses surrounding the subject property predominantly consist of single and two-family residential dwellings in the R-2 Detached/Attached Residential District. The Mary J. Donohoe Elementary School is located northwest of the site across E. 5th Street and Orient Street.
- 1.4. **Environmental Factors.** The site is not in a flood zone, nor are there wetlands located within the vicinity of the site. According to NJDEP's *NJ-Geo Web* website, there are two nearby remediation facilities located at the Mary J. Donohoe Elementary School (closed status) and the residence at 133 Lexington Avenue (active status due to a home heating oil tank).
- 1.5. **Site Plan Approval is not Required.** The Municipal Land Use Law prohibits requiring site plan approval for one- and two-family dwellings. This report will only review zoning regulations relating to variances and will not serve as a general site plan review.



Looking South from East 5th Street

2. ZONING

- 2.1. **Permitted Use.** Pursuant to §35-5.3.a.2, the existing detached two-family dwelling is permitted in the R-2 district.
- 2.2. **Accessory Uses.** Pursuant to §35-5.3.b, off-street parking is a required accessory use in the R-2 district and sheds are a permitted accessory use. Per to §33-10.16a, fences taller than two feet shall also be considered an accessory use. The shed is presently a principal use of the property, but with an approval would resort to being an accessory use and structure.
- 2.3. **Bulk Standards.** The table on the following page indicates the site's conformance with area and yard requirements in the R-2 zone pursuant to §35-5.3e.
- 2.4. **Lot Size Variance.** The subject property has an existing lot size of 2,597 sf. whereas the R-2 zone requires a minimum lot size of 3,000 sf. for detached two-family homes on interior lots, per §35-5.3.e. **A bulk, or "c" variance is required.**



Table 1: R-2 Area, Yard and Structure Requirements for 2-Family Dwelling~ §35-5.3e

Standard	Required	Proposed	Complies?
Minimum area	3,000 sf.	2,597 sf.	No
Min. lot frontage	30 ft.	25 ft.	No
Min. lot width	30 ft.	25 ft.	No
Min. lot depth	100 ft.	103.72 ft / 104.06 ft	Yes
Min. front yard setback	20 ft.	20 ft.	Yes
Min. rear yard setback	20 ft.	20 ft.	Yes
Min. side yard setback (east)	3 ft.	3.08 ft.	Yes
Min. side yard setback (west)	3 ft.	3.08 ft.	Yes
Min. side yard setback (aggregate)	6 ft.	6.16 ft.	Yes
Max. bldg. height (feet)	35	31.83	Yes ⁽¹⁾
Max. bldg. height (stories)	2 1/2	3	No
Max. lot coverage	70%	58.86%	Yes
⁽¹⁾ - Refer to item 2.8.1 of this report for discussion.			

- 2.5. **Lot Width Variance.** The property has an existing lot width of 25 feet whereas the district requirement is 30 feet. **A bulk, or “c” variance is required.**
- 2.6. **Lot Frontage Variance.** The property also has a lot frontage of 25 feet whereas at least 30 feet is required. **A bulk, or “c” variance is required.**
- 2.7. **Note Regarding Nonconforming Lot Size, Width and Frontage.** §35-16.6 recognizes certain situations where two-family dwellings may be erected on nonconforming lots:
- The total lot area is not less than 2,500 sf.;
 - The applicant has been unable, upon a good faith effort, to purchase at fair market value any adjacent available vacant lot or a portion of any adjacent land, whether vacant or not, which would render the applicant's lot conforming; and
 - Required front, rear and side yards are provided; and



- Off-street parking is provided in accordance with the zoning ordinance.

The application fulfills the first three of these conditions: the subject property is 2,597 sf. and the minimum required setbacks are provided. In addition, there is no adjacent land available that would render the lot size conforming. The adjoining southern property on Lot 14 is currently used as a driveway by the residence on Lot 13; however, acquiring this adjacent land would create a lot size nonconformity for the neighboring property.

Although the applicant has proposed a sufficient number of parking spaces, the site requires a bulk variance for two undersized parking stalls. Should the property be granted variance relief for this condition, the lot size may be considered conforming per §35-16.6. These factors may inform the Zoning Board in its deliberations over this application.

- 2.8. **Nonconforming Shed Setback.** The existing shed is along the eastern property line, which violates the required three-foot setback for accessory structures in residential districts, per §35-4.12a.2. **As a condition of approval, the shed should either be removed or relocated so that it conforms to the required setback.**
- 2.9. **Building Height Defined.** Per §33-2.2, the Ordinance defines building height as the vertical distance measured from mean finished grade along the side(s) of the building facing the street or street line to the highest point of the roof. This does not include roof appurtenances such as parapets, elevator, or stair bulkheads, required mechanical equipment and semi-permanent roof coverings such as awnings, pergolas or canopies. For sloping roofs, it will be vertical distance from finished grade to the average distance between eaves and the ridge level for gable, hip and gambrel roofs.
- 2.10. **Building Height in Feet.** The architectural plans do not indicate whether the building height is measured from the mean finished grade. In addition, the building height is incorrectly measured to the roof ridge rather than the average distance between the ridge and eave, which would indicate the structure as being taller than it would otherwise be calculated for zoning compliance. **While the proposed building scales to less than the maximum permitted height, the plan should be revised to show the vertical distance from the mean finished grade to the average distance between the eaves and the ridge.**
- 2.11. **Height in Stories.** The applicant proposes to build a three-story building whereas the R-2 district requires buildings no taller than two-and-a-half stories pursuant



to §35-5.3.e. A variance is required. Under longstanding City interpretation this requires a “-c” bulk variance and not a “-d(6)” variance.

3. PLAN REVIEW

- 3.1. Parking Stall Size Variance.** Pursuant to §35-17.5.a, the minimum required size for a parking stall at a two-family dwelling is 10 by 20 feet. The proposed two-car parking stall is 20 feet by 18 feet, which translates to a width of 9 feet per space. **A “c” variance is required. This office notes that the proposed parking spaces comply with §5:21-4.15 of the Residential Site Improvement Standards (RSIS) which require parking stalls to measure only 9 feet wide and 18 feet in depth. We note that the RSIS supersedes local jurisdiction with regard to this standard.**
- 3.2. Parking Space Requirements.** Pursuant to §35-17.6.b, the minimum number of street parking spaces for two-family dwellings containing three (3) bedrooms is 1.5 parking spaces per dwelling unit. Based on this requirement, the subject property is required to have a minimum of 3 parking spaces. **The plan complies, provided the applicant is granted relief for the parking stall width per §35-17.5.a (as indicated above in 3.1).**
- 3.3. Parking in Yard Requirements.** Per §35-17.5.c.1, accessory parking for two-family dwellings may be located in any yard, provided that front yard parking be limited to no more than two spaces. **The plan complies.**
- 3.4. Fences.** In 35-4.13.a.1, fences and walls on any side or rear property line may not exceed six feet in height. The site plan depicts a six-foot high board-on-board fence in the rear and side yards of the proposed residence. **The plan complies; however, this office requests the applicant provide a detail of the proposed fencing.** Also, pursuant to §33-10.16a.3, fences are required to be setback at least three inches from the property line. **The plan should be revised to note the setback for the proposed fence. In the event the minimum setback is not met, a design exception may be required. A design exception should be considered since two fences on either side would create a “no man’s land” of six inches that could not be maintained.**
- 3.5. Lighting at the Property Line.** Under §33-10.10b, lighting at property lines are not allowed to exceed one footcandle in intensity. Furthermore, the light fixture is required to be installed with shielding to prevent light from falling on adjoining properties. No lighting, however, appears to be proposed. **The applicant should testify as to whether any outdoor lighting is planned. If so, the applicant should testify as to whether it will impact the neighboring properties and whether it will contain shielding. Regardless, lighting illuminating each entrance to the building is recommended.**



- 3.6. **Trash/Recycling.** In 33-10.13.a, all development applications shall demonstrate facilities suitable for separation of recyclable materials in accordance with the Municipal Recycling Ordinance. The site plan depicts a dedicated room for garbage on the ground-level, presumably which will be shared by both units. **Although the plan appears to comply, the applicant should testify as to whether the trash room will be shared and whether exterior storage is anticipated.**

4. **VARIANCE COMMENTS**

- 4.1. **Overall Comment.** The following sections summarize the “c” variance criteria for the purposes of establishing a framework for review. The applicant bears the burden of proof, which is divided into two parts, in the justification of the “c” variances. The applicant must justify the “c” variances separately and each variance must satisfy both parts. We defer to the Board Attorney for any additional comment on the “c” variance criteria.

- 4.2. **Consideration of the Positive Criteria.** To satisfy the positive criteria for a “c” variance, the applicant has two choices. First, known as “c(1)” variance relief, the applicant may demonstrate that strict application of the regulation would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship due to one of the following:

- By reason of exceptional narrowness, shallowness or shape of a specific piece of property;
- By reason of exceptional topographic conditions or physical features uniquely affecting the specific piece of property; or
- By reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.
- Alternatively, and known as “c(2)” variance relief, the applicant may demonstrate the following positive criteria in support of the request for relief:
- Where in an application or appeal relating to a specific piece of property to purposes of this act would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.

- 4.3. **Consideration of the Negative Criteria.** Should the applicant satisfy the positive criteria, it must also be demonstrated that that the granting of the variance can be accomplished without resulting in substantial detriment to the public good and



without substantial impairment of the intent and purpose of the zoning ordinance and zone plan. These factors are referred to as the negative criteria.

5. ANALYSIS OF APPLICANT'S PROPOSAL

- 5.I.** The proposed development requires bulk variances due to exceeding the maximum number of building stories, insufficient lot width and lot frontage, and the creation of an undersized parking stall. However, should the site receive relief for the parking stall, the lot size may be considered conforming, under the standards listed in §35-16.6 and as noted, the City's standard is inconsistent with the Residential Site Improvement Standards.

This office notes, based on review of tax maps from the City of Bayonne, that the majority of interior lots on E. 5th Avenue between Lord Avenue and Lexington Avenue measure 25' x 100', indicating that the R2 zoning requirements for lot size (25,000 sf. minimum) and lot width/frontage (25 feet minimum) are inconsistent with the existing built environment.

6. APPLICANT AND THEIR PROFESSIONALS

- Applicant/Owner. Hudson Property Holdings, LLP, 320 Ridge Road Rutherford, NJ 07070. Tel: 201-741-4535. Email: ajstragapede@gmail.com.
- Attorney. Peter Cecinini, Esq. 1081 Avenue C, Bayonne, NJ 07002. Tel: 201-354-9305. Fax: 201-603-6615. Email: peter@cecininilaw.com.
- Architect. Jennifer L. Palermo, RA@ Palermo Edwards Architecture. 600 Mountain Road, Kinnelon, NJ 07405. Tel: 201-532-4453. Tel: 973-909-7753. Email: jpalermo@palermoedwards.com.

7. MATERIALS REVIEWED

The following materials were reviewed in the preparation of this report:

- Application, dated September 14, 2023.
- *Narrative Statement of Applicant*, undated.
- Copy of Property Deed.
- Site Plan and Architectural Drawings, 7 sheets, prepared by Jennifer L. Palmermo, R.A. of Palermo | Edwards Architecture, last revised August 16, 2023.
- *Boundary & Topographic Survey*, 1 sheet, prepared Valery Braginsky, P.L.S. or Braginsky Surveying, LLC, last revised August 10, 2023.



8. LIST OF NECESSARY RELIEF

Based on our initial review, the following variances and exceptions are required or may be required, depending on the additional information submitted by the applicant. This list is not exhaustive and may be augmented by analysis performed by other Board professionals.

8.I. Variances:

- §35-5.3.e Minimum lot area
- §35-5.3.e Minimum lot frontage
- §35-5.3.e Minimum lot width
- §35-5.3.e Maximum building height (stories)
- §35-17.5.a Parking Stall Size

We would be pleased to answer any questions concerning this review.

Cc. Alicia Losonczy, Land use Administrator
Richard N. Campisano, Esq., Board of Adjustment Attorney
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