



# GREGORY ASSOCIATES<sup>LLC</sup>

*Specializing in Planning & Development Consulting*

## PLANNING MEMORANDUM

To: City of Clifton Zoning Board of Adjustment  
From: Kathryn M. Gregory, PP, AICP  
Principal  
Re: Lexington Partners, LLC  
Block 8.22 Lot 37 & 39  
340 Lexington Avenue  
Date: November 3, 2020

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### INTRODUCTION

The applicant, Lexington Partners, LLC, has submitted an application for variance approval for the property located at 340 Lexington Avenue. The property in question (PQ) is 17,295 SF in size and is located in the R-B3 District, is rectangular in shape, with frontage along Lexington Avenue and Lake Avenue. The applicant proposes to demolish the existing building on site and construct a multi-family development consisting of 28 units.

Variances required include:

- D(5) Density Variance
- D(6) Height Variance in feet
- C Variances:
  - Minimum Lot Area per Dwelling Unit
  - Minimum Front Yard Setback
  - Minimum Side Yard Setback
  - Minimum Rear Yard Setback
  - Minimum Street Side Setback
  - Maximum Building Height (stories)

The application consists of the following:

1. City of Clifton Application for Development and/or Appeal.
2. Rider to application.
3. Architectural Plans, Sheets A-1 through A-7, prepared by Seth A. Leeb, AIA, dated 8/31/20.
4. Preliminary & Final Site Plan, "The Lex", Sheets C-01 through C-12, prepared by L2A Land Design, LLC, dated 8/31/2020.

### PROPERTY DESCRIPTION

The property in question (PQ) is an undisclosed size is located in the R-B3 District, is rectangular in shape, with almost 250' of frontage on Lake Avenue and almost 70' of frontage along Lexington Avenue. The site contains a 2-story building, formerly housing the JC Fila Lexington Memorial Home.

## EXISTING ZONING AND SURROUNDING LAND USES

The site is located in the R-B3 District. The uses in the area are varied, including commercial uses, as well as a trade school, a diner, multi-family and single- and two-family homes. An aerial of the site and surrounding area is found below.



Source: Bing Maps

## PROPOSED DEVELOPMENT

The application proposed to demolish the existing funeral home on site and construct a 4-story multi-family building consisting of 28 residential units. A total of 42 parking spaces are proposed on the first level of the building, which includes one ADA space, along with the lobby, stairwells, mechanical, and trash spaces. The residential units are proposed to be located on the 2<sup>nd</sup> through 4<sup>th</sup> floors, consisting of twenty (2) one-bedroom units and eight (8) two-bedroom units. The two-bedroom units are duplex units, with bedrooms on the second floor of the units (3<sup>rd</sup> or top floor of the building). The top level is set back from Lake Street (no dimension given, Applicant should provide). A roof deck is also provided on the second floor. Balconies are provided for units facing Lake Street. Vehicular access to the site is from a one-way in and one-way out along Lake Avenue. The parking level is proposed to be open.

## ZONING REQUIREMENTS

The P.Q. is located in the R-B3 Residential One & Two Family and Multi-Family Apartment District. The uses in the R-B3 District are as follows:

Permitted principal uses are:

- (1) Any use permitted in the R-B2 District.
- (1) Any use permitted in an R-B1 District.
- (1) Any use permitted in an R-A1, R-A2 and R-A3 District.
  - (1) One-family dwelling containing a minimum floor area as follows:
  - (2) Offices of a home profession, as defined in this chapter, when conducted as a subordinate use in the resident practitioner's dwelling and incorporated as an integral part of the dwelling

but limited to his own practice and not entailing more than one employee. Not more than 20% of the ground floor area of the dwelling unit may be devoted to such professional office use.

(3) A noncommercial swimming pool as a detached accessory building, provided that:

(4) Where a homeowner or tenant who operates a taxi or limousine business is proposing to operate from his or her residence, upon certification by the Zoning Officer that such residence has a driveway and/or a garage which can accommodate the taxi or limousine in question, which shall be no larger than a full-size four-door sedan, and upon the issuance of a certificate of operation pursuant to Chapter 413 of the Code of the City of Clifton, one such vehicle may be maintained in such garage and/or driveway.

[Added 2-18-2014 by Ord. No. 7138-14]

(2) Two-family dwelling, provided that each dwelling unit contains not less than 768 square feet of floor area.

(2) Dwelling group consisting of garden apartments, subject to the provisions of Article V, § 461-19.

(3) Townhouse group, subject to provisions of Article V, § 461-21.

(2) Multifamily apartment building.

A multi-family residential development is a permitted use, however, the applicant will require the following variances with this application.

#### **D(5) Density Variance**

##### Minimum Lot Area per Dwelling Unit

- 2,178 SF required (20 du/ac permitted)
- 557.91 SF proposed (78 du/ac proposed)
- 7 units permitted on site; 28 proposed
- 1,620.09 SF variance (58 du/ac 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(5) Density variance, the use is already permitted in the zone. Therefore, the particular suitability of the use does not apply. When considering a d(5) Density variance it is the *Randolph Town Center* 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 FAR and/or density 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 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.

### **D(6) Height Variance.**

Where the height proposed is 10' or 10% greater than permitted by ordinance.

The applicant is proposing a 4-story building at 48 feet in height, where only 35' is permitted. The increase of 13' is more than 10% greater than permitted by ordinance.

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(6) 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 purpose" of the Master Plan and Zoning Ordinance.

### **"C" variances**

N.J.S.A. 40:55D-70c sets forth the criteria for a board of adjustment 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."

### **Minimum Front Yard Setback**

- 25' required
- 1.34' proposed
- 23.66' variance

### **Minimum Side Yard Setback**

- 10' required
- 5.56' proposed
- 4.44' variance

### **Minimum Rear Yard Setback**

- 45' required
- 6.01' proposed
- 43.99' variance

Minimum Street Side Setback

- 15' required
- 5.56' proposed
- 9.44' variance

Maximum Building Height (stories)

- 3 stories permitted
- 4 stories proposed
- 1 story variance

**GENERAL COMMENTS:**

1. It appears the building columns encroach into parking spaces 4, 7, 12, 16, 19, 22, 27, 29, 33, 37, and 39. Parking spaces 25 and 26 are also only 18.5' in length. A waiver will be required for these parking spaces not meeting the 18' standard in length according to RSIS.
2. The architecture of this building leaves something to be desired. It does not fit in with the existing character of the neighborhood; the parking being open to the public does not create a pedestrian-friendly or attractive streetscape; there are no windows facing Lexington Avenue, a major corridor; the setbacks are extremely narrow, limiting adequate light, air, and open space on adjacent properties. The property, being a corner property, should address the corner in the architectural design. The building essentially does not address the streetscape at all.

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

KMG

Cc: John Pogorelec, Esq. Zoning Board of Adjustment Attorney  
Dan Howell, Zoning Officer, City of Clifton  
Frank Carlet, Esq, Applicant's Attorney