



AGENDA ITEM COVERSHEET

PREPARED BY: Haley Moccia, Planner

DEPARTMENT: Planning & Development

MEETING: Board of Adjustment – January 22nd, 2024

SUBJECT: Variance to Building Setbacks - Sec. 40-74. - Dimensional standards for lots and principal structures.

Variance to Building Height - Sec. 40-74. - Dimensional standards for lots and principal structures.

Variance to Lot Coverage - Sec. 40-426. - Reconstruction, maintenance, full or partial demolition and renovation of nonconforming situations. & Sec. 40-74. - Dimensional standards for lots and principal structures.

BACKGROUND:

The applicant, North Pier Holdings, LLC, is a North Carolina Limited Liability Company, formed on May 3, 2022. The Registered Agent is Caleb Kratsa.

On July 27, 2022, the applicant acquired a fee simple interest in all of the units (42 units) within North Pier Ocean Villas Condominiums (the “Property”) from North Pier Ocean Villas Homeowners Association, Inc. (the “HOA”) for a sales price of \$8.3 million following proceedings in bankruptcy court. The Property has a physical address of 1800 Canal Drive, Carolina Beach, New Hanover County, North Carolina.

The Property, currently improved with condominium units, is an irregularly shaped area containing 33,541 gross square feet or approximately 0.8 acres. The Property is bounded by Carolina Beach Pier House, a rock revetment, the Carolina Beach Pier, and the Atlantic Ocean to the east, Canal Drive to the west, Island North condominium complex to the south, and a privately owned parking lot (which is leased to the Town for public parking) to the north.

According to the Flood Plain Map number 3720313000K, dated August 28, 2018, the Property is located within a special hazard flood zone (Zone Coastal AE-12). This structure is considered legal non-conforming since it does not meet current FEMA Flood requirements, town ordinance requirements, nor current CAMA requirements. The buildings (1 & 2) are limited in their improvements. The total cost of the improvements is not permitted to exceed 49% of the “as is” market value of the structures (Building 1 & 2). If the renovation exceeds this renovation cap, the

buildings would be required to come into compliance with all town ordinances, FEMA Flood requirements, and CAMA requirements. The current proposed renovations do not exceed 49% and therefore the applicant was allowed to renovate as long as the existing building (pre-renovation) setbacks and lot coverage were not enhanced.

The property is located within the R-1 Zoning district. This zoning district usually supports single-family/2-family dwellings. It does not permit multi-family structures. The table below lists the permitted dimensional standards for lots and principal structures located within the R-1 zoning district:

Zoning District	Primary Permitted Uses	Min. Lot Size	Min. Lot Width ⁶	Min. Front Yard	Min. Rear Yard	Min. Side Yards* (Corner Lot—Min. 12.5 ft.) ⁴	Residential Max. Density	Max. Height	Max. Lot Coverage
R-1	Single-Family Two-Family	5,000 sq. ft.	50 ft.	20 ft.	10 ft.	7.5 ft.	15 units/acre	50 ft. 1	40%

The condominium structures were constructed beginning in 1984 and 1985 and consist of two (2), cosmetically attached but structurally independent, three-level, piling-supported wood frame buildings containing 42 individual residential units: Building 1 consisting of 15 (3 floors x 5) individual residential units and Building 2 consisting of 27 (3 floors x 9) individual residential units. The pool area was constructed sometime between 1985 and 1992.

Following deferred maintenance by the prior HOA, during Hurricane Dorian in 2019, Building 1 experienced significant storm damage. The applicant describes it as uninhabitable but was not condemned by the Town. The HOA chose not to make the necessary repairs for financial reasons and Building 1 remained in this state of disrepair for several years. Building 2 experienced minor damage from Hurricane Dorian and continued to be used as vacation rentals following the storm.

At the time that Applicant acquired the Property, the buildings, in particular Building 1, were in significant disrepair, including mold and structural issues. The Town’s building inspector at that time, Mr. Darrell Johnson, informed the applicant that he had the authority to require either demolition to prevent the structures from becoming storm debris if a major hurricane neared the coast or to secure.

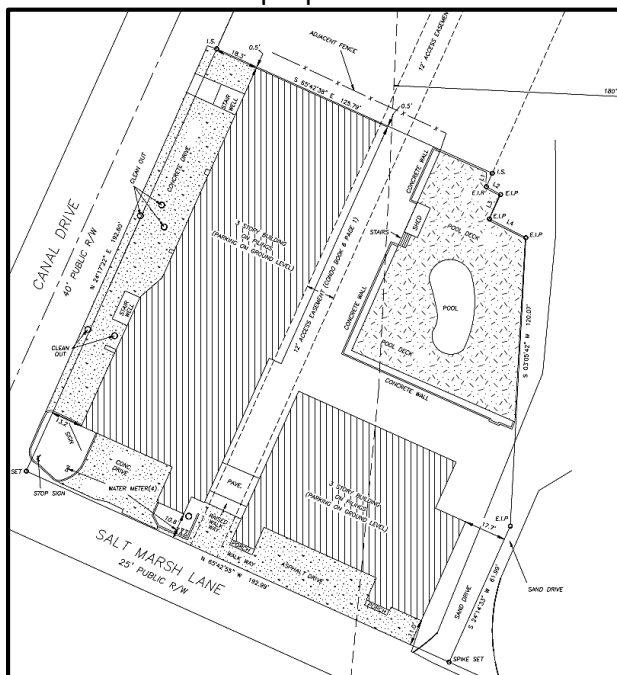
Shortly after the applicant purchased the Property on July 27, 2022, beginning in August 2022, the applicant began maintenance and repair activities of Buildings 1 and 2. See attached timeline of permits.

In addition to these activities, in February 2023, the existing pool plumbing under the in-ground pool's surrounding deck was not functioning and the applicant contends it needed to be replaced. The concrete pool deck was cracked and created dangerous conditions for the pool users. Due to these conditions, the applicant removed the pool deck, without a demo or renovation permit, and proposes to fix the plumbing, repair the retaining wall, and replace the pool deck.

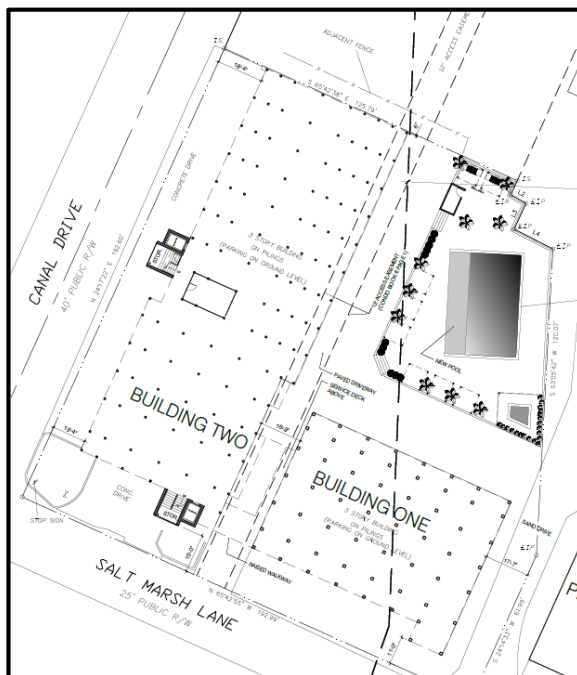
On April 20, 2023, the Town issued a Violation to the applicant for enclosing unheated areas of Building 1 within the State Coastal Area Management setback regulations (CAMA setback). The applicant also did not have a renovation permit for this work. The applicant contends there was a misunderstanding with the building inspector regarding the ability to enclose the unheated sf based on their ability to secure the building prior to Hurricane Dorian in 2019, mentioned above. The applicant applied for a CAMA variance to permit the following: enclose the decks located on the NE corner of building 1, expand the decks on the NE corner of Building 1, add a penthouse to building 1, enclose an entryway into 6 units located on the E side of Building 1, and add a smaller proposed pool deck back within the CAMA buffer. CAMA granted a variance for the enclosures and pool deck but denied the expansion of the NE decks and penthouse on building 1.

CURRENT STATE OF THE PROPERTY:

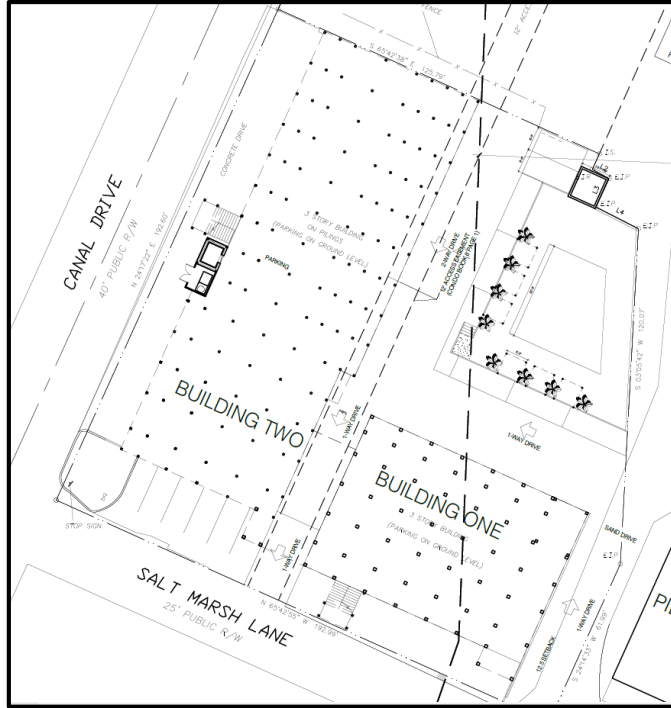
To date, a building permit has been issued for the renovation and repair of the buildings. The renovation included combining some residential units, moving interior walls, replacing and fortifying the roof, replacing siding, decking, and adding windows. A second building permit was issued for the addition of four (4) penthouse units added to the top of building 2, the reconstruction of the breezeways and small storage closet, and the relocation of the elevators and staircases. The proposed number of units overall decreased from 42 units to 40 units.



Pre-construction Site Plan



Approved Building Permit Site Plan



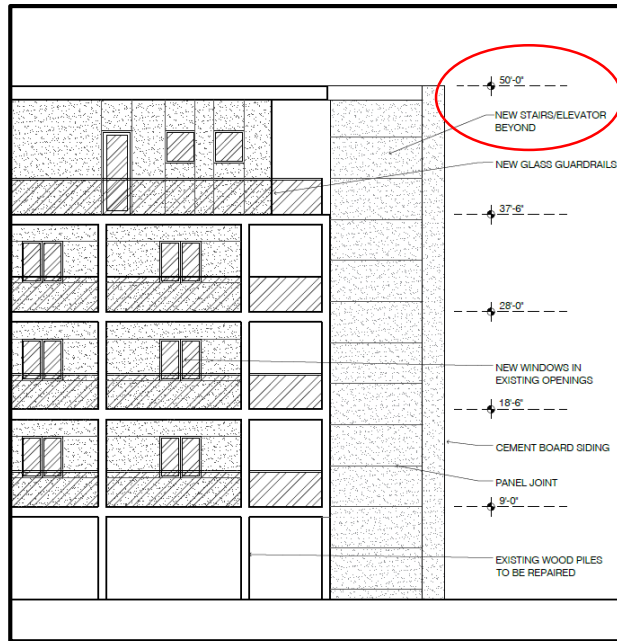
Variance Proposed Site Plan

Height

The maximum height limit for the R-1 zoning district, in which this building is located, is 50' (Sec. 40-74.). Leading up to the variance request, the applicant stated they ran into an unexpected issue with the design of their proposed elevator shafts. The elevators were originally designed and approved to not exceed 50' and stay level with the roof line on top of the added penthouses on building 2. The applicant requests a total of 55' 4" height for the elevator shaft.



Proposed Height for Variance – 55' 4"



Approved Building Permit Height – 50'

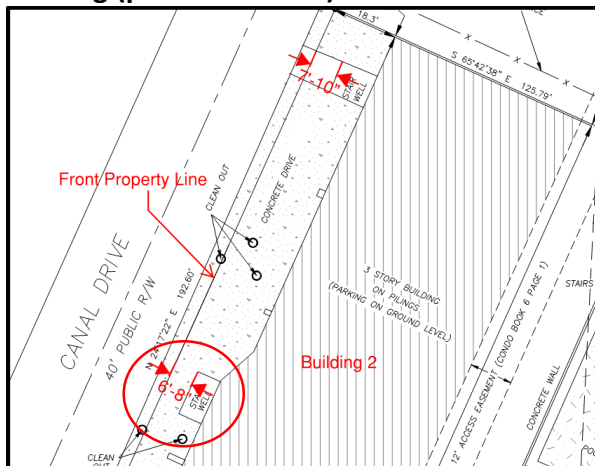
Setbacks

The R-1 Zoning district allows a minimum front setback of 20' and a minimum corner side setback of 12.5' (Sec. 40-74.). With the change in the design of the elevators and staircases, the applicant also proposes to encroach further into the front and side building setbacks. The front property line would be adjacent to Canal Dr. and the side property line would be adjacent to Salt Marsh Ln. The setbacks required by Town ordinance are a 20' front setback and a 12.5' side setback. The existing building, before demo and reconstruction began, was considered legal non-conforming because the building was already encroaching into the front and side setbacks.

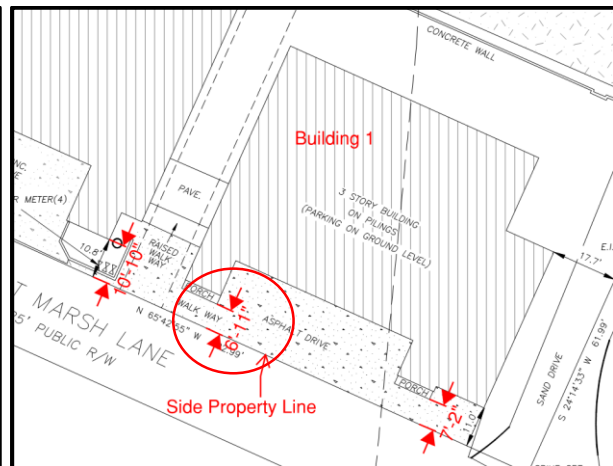
Staircase

The applicant proposes enlarging the staircase which would cause further encroachment into the building setbacks. The existing most forward staircase along the front property line was located on building 2 and was 6'8". The new, most forward, front setback would be 3'9". The existing most forward staircase in the side setback was 6'11". The proposed new most forward side setback would be 0'6". See comparison between the existing setbacks (pre-renovation), the approved building permit setbacks, and the proposed variance setbacks:

Existing (pre-renovation) Setbacks:

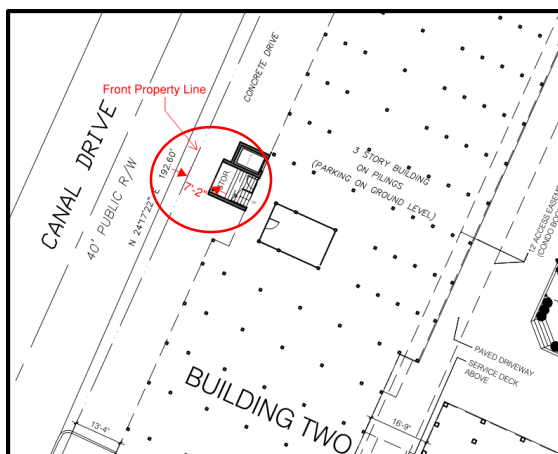


Building 2 (Front Setbacks) – 6'8"

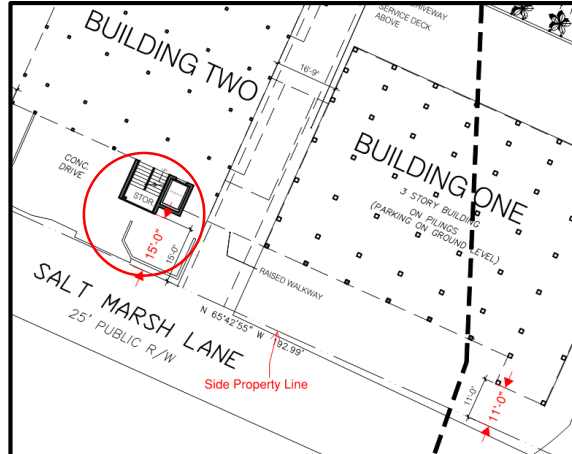


Building 1 (Side Setbacks) – 6'11"

Approved Building Permit Setbacks:

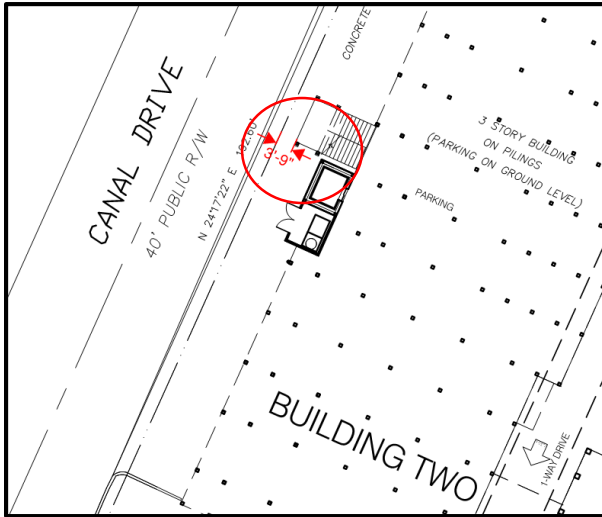


Building 2 (Front Setback) – 7'2"

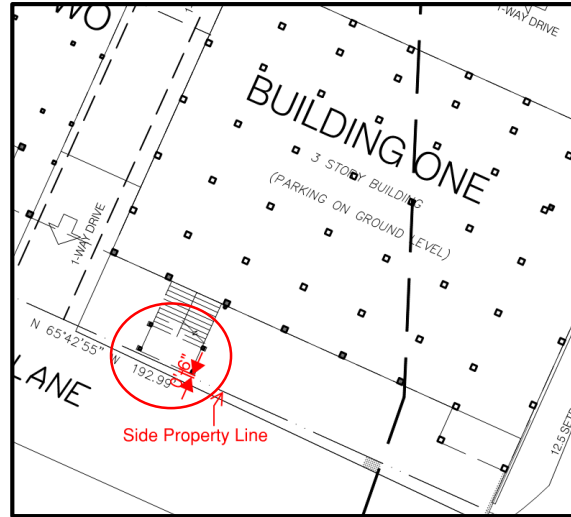


Building 1 & 2 (Side Setback) – 11'0"

Variance Proposed Setbacks:



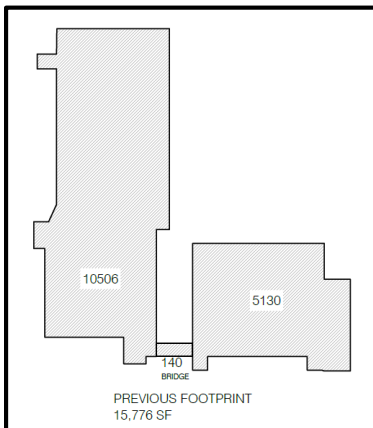
Building 2 (Front Setback) – 3'9"



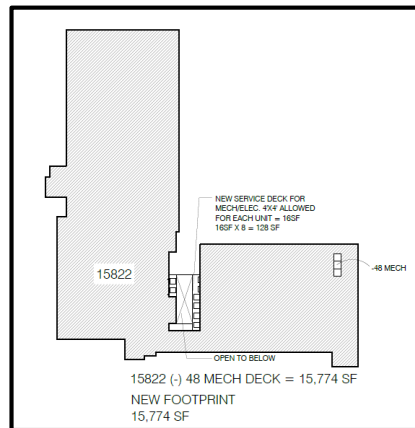
Building 1 (Side Setback) – 6 inches

Lot Coverage

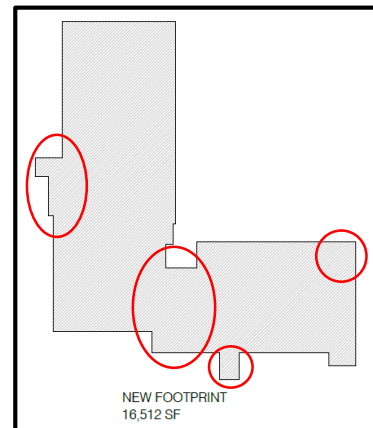
The applicant also desired to enlarge the size of the residential balconies on buildings 1 & 2, add an elevator machinery room/vending room, add a trash chute, enlarge a storage closet between the buildings, and relocate and enlarge the staircases and elevator. These proposed additions and enlargements contribute to the increase in lot coverage proposed by the applicant. The town ordinance allows lot coverage not to exceed 40%. The building was already legal-nonconforming for lot coverage. The existing lot coverage was 15,776 sf (47.0%). The lot coverage of the building approved for the renovation and addition building permits was 15,774 sf (46.99%). The proposed variance lot coverage would be 16,512 sf (49.2%). This is an increase of approximately 736 sf.



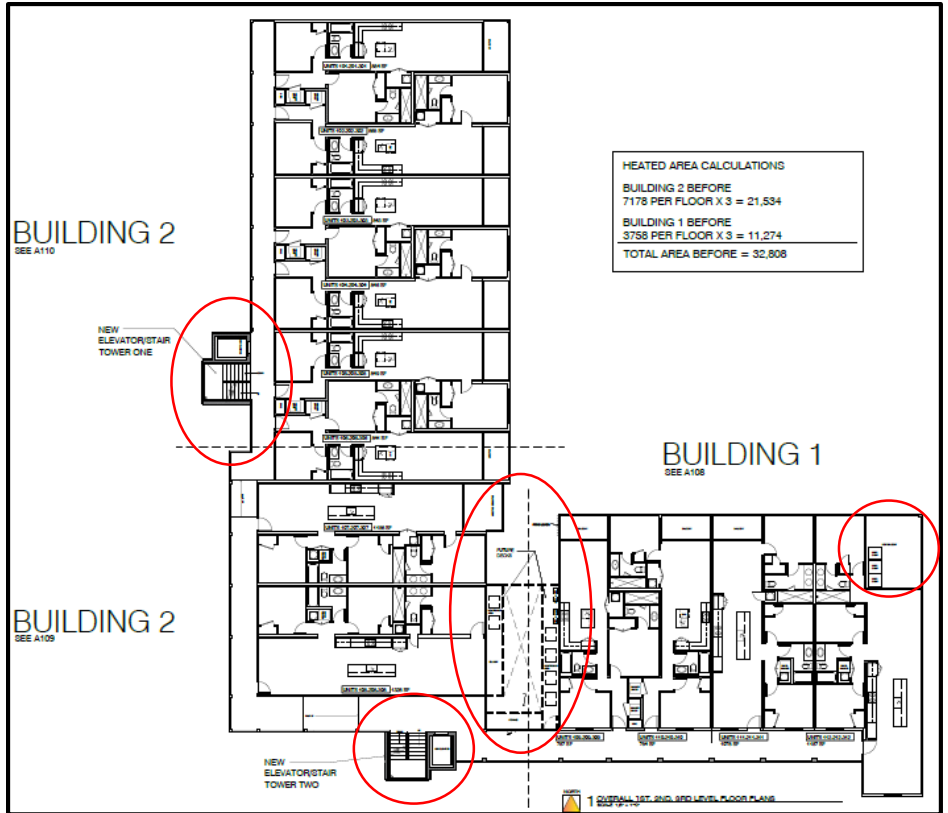
Pre-Construction Lot Coverage



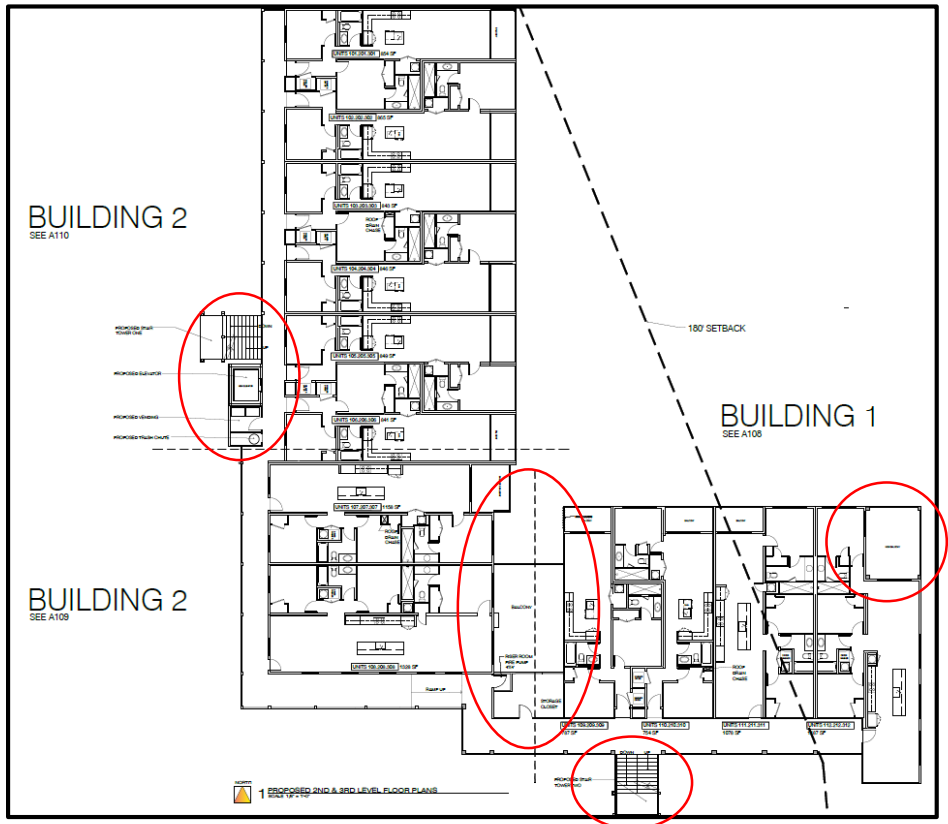
Approved Permit Lot Coverage



Variance Proposed Lot Coverage



Approved Building Permit Lot Coverage



Proposed Variance Expansions to Lot Coverage

SUMMARY:

The applicant is seeking three (3) separate variances:

- **Building Height (50' Max)**– Exceed the maximum 50’ height limitation by 5’ 4” for a total height of 55’ 4” for the elevator shaft.
- **Front and Side Building Setbacks (20’ Front, 12.5’ Side)** – The front setback would change from the existing (pre-renovation) setback of 6’8” to the proposed variance front setback of 3’9”. The side setback would change from the existing (pre-renovation) setback of 6’11” to the proposed variance front setback of 0’6”.
- **Lot Coverage (40%)** – The total lot coverage would expand by approximately 738 sf and would change from the existing (pre-renovation) lot coverage of 15776 sf (47.0%) to the proposed variance lot coverage of 16,512 sf (49.2%)

	Ordinance	Required By Ordinance	Pre Construction	Approved Building Plans	Proposed Variance	Notes
Building Height	Sec. 40-426. & Sec. 40-74.	Up to 50'	<50'	50.0'	55' 4" to top of elevator shaft	
Lot Coverage	Sec. 40-426. & Sec. 40-74.	13,426.8 Sf = 40.0%	15,776 sf = 46.7%	15,774 sf = 46.7%	16,512 sf = 49.2 %	An addition of 736 sf of expanded balconies, trash chute, storage, vending, and mechanical room.
Building Setbacks	Sec. 40-426. & Sec. 40-74.	Front Setback: 20' Side Setback: 12.5'	Front Setback: 6' 8" Side Setback: 6' 11"	Front Setback: 7' 2" Side Setback: 11' 0"	Front Setback: 3' 9" Side Setback: 0' 6"	

Summary Table of Comparisons

REQUIRED FINDINGS:

When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

CONDITIONS:

In granting any variance, the Board may prescribe reasonable and appropriate conditions and safeguards, in conformity with this ordinance. Violation of any such conditions or safeguards, when made part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under Article 19 of the Zoning Ordinance:

Attachments

1. Building Height Variance Application
2. Setback Variance Application
3. Lot Coverage Variance Application
4. Variance Architecture Plans
5. Building Permit Timeline