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MEMO TO: City of Bayonne Zoning Board

FROM: Malvika Apte, PP/AICP  
Consulting City Planner

*MA*

DATE: October 5, 2021

RE: **Remino Bayonne, LLC  
Use Variance and Site Plan  
Planning Report # 1  
Block 143 Lot 28  
120-122 West 33<sup>RD</sup> Street  
Bayonne, New Jersey  
Our File: PBYZ0143.03  
Application # Z-21-009**

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

- Application form and Statement.
- One (1) sheet titled " Survey of Property for Lot 28 Bock 143, prepared by Amertech Engineering, Inc. dated February 20, 2019
- Eleven (11) sheet of plans titled " Preliminary and Final Major Site Plan for Residential Development", prepared by Dal Design Group, dated April 1, 2021

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

### 1. Summary of Application

The Applicant, Remino Bayonne, LLC is seeking a use variance and site plan approval to locate a four (4) story multi-family residential building comprising of eight (8) units and nine (9) on site parking spaces. The proposal includes four (4) one-bedroom units and four (4) two-bedroom units. One-bedroom units range in size from 620 square feet to 720 square feet. Two bedroom unit sizes range from 775 square feet to 910 square feet. One-bedroom units are to be located on second and third floor while two bedroom units are to be located second, third and fourth floor.



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The subject site is an interior lot, located on W 33<sup>RD</sup> St. with 40 feet street frontage and 126 feet on lot depth. The subject site is currently vacant. Adjacent to the site, to the west is existing three story multifamily residential development, to the east, is the corner lot that appears to be rehabilitated multifamily residential development. To the north, is the street and opposite that is a multifamily residential development, to the south (rear of the property) are one and two family residential units.

## **2. Review:**

- (a) **Use:** The subject site is to be developed with a four story, eight-(8) unit development. The subject site is located in R-2 zone wherein multifamily is not permitted. For the proposed eight (8) unit multifamily use, 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.



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iii) That the variance can be granted without substantially impairing the Master Plan, Zone Plan or Zoning Ordinance.

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.

In addition to the use variance, the application also requires height d (6) variance to permit the height of the principal structure. The Board’s focus would be whether the site would accommodate the problems associated with the permitted principal structure but at a height higher than permitted by the ordinance.

(b) **Parking:** Per the application, applicant has indicated parking has been met. Per section 35-17.6,

Number of bedrooms	Number of spaces required	Required	Proposed
Apartment- One bedroom	1 sp/dwelling unit = 4x 1.25	4	
Apartment- Two bedroom	1.25 sp/dwelling unit = 4 x1.25	5	
	Total	9	9

The proposal includes 9 parking spaces to be proposed in the first floor garage.

(i) Per the recently adopted State Model EV ordinance, multiple dwellings with five or more units are required to provide 15% of the required off street parking spaces as Make Ready spaces. Make Ready means the pre-wiring of electrical infrastructure at a parking space, or set of parking spaces to facilitate easy and cost efficient future installation of Electrical Vehicle Supply Equipment. In this case, atleast two (2) parking spaces are required to be



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Make Ready or EV parking spaces. Applicant should confirm this requirement shall be complied with.

- (c) **Bulk Variance:** The following table notes the subject site’s compliance/non-compliance with the zone district. In addition, the table provides bulk regulations for TDO zone where an apartment building shall be permitted. This is for comparison purposes.

Regulation	R-2 Zone	Existing/Proposed	TDO Zones
Min. Lot Area (sq. ft.)	3,000	5,040	30,000
Min. Lot Frontage (ft.)	30	40	150
Min. Front Yard Setback	20	<b>5 (V)</b>	30
Min. Rear Yard Setback	20	<b>5 (V)</b>	25
Min. Side Yard setback (one/ both)	3 ft./ 6 ft.	<b>0/0 (V)</b>	
Max. Building Ht. (ft.) Principal Structure (sty/ ft.)	2.5 sty/35	<b>4/42.79 (V)</b>	7/75
Max. Lot Coverage (%)*	70%	<b>96% (V)</b>	75
Min. Useable Open Space (sq. ft)	1,800	<b>861 (V)</b>	

- (i) With the proposed addition, the subject site is creating a new variance for combined side yard setback. **A variance is required.**
- (ii) Per the proposal, 861 square feet is provided in private terraces. These terraces are only provided for three (3) units on second floor. Open Space is defined as space for the purpose of providing light air and recreational open space for occupants and other persons coming into the property. The proposed space is not sufficient. A variance is required.



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- (d) **Façade:** Applicant should discuss the proposed façade and its compatibility with surrounding sites.
- (e) **Refuse and Recycling:** Applicant should discuss how the refuse and recycling for the units shall be maintained.
- (g) **Unit sizes:** The one bedroom unit sizes range from 620 square feet to 720 square feet and two bedroom units range from 775 square feet to 910 square feet. Applicant should discuss the sufficiency of these unit sizes.
- (h) **Grass Area to the rear:** Applicant should discuss how the proposed grass area to the rear is to be maintained, considering the building is to be built to the side property lines.
- (i) **Signage:** No signage details is proposed. Applicant should provide this to determine compliance.

**4. Statutory Criteria:** The site requires several bulk variances commonly known as c variances for parking, useable open space and the bulk regulations. 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.

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.

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



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cc: Land Use Administrator  
Board Attorney  
City Engineer  
Zoning Officer  
City Planner