

Exhibit A-21
US Masters Residential
Property Fund (USA)
Z-20-006 (5/17/21)
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MEMO TO: City of Bayonne Zoning Board

FROM: Malvika Apte, PP/AICP
Consulting City Planner *MA*

DATE: April 29, 2021

RE: **US Masters Residential Property Fund
Use Variance, Minor Site Plan, and Bulk Variances
Planning Report # 1
Block 244, Lot 26
126 West 16th Street
Bayonne, New Jersey
Our File: PBZ0244.03
Application # Z-20-006**

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;
- Survey of Property prepared by Morgan Engineering & Surveying, LLC, dated February 24, 2021;
- Three (3) sheets titled "Proposed Interior Alteration to Existing Residential Building", prepared by MFS Architecture, dated June 11, 2019 and last revised March 29, 2021.
- Ten (10) Site Photos, mostly undated, of the interior and exterior of the dwelling.

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 126 West 16th Street, on a block between John F. Kennedy Boulevard to the east and Avenue A to the west. The property is owned by US Masters Residential Property Fund and is identified as Block 244 Lot 26 in the City tax records. The property is located in the R2 Detached/Attached Residential Zone.

The site is currently developed with a three and a half story residential building consisting of 2 apartment units. The first unit, comprising approximately 1,200 square feet, occupies the first floor and includes three bedrooms. The second unit, which includes three bedrooms, occupies the second story and is 1,400 square feet. The final half-story was, according to the Applicant, previously utilized as a one-bedroom third apartment unit and containing about 870 square feet.

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An OPRA request by the Applicant yielded no prior Board approvals of a three-family use for this property. **The Applicant should clarify whether the third floor was being used as part of the second apartment unit or was unused immediately prior to their renovations.** The basement currently includes a one-car garage, two storage rooms, a cellar, and a crawlspace. This arrangement is proposed to remain.

The property is currently approved for two-family use. With this application, applicant is proposing to renovate and restore a third (870 square foot) apartment on the third floor of the dwelling. The proposed changes are only to the interior of the building. **Applicant should clarify during Hearing what renovations will be included.**

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. The proposed renovation of the third floor would convert the building to a multi-family dwelling unit. **As such, a use variance is required.** While the applicant claims that the third floor has previously been utilized as a third apartment unit, in order to be eligible for the d(2) variance (expansion of a pre-existing non-conforming use) the applicant would first have to show that the non-conforming use has been continuous and then justify that the existing use is a pre-existing non-conformity, as in the use existed prior to the adoption of the ordinance forbidding the use.

Unless the applicant can prove the certificate of non-conformity, the Courts have established that such a use that was not permitted when commenced, and an application to expand such a use should be treated as an application for a new use, subject to d (1) variance. Therefore, an applicant should 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.

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



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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 R2 Zone and those for low-rise apartments in the R3 Medium Density Residential District (which permits three- to six-family residential buildings) for comparison only where such use is permitted.

Bulk and Yard Standard			
	R2 Detached Double-Family (Interior Lot)	Existing / Proposed	R-3 Low Rise Apartments (for comparison)
Minimum Lot Area (sq. ft.)	3,000	4,172	3,000
Minimum Lot Frontage (ft.)	30	25 (V)	75
Minimum Lot Width (ft.)	30	25 (V)	75
Minimum Lot Depth (ft.)	100	164.8	100
Minimum Front Yard Setback (ft.)	20	20	None
Minimum Rear Yard Setback (ft.)	20	86	20
Minimum Side Yard Setback One / Both (ft.)	3 / 6	0 (V) / 1.2 (V)	None
Maximum lot coverage	70%	TBD	70%



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Bulk and Yard Standard			
	R2 Detached Double-Family (Interior Lot)	Existing / Proposed	R-3 Low Rise Apartments (for comparison)
Maximum Height (ft./ sty)	35 / 2.5	30 / 3.5 (V)	40 / 3.5
Floor Area Ratio	None	1.1	1.5
Useable Open Space (sq. ft.)	800	1,016 sq. ft.	800
Number of Parking Spaces (ps)	4	2 (V)	4

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

3. Review:

- (a) **Useable Open Space:** The proposed 3 unit residential building would require 800 square feet of open space (Section 35-5.26k). The first and second floor apartments, each consisting of three bedrooms, require 300 square feet each, while the proposed one-bedroom third floor apartment requires 200 square feet. According to the submitted property survey and site plan, there is an area in the rear yard of approximately 1,016 square feet of unknown use (see the next item (b)). Based on aerial imagery, some of this area might be considered open space suitable for recreation. Applicant shall confirm the use of this rear yard space and the type of recreation use proposed, along with accessibility of each tenant.
- (b) **Rear Yard Use:** Aerial imagery of the property indicates that the southern one-third of the property includes a lawn area, pavers, and an oval-shaped structure of unknown use. None of these features are indicated on the Survey or Site Plan. Applicant shall provide testimony regarding the existing use of this rear yard area.
- (c) **Lot Coverage:** As noted above applicant must confirm the lot coverage and provide testimony regarding the structures located in the backyard as noted above.
- (d) **Building Height and Story:** Applicant must confirm the height of structure during testimony. The height of the building in stories is determined to be three and a half (3.5): the two full residential stories (apartment units 1 and 2), the half-story third apartment unit, and the garage level. While Section 35-5.26j.1 provides an exception of ground floor parking



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garages, this exception is only for detached single- or double-family dwellings, or townhouses. Since a third apartment unit is proposed, this exception does not apply. The unit is now proposed to be a 3.5 story structure.

- (e) **Parking:** Per Section 35-17.6, the proposed layout of the building with three apartments (two with three bedrooms and one with one bedroom) requires 4 off-street parking spaces. Per the Survey and the Site Plan, only two such spaces are provided. **A variance is required.** Furthermore, one of these spaces, located in the garage, only provides an 8.66 foot by 20 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 include discussion on 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.
- (f) **Fencing:** Applicant shall confirm the height of all fencing. Per section 35-4.14 a, maximum permitted height of fence on side and rear yards in 6 feet.
- (g) **Security:** All entrances consist of an initial door from the exterior and a second entry to each unit. Applicant shall provide testimony indicating if separate keys/locks will be provided for the three units, including separate locks for the first floor initial doorway and upper floor initial doorways.
- (h) **Third Floor Unit Entry:** Per the floor plans, the stairwell toward the front of the building only goes from the first floor to the second floor. Only the rear stairwell provides access to the third floor apartment; however, the Survey and Site Plan do not indicate any way for the occupant of the apartment to access the rear stairwell from the front, or to exit the property when leaving. Applicant shall provide testimony indicating how an occupant is to gain access to the building entry door.
- (i) **Refuse:** The Applicant should provide testimony regarding the garbage and trash recycling operations of the building.
- (j) **Storage in Basement:** The current and proposed basement includes a storage space immediately adjacent to the existing/proposed parking space in the garage. The only entry/exit to this space is through a door that would be blocked by a parked vehicle. Applicant should discuss if the door can be moved to allow for entry/exit when vehicle is parked in garage.



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- (k) **Façade:** Applicant should discuss if any façade improvement along West 16th Street is proposed or possible.
- (l) **Metering:** Applicant shall testify as to whether an additional meter for the third apartment is needed and will be added. Per the site photos submitted additional electric meter is noted, however no additional meters for gas or other utilities is noted.

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