

CITY OF JERSEY CITY

Department of Housing, Economic Development & Commerce
Division of City Planning
Interdepartmental Memorandum



DATE: May 11, 2021
TO: Board of Adjustment Commissioners
FROM: Lindsey Sigmund, AICP, Senior/Environmental Planner
RE: Case #Z20-046 230 4th Street
Minor Site Plan with D Variance

Documents Reviewed:

- City of Jersey City General Development Application, received by City Planning July 24, 2020;
- Plans entitled "Mixed Use Rowhouse 230 Fourth Street, Jersey City, NJ 07302" prepared by Debra David Architect, LLC, dated November 7, 2019, revised April 12, 2020, and August 2020;
- Statement of Principal Points, prepared by Dresdner Robin, undated;
- HPC Staff report, prepared by Daniel Wrieden, dated April 24, 2021.

Site Location:



Application Background and Proposal:

The subject property, known as Block 11205, Lot 25 is located at 230 4th Street in the Harsimus Cove Historic District (H). The site is comprised of one (1) undersized parcel with a total area of 750 SF. The site currently includes a three (3)-story mixed-use building with ground floor commercial and a two (2)-story duplex containing one (1) residential unit.

The Applicant is proposing to convert the ground floor commercial space into a 462 SF Category 2 Restaurant/Café. The proposed use also includes an accessory sidewalk café with seating along Erie Street. No additional gross floor area or bulk is proposed. In addition to a change in use, the Applicant is proposing to rehabilitate the exterior of the structure in accordance with Jersey City’s Historic Design Standards and Secretary of the Interior’s Standards for Historic Preservation.

The Applicant is proposing a Restaurant/Café with a sidewalk café which is not a permitted Use in the Harsimus Cove Historic District, therefore a D(1) Use Variance is required.

Table 1: Historic Bulk Standards for Townhomes			
Standard	Required	Proposed	Conforming (Y / N)
Min. Lot Size	1,800 SF	750 SF	N*
Min. Lot Width	18 FT	15 FT	N*
Min. Lot Depth	100 FT	50 FT	N*
Front Yard	Meet Adjacent	0 FT	Y
Side Yard	0 FT	0 FT	Y
Rear Yard	30 FT	0 FT	N*
Max. Height	4 Stories / 40 FT	3 Stories / 31.5 FT	Y
Max. Building Coverage	60%	100%	N*
Max. Lot Coverage	80%	100%	N*

*pre-existing condition

Staff Comments:

The Applicant is not proposing an inherently beneficial use, therefore the applicant is required to provide proof that the proposed use can meet the purposes of zoning, the site is particularly suited for the use, and the proposal meets the enhanced burden of proof. Additionally, the applicant must demonstrate the variances can be granted without substantial impairment to the intent and purpose of the zone plan and zoning ordinance but can also be granted without substantial detriment to the public welfare.

D(1) Variance:

The Applicant is proposing a Café/Restaurant with a sidewalk café as an accessory use, which is not permitted in the Harsimus Cove Historic District. The LDO defines **Café – Category Two Restaurant** as “A small-scale restaurant, with limited seating, engaged in the selling of light

meals and drinks. A café is designed to operate for substantial carry-out service; delivery service; self-service; counter service, and which may, but is not required to, include on premise consumption. No commercial kitchen or ventilation systems are permitted” (345-6). No commercial kitchen or ventilation is proposed.

While sidewalk cafes are conditionally permitted in Paulus Hook and Van Vorst Park Districts, they are not permitted in Harsimus Cove. However, there are aspects of the subject property that make it suitable for a Restaurant/Café with a sidewalk café. This property is a corner lot, currently contains a ground floor commercial use, and the sidewalk along Eerie Street is 14.6 FT wide, providing a minimum of six (6) feet of sidewalk width for pedestrians. Staff recommends the condition that a sidewalk café license shall be obtained from the Division of Commerce for any seating area which extends beyond the property line, and all standards of Article XII (Sidewalk Cafes), of the Jersey City Municipal Code, shall be met.

In addition to site suitability, the Applicant is proposing to repair the existing building, which includes the repair and repainting of the cornices, the preservation and restoration of the existing storefronts, repainting, and repairs to the brownstone.

It is the opinion of staff that this proposal advances the following purposes of Zoning, per NJSA 40:55D-2 of Municipal Land Use Law:

j. To promote the conservation of historic sites and districts..

The applicant has received a Certificate of Appropriateness from the Historic Preservation Commission for the proposed restoration and ground floor conversion to a Restaurant/Café. HPC Staff found that the proposal would not cause an adverse effect on the character and/or integrity of the Harsimus Cove Historic District.

The Applicant’s experts shall address the following points:

1. The Applicant’s experts shall address through testimony the positive and negative criteria required to grant use relief.
2. The Applicant’s expert witnesses shall provide testimony on the proposed building improvements and site improvements.
3. The Applicant’s expert witnesses shall provide testimony on the proposed façade elements and create a verbal record of the materials to be used on the project.

Staff Recommended Conditions:

1. No change to the site design shall be permitted without consultation with and approval by planning staff.
2. All testimony given by the applicant and their expert witnesses in accordance with this application shall be binding.
3. All street trees/landscaping shall be installed in accordance with 345-66 and the City’s Forestry Standards, prior to an issuance of a Certificate of Occupancy.

4. All HPC conditions shall be shown on final signature plans.
5. A sidewalk café license shall be obtained from the Division of Commerce for any seating area which extends beyond the property line, and all standards of Article XII (Sidewalk Cafes), of the Jersey City Municipal Code, shall be met. These standards shall be enforced by the Division of Commerce.
6. The Applicant shall pay a fee in lieu of planting street trees to the Division of Parks and Forestry. Receipt of payment shall be submitted to City Planning prior to the issuance of a Certificate of Occupancy.
7. The Architect of record shall be retained during construction and shall submit a signed and sealed letter representing and nothing that site construction was consistent with work approved before the issuance of the Certificate of Occupancy.
8. A copy of the memorialized resolution with amended deed shall be filed with the Hudson County Register's Office with proof of such filing to be submitted to the Division of City Planning prior to application for construction permits.

APPENDIX:

Required Findings for “D” Variances (NJSA 40:55D-70d):

Positive Criteria

NJSA 40:55D-70d states that “in particular cases and for special reasons...” the types of variances already identified may be granted by the Board of Adjustment. These “special reasons” also are referred to as the positive criteria. The Applicant must demonstrate that a project advances the purposes of zoning listed in the MLUL.

A. Special Reasons/Positive Criteria for D(1) Use Variance

The 1975 Municipal Land Use Law lists the purposes of zoning in N.J.S.A. 40:55D-2. A-O. “Special reasons” is more generally referred to as the positive criteria for a use variance.

NJSA 40:55D-4 defines an inherently beneficial use as a use that is universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare. If a use is held to be inherently beneficial, it presumptively satisfies the positive criteria.

The accepted standard for reviewing use variance application is set forth in Medici v. BPR, 107 NJ 1 (1987).

The application must show:

- 1) **That the purposes of zoning are advanced, and**
- 2) **That the use is particularly suited to the property, and**
- 3) **Must also meet the enhanced burden of proof – the Applicant must reconcile why the use is not listed in the permitted or conditional uses for this zone.**

Negative Criteria

NJSA 40:55D-70 states that no Variance or other relief may be granted unless it can be done:

- 1) **without substantial detriment to the public good, and**
- 2) **without substantially impairing the intent and purpose of the zone plan and zoning ordinance.**