

CITY OF JERSEY CITY

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



DATE: June 21, 2022
TO: Board of Adjustment Commissioners
FROM: Francisco Espinoza, Assistant Planner
Matthew Ward, Supervising Planner, AICP, PP
RE: Case #Z22-019 221 Liberty Avenue
D Variance

Site Location:



Application Background and Proposal:

The subject property, known as Block 4601, Lot 17 is located at 221 Liberty Avenue in the R-1 One- and Two-Family Housing District. The site is over sized compared to the standard 25'x100' lot. The lot is 29.17'x138' and comprised of one (1) 4,025 SF parcel. The property currently has an existing 2 story home.

The Applicant is proposing to demolish the existing building and construct a three (3)-story multi-family building containing three (3) dwelling units. The building includes 7,970 SF of gross floor area with 5,130 SF of new residential space distributed by three units. The site plan includes the addition of a curb cut for a 2 car garage with EV chargers and a landscaped rear yard area.

The Applicant is proposing a three (3)-family building in the R-1 Zone, therefore a D(1) Use Variance is required. There are no other variances.

Table 1: R-1 Bulk Standards			
Standard	Required	Proposed	Conforming (Y / N)
Min. Lot Size	2,500 SF	4,025 SF	Y
Min. Lot Width	25 FT	29.17 FT	Y
Min. Lot Depth	100 FT	137.90 FT	Y
Front Yard	Predominant	4 FT	Y
Side Yard	One Side: 2 FT Both Sides: 5 FT	3.3 FT / 6.9 FT	Y
Rear Yard	33.42 FT	38.95 FT	Y
Max. Height	3 Stories / 33 Feet	3 Stories / 33 FT	Y
Min. Floor to Ceiling Height	Min. 9 FT	9FT	Y
Max. Building Coverage	60%	56%	Y
Max. Lot Coverage	80%	76%	Y
Landscaping	30%	32%	Y
*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.

Tax records from 1960 indicate that the building was constructed in 1920. The building was two (2) stories and contained three (3) units. Three (3) units are proposed therefore the density is conforming.



1938 Tax Record Photo.

D(1) Variance:

The Applicant is proposing a multi-family building, which is not a permitted use in the R-1 District.

When evaluating a D(1) Use Variance to permit an additional unit in the R-1, site suitability is evaluated. With 4,025 SF, the lot is oversized for the R-1 Zone. The size of the lot allows for adequately sized units and provides a density closely aligned with the implied density of the R-1. The implied density of the R-1 zone is 35 units/acre where 32.49 units/acre is proposed.

While bulk variances are subsumed under the use variance, the overall bulk of the structure is also applicable when evaluating site suitability. The height, front yard setback, and side yard setbacks, and rear yard are conforming. The lot coverage and building coverage is conforming.

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 experts shall address through testimony the positive and negative criteria required to grant relief from R-1 bulk standards.
3. The Applicant's expert witnesses shall provide testimony on the proposed façade elements and landscaping plan 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. 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.**