



MEMO TO: City of Bayonne Zoning Board

FROM: Malvika Apte, PP/AICP
Consulting City Planner

DATE: January 16, 2023

RE: **Kamal Girgis**
Preliminary and Final Major Site Plan, Use Variance and Bulk Variances
Planning Report # 1
Block 216, Lot 32
46 West 21st Street
Bayonne, New Jersey
Our File: PBYZ0216.02
Application # Z-22-015

As per your request, our office has reviewed the above referenced application. The following documents were reviewed for this application:

- Application Form, Development Application Checklist and Statement;
- Narrative Statement of Application for Major Site Plan, Use and Bulk Variance Relief;
- Survey of Property dated March 2, 1989;
- Two (2) sheets of plans entitled "Minor Site Plan and Variance Application 46 West 21st Street Block 216, Lot 32 Bayonne, New Jersey", prepared by MFS Architecture, dated June 11, 2019 and last revised March 29, 2021.

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

1. Summary of Application:

The application is for an interior property that is located at 46 West 21st Street, on a block between Avenue C to the northwest and Broadway to the southeast. The intersection of West 21st Street and Avenue C is, per the submitted survey, located 101.50 feet from the northwest corner of the subject property. The property is owned by Kamal Girgis and is identified as Block 216 Lot 32 in the City tax records. The property is located in the R-2 Detached/Attached Residential District.

The site is currently developed with a three story residential building consisting of 4 apartment units. The survey and "Existing Site Layout" panel on the site plans note the building's maximum height as two stories; however, the floor plans indicate that Unit 4 includes a second level that is located on a third story. This is confirmed by the zoning table, which identifies the building as being



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three stories. **Site plans should be revised so that “Existing Site Layout” matches the zoning table and floor plans to show three stories in the rear of the building.** The first unit, comprising approximately 928.6 square feet, occupies a portion of the first floor and includes three bedrooms, a kitchen, a living room, and a bathroom. The second unit consists of about 1,578.9 square feet and is a two-story unit with a living room, kitchen, den, dining room, and bathroom on the first floor; and a bedroom, home office, and master bedroom with bathroom on the second floor. It is noted that the den, dining room, and home office are all large enough and are fully enclosed with an entry door such that they could be used as bedrooms. The third unit occupies a portion of the second floor, consisting of approximately 665 square feet, and includes a kitchen, bathroom, living/dining room and two bedrooms. The fourth and final unit includes a section on the second floor which consists of a living room, kitchen, and dining room along with a set of stairs leading to the third level of the building. The third level section of the unit includes a master bedroom with bathroom, two bedrooms, and bathroom. In total, the fourth unit has about 1,402.2 square feet of floor area. The dining room of this unit is also enclosed and includes an entry door that makes it potentially usable as a bedroom. There is a small basement of about 482 square feet in which utility services and meters are located.

The property is currently approved and listed in City records for two-family use. According to the narrative provided by the Applicant, the building was converted from mixed use (commercial/industrial and residential) to multi-family use in 2000 without approval. With this application, Applicant is seeking approval to retain the four-unit multi-family use. This requires a d(1) use variance and site plan approval.

2. Zoning and Bulk Variances:

(a) **Use:** The subject property is located in the R-2 district detached/attached residential district. The zone does not permit multifamily dwelling units. **As such, a d(1) use variance is required.**

An applicant for a d(1) variance must demonstrate the “special reasons” and simply improvements to safety, health and aesthetics of the premises in question do not alone give rise to special reasons. The Municipal Land Use Law (MLUL) sets forth the statutory positive and negative criteria for variance relief.

The courts have determined that special reasons include 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 master plan. This is the “positive criteria” of the statute.



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To address the negative criteria, the applicant must demonstrate that the proposed variance can be granted without substantial detriment to the public good nor will the granting of the variance substantially impair the intent and the purpose of the zone plan and zoning ordinance of the municipality.

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.*, 107 NJ1 (1987). In accordance with the guidelines set forth in *Medici*, an applicant for a use variance must demonstrate that special reasons are satisfied by either showing that 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 provides the requirements for detached double-family residence in the R-2 Zone and those for low-rise apartments in the R-3 Medium Density Residential District (which permits three- to six-family residential buildings) for comparison only where such use is permitted. There are nine non-conforming bulk conditions identified in the table. While these currently exist, they are noted as variances since the Applicant is requesting permission for a use not previously approved for the property.

Bulk and Yard Standard			
	R-2 Detached Double-Family (Interior Lot)	Existing / Proposed	R-3 Low Rise Apartments (for comparison)
Minimum Lot Area (sq. ft.)	3,000	2,566.75 (V)	3,000
Minimum Lot Frontage (ft.)	30	25 (V)	75
Minimum Lot Width (ft.)	30	25 (V)	75
Minimum Lot Depth (ft.)	100	102.67	100
Minimum Front Yard Setback (ft.)	20	0 (V)	None
Minimum Rear Yard Setback (ft.)	20	1.75 (V)	20



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Bulk and Yard Standard			
	R-2 Detached Double-Family (Interior Lot)	Existing / Proposed	R-3 Low Rise Apartments (for comparison)
Minimum Side Yard Setback One / Both (ft.)	3 / 6	0.13 (V) / 0.34 (V)	None
Maximum lot coverage	70%	100% (V)	70%
Maximum Height (ft./ sty)	35 / 2.5	28.7 / 3	40 / 3.5
Floor Area Ratio	None	1.78	1.5
Useable Open Space (sq. ft.)	1,100 or 1,250	0 (V)	1,100 or 1,250
Number of Parking Spaces (ps)	4		4

(V) Variance
 (e) Pre-existing non-conformity

3. Review:

- (a) **Useable Open Space:** The four-unit residential building requires either 1,100 square feet or 1,250 square feet of open space (Section 35-5.26k), depending on whether the dining rooms, dens, and office spaces in some of the units that could be utilized as bedrooms are counted as bedrooms. The first unit, consisting of three bedrooms, requires 300 square feet. The second unit would require either 250 square feet (for two bedrooms) or 350 square feet (for five bedrooms). The third unit requires 250 square feet of open space for the two bedrooms. Finally, the fourth unit would require either 300 square feet for three bedrooms or 350 square feet for four bedrooms (if the enclosed dining room is taken as a bedroom). ***In either case, a variance is required since no open space is provided on the property.***
- (b) **Parking:** Per Section 35-17.6, the layout of the building with four apartments would require either 5.5 parking spaces or 6.5 parking spaces, depending on whether the enclosed dens, offices, and dining rooms are counted as bedrooms. ***In either case, a variance is required since only one parking space is identified in the plans.*** Furthermore, the parking space is only 8.2 foot by 18 foot space, which does not meet the minimum 9 feet by 18 feet requirement set in Section 25-17.5.a. ***A variance is required.*** The applicant should discuss the anticipated parking need and the current on street parking conditions. This should



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include discussion of on-street parking spaces during peak parking period such as evening/night time. Applicant should testify if any mass transit options are located near the site.

- (c) **Fencing:** The fencing along the southeasterly property boundary is identified as PVC fence of six foot height. The maximum permitted height of fence on side and rear yards in 6 feet. ***This complies.***
- (d) **Security:** The first and second units both have direct entrances to the outside. Units three and four have entrances of an initial door from the exterior and a second entry to each unit. Applicant shall provide testimony indicating if separate keys/locks are provided for the four units, including separate locks for the first floor initial doorway and upper floor initial doorways.
- (e) **Refuse:** The Applicant should provide testimony regarding the garbage and trash recycling operations of the building.
- (f) **Storage in Basement:** The basement includes a storage space. Only the first unit has direct access to the basement through a stairwell from the unit to the basement. The only other entrance is a Bilco-type door that straddles the property line and encroaches into the right-of-way. Applicant should clarify if all tenants have access to the basement and should also be prepared to clarify if the City has permitted the encroachment into the right-of-way.
- (g) **Façade:** Applicant should discuss if any façade improvement along West 16th Street is proposed or possible.

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
City Planner