

(d)(1) use variance for 20-26 Bruen Street/23-33 McWhorter Street

General Findings of Fact:

Resolution should note that proposed use is not permitted in I-1 district for which it is zoned, and the R-5 district for which it is zoned in the Land Use Element plan of the 2012 Master Plan.

The current Zoning Ordinance provides for a wide variety of permitted uses within the I-1 zone to which the property is suitable and specifically precludes parking lots as a principle use in the zone.

The 2012 Master Plan also calls for reduced parking requirements, as an accessory use, due to its location within 1,200 ft. of transit hub. 2012 Master Plan specifically recommends that the City of Newark rezone the area to establish a Transit Oriented Development in proximity to Penn Station without parking requirements to promote transit use, reduce vehicle use and create a sustainable and walkable community within ¼ mile of major rail facility.

Resolution accepts expert testimony that surface parking lots represent “yesterday’s solution” to the City’s need to address parking, and that such lots inhibit more appropriate “urban center uses” especially with respect to the establishment of transit hubs, the very type of land use that Newark has envisioned for this property and the zone in which it is located.

POSITIVE CRITERIA

Applicant must demonstrate “Special” Reasons to support the granting of the use variance. Court’s have found that an applicant’s financial reasons are not the basis upon which zoning boards can grant an approval.

Applicant did not provide credible evidence that the applicable property was particularly suitable for use as a parking lot.

There was a building on the site and it was not adequately explained why the property could not be used for a permissible use.

The fact that the owner was unwilling to renovate the roof on the building to enable the building to be safe for rental purposes, and rather decided to demolish the building to pay less taxes does not establish undue hardship.

The lot was physically no different than other lots in the zone with respect to terrain; it is flat. However, the Applicant’s architect noted that the narrowness of this particular lot makes it especially suitable for housing.

The fact that a commercial parking lot would serve an immediate need does not satisfy the legal criteria that this lot be particularly suited for the purpose that it serves. Mere location in

proximity to certain cultural attractions –a characteristic that is shared by all other properties in the District-- is not sufficient to meet this test.

NEGATIVE CRITERIA:

Grant of the requested D[1] Variance would represent a “Substantial detriment to the public good”

The Applicant’s report prepared by Dynamic Traffic, dated February 20, 2014, did not address the traffic impact of the proposed parking lot on the surrounding neighborhood; and limited its assessment of need for more parking to certain times of the day. It also did not establish that paid parking was a solution for people who currently double park on some streets in the area at certain times of the day.

Conversion of the property into a parking lot would not increase the residential population of Newark, it would add a minimal number of jobs to the Newark economy, and it would likely generate minimal taxes annually; in contrast, if the property is developed in a way consistent with the Master Plan, the parcel could potentially house 29 individuals, host 25 jobs and raise tax revenue at almost \$400,000 annually.

The proposed use is inconsistent with the goals and objectives of the City’s sustainability initiative, and despite requirements for a water retention system, the proposed retention system is very shallow and may continue to exacerbate the flooding problem experienced by residents in the area.

Many community residents indicated the lack of security in the area due to the emptiness of the parking lots in the evening. With no eyes on the street, they voiced their fears of walking from the station to their apartments primarily at night.

Community residents raised the bad air quality in the neighborhood generated by the cars going in and out of the parking lots in the area, and the negative impact of parking lots on their ability to walk in the community and for children to play in the area.

Grant of the requested D[1] Variance would “substantially impair the intent and purpose of the zone plan and zoning ordinance”

Applicant must establish by an enhanced standard of proof why the intent and purpose of the Zoning Ordinance and Master Plan are not impaired given the failure of Newark to authorize parking lots as a principle use subsequent to all the other variances the Board of Adjustment has given for such use in this zone.

The City of Newark has not sought to amend its zoning for this I-1 zone to permit surface parking lots, despite the Applicant’s contention that there is a need for such parking facilities, and the Land Use Element of the 2012 Master Plan continues this prohibition.

The Land Use Element of the 2012 Master Plan designates the location of the subject property as well as the adjacent lots as R-5 (mid-rise residential) zone. Parking as a principle use is prohibited in the zone, and the Master Plan specifically discourages any parking in the zone.

Newark's recently proposed new zoning ordinance is consistent with the land use element set forth in the 2012 Plan.

The establishment of a surface parking lot would substantially impair the 2012 Master Plan because it is not contemplated in the R-5 District and would actually frustrate and defeat the implementation of the Plan's specific recommendations for the redevelopment of the area, as a transit oriented hub. The City's 2012 Mobility Element of the Master Plan further supports such transit oriented development.

When weighing the public interest against the public detriment, this Board concludes that it must deny request for d(1) variance to use the current property for a commercial, surface parking lot.