



## PLANNING MEMORANDUM

To: John Candelmo, Land Use Administrator  
Edgewater Planning Board  
From: Kathryn M. Gregory, PP, AICP  
Principal  
Re: 689 Undercliff LLC  
Block 24.01 Lot 15  
689 Undercliff Avenue  
Date: November 19, 2020

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### INTRODUCTION

The applicant, 689 Undercliff LLC, has submitted an application for construction of a duplex dwelling on the property located at 689 Undercliff Avenue, which will require a several “d” and “c” variances. The property in question (PQ) is located in the R-2 Single- and Two-Family Residential District. The applicant will require the following variances:

“D” Variances include:

- D(6) Height Variance
  - Average Height

“C” Variances required include:

- Front Yard\*
- Side Yard
- Rear Yard\*\*
- Lot Coverage
- Building Height
  - Maximum Height in Feet
  - Number of Stories

\* The plans incorrectly indicate the proposed front yard setback as 21’, wherein there is an overhang of 1’-8” in the front, so therefore the proposed front yard setback is 19’-4”.

\*\* The plans do not indicate a rear yard setback variance, but one is required. Decks must meet the rear yard setback for the principal building (§240-114D(4)).

### The application consists of the following:

1. Application for Preliminary and/or Final Site Plan Approval and Variances.
2. Exhibits A through E
  - a. Letter of Denial
  - b. Proposed Form of Public Notice
  - c. Certification as to Taxes Paid
  - d. Authorization to inspect premises

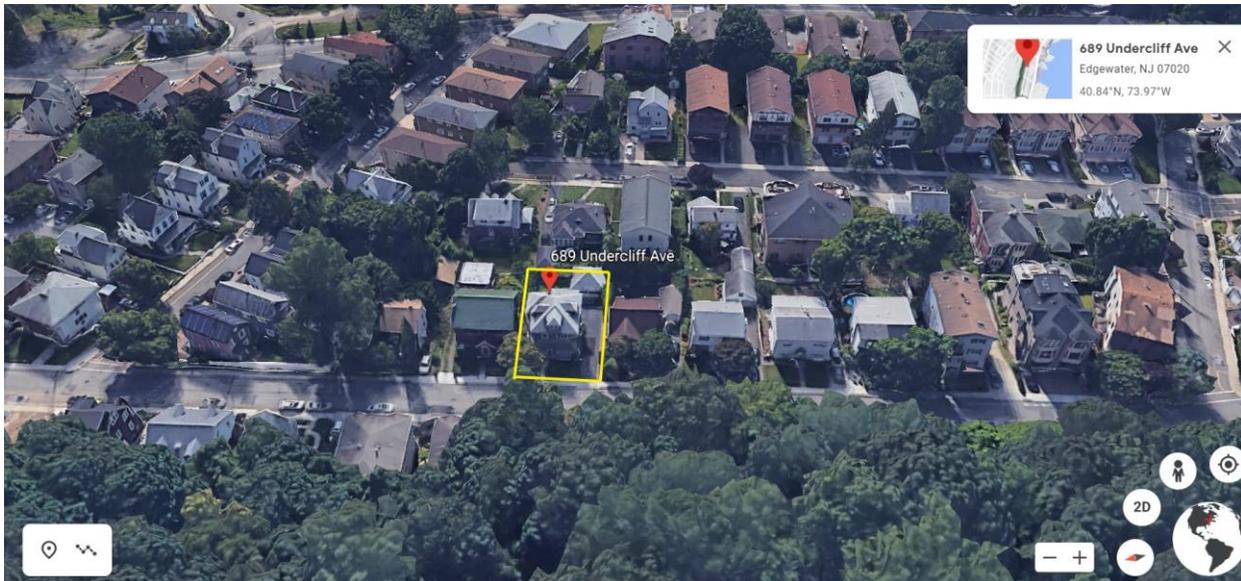
- e. Application ownership disclosure
- 3. Application Checklist - General Requirements for all Development Applications.
- 4. Form 8 "D" Variance Application.
- 5. Form 9 "C" Variance Application.
- 6. Architectural Plans, prepared by VCA Group, sheets A-1 through A-3, and S-1, dated 08/28/20.

**The applicant is subject to the following:**

- 1. Application for Preliminary and/or Final Site Plan Approval.
- 2. Application Checklist - General Requirements for all Development Applications.
- 3. Form 8 "D" Variance Applications.
- 4. Form 9 "C" Variance Applications.

**EXISTING CONDITIONS**

The site is located on the east side of Undercliff Avenue. The overall site is 5,000 SF and is currently occupied by an existing 2 1/2 story structure. The surrounding uses include single- and two-family residential uses. An aerial of the site is found below.



Source: Google Earth

**PROPOSED DEVELOPMENT**

The applicant is proposing to demolish the existing structure and construct a new two-family duplex dwelling, which requires a d(6) height variance and several "c" variances. Each of the units is proposed to have 3-bedrooms, 2 full baths, 3 half baths, 2 recreation rooms, a living room, dining room, kitchen, laundry room, roof deck, and a 2-car garage.

**ZONING ORDINANCE**

The property is located in the R-2 Single- and Two-Family Residential District. The proposed use is permitted, however, several variances are needed associated with this application.

**D(6) height variance** – where the height proposed is 10’ or 10% greater than the permitted height, whichever is greater.

**Maximum Average Height**

- 32’ permitted
- 40.92’ proposed
- 27.88% variance

N.J.S.A. 40:55D-70(d) permits a Board of Adjustment “in particular cases for special reasons” to grant a variance to permit “a use or principal structure in a district restricted against such use or principal structure.” This represents the Positive Criteria of the statute. In addition, a showing of the Negative Criteria is necessary to obtain a “d” variance. The applicant must demonstrate that the proposed variance can be granted “without substantial detriment to the public good and will not substantially impair the intent and the purpose” of the Master Plan and Zoning Ordinance.

When considering the granting of a “d” variance, an applicant must demonstrate that special reasons are satisfied by either showing that the proposed use “inherently serves the public good” or that it promotes the general welfare because the proposed site is particularly suited for that use. It was held in *Medici v. B.P.R. Co.*, 107 NJ 1 (1987) that the only “special reasons” which can be considered are those which promote the general purposes of zoning, as listed in N.J.S.A. 40:55D-2. The court emphasized in *Burbridge v. Mine Hill Twp.*, 117 NJ 376 (1990), however, that the MLUL includes all the zoning purposes listed in N.J.S.A. 40:55D-2, not only the promotion of the general welfare. Therefore, each of these listed purposes may support an application for a “d” variance.

However, in the case of a d(6) or height variance, the use is already permitted in the zone. Therefore, the particular suitability of the use does not apply. When considering a d(6) height variance it is the *Coventry Square v. Westwood* case and not the *Medici* case that is utilized when analyzing the request for a variance. Instead of showing that the site is particularly suited for more “intensive” development the applicant must show that the site can accommodate the potential problems associated with a height greater than that permitted by the ordinance. In other words, can the problems that the ordinance, by restriction intended to address, be accommodated in this particular location?

In 2004, another case was decided that relates to a d(6) height variance. It is the case of *Grasso v. Spring Lake Heights*, 2004, that is utilized when analyzing the request for a height variance. The court found that special reasons could be proven if the applicant could persuade the Board that a taller structure than that permitted by ordinance would none the less be consistent with the surrounding neighborhood.

In addition, a showing of the Negative Criteria is necessary to obtain a “d” Variance. The applicant must demonstrate that the proposed variance can be granted “without substantial detriment to the public good and will not substantially impair the intent and the purpose” of the Master Plan and Zoning Ordinance.

**“c” Variances**

N.J.S.A. 40:55D-70c sets forth the criteria for a planning board to grant variance from bulk requirements of zoning ordinance. Two types of “c” variances can be granted:

- 1) (c) 1: in cases of hardship, such as “exceptional narrowness, shallowness or shape of specific piece of property,” or by reason of exceptional or unique topographic conditions, physical features, or an exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.

- 2) (c) 2: where the purposes of zoning would be advanced and the benefits derived by the variance would outweigh any detriments.

The applicant must also meet the negative criteria of the statute for the granting of a “c” variance, wherein a variance can be granted only “without substantial detriment to the public good” and where it “will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.”

Front Yard

- 25’ required
- 19’-4” proposed
- 5’-8” variance

Lot Coverage

- 60% permitted
- 68.8% proposed
- 8.8% variance

Side Yard

- 8’ required
- 6.67’ proposed to overhang
- 1.33’ variance

Maximum Absolute Height

- 38’ permitted
- 41.42’ proposed
- 3.42’ variance

Rear Yard

- 20’ required
- 12’ proposed
- 8’ variance

Building Height – number of stories

- 2.5 stories permitted
- 3.5 stories proposed
- 1 story variance

**WAIVERS**

MLUL C.40:55D-51 Exception in application of subdivision or site plan regulation

- b. The planning board, when acting upon applications for preliminary site plan approval shall have the power to grant such exceptions from the requirements for site plan approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval of an ordinance adopted pursuant to this article, is the literal enforcement of one or more of the provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.

Parking Setback – Front (§240-166B(1))

- Off-street parking shall not be located closer than 15 feet from any front yard lot line, nor closer than five feet from any side or rear lot line, nor within a required buffer area
- Parking proposed within front yard
- Variance required

We reserve the right to determine additional variances and make comments during the course of testimony.

KMG

Cc: Denise Travers, Esq, Zoning Board of Adjustment Attorney  
Dennis Harrington, PE, Zoning Board of Adjustment Engineer  
Mark Sokolich, Esq., Applicant’s Attorney